

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 2098, RELATING TO HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS

DATE: Wednesday, February 5, 2020 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Clare E. Connors, Attorney General, or
Erin N. Lau, Deputy Attorney General

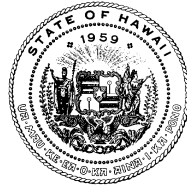
Chair San Buenaventura and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill prohibits the Department of Human Services Med-QUEST program from denying coverage for home- and community-based services to individuals diagnosed with autism, intellectual disabilities, or developmental disabilities, including seventeen listed services. This bill also requires Med-QUEST to limit the services to comply with the applicable federal requirements related to utilization, coverage, and reimbursement. The bill further provides, on page 3, line 8, and page 4, line 20, that Med-QUEST must provide services “notwithstanding any law to the contrary” and also must limit services “notwithstanding any law to the contrary.”

The dual use of the phrase “notwithstanding any law to the contrary” is confusing because it requires Med-QUEST to provide the seventeen services, but then also requires Med-QUEST to limit the services per federal requirements. We recommend deleting the phrase “and notwithstanding any law to the contrary,” on page 3, lines 7-8, which requires Med-QUEST to provide the services. This would allow the two requirements to be read consistently by requiring Med-QUEST to provide the home- and community-based services only to the extent allowed under the applicable federal requirements for utilization, coverage, and reimbursement.

We respectfully ask the Committee to consider the recommendation if the bill is passed.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony COMMENTING on H.B. 2098
RELATING TO HEALTH.

REPRESENTATIVE JOY A. SAN BUENAVENTURA, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES & HOMELESSNESS

Hearing Date: February 5, 2020

Room Number: 329

1 **Department Position:** The Department of Health (DOH) offers the following **COMMENTS**
2 **AND SUGGESTED AMENDMENT.**

3 **Department Testimony:** The subject matter of this measure intersects with the scope of the
4 Department's Behavioral Health Administration (BHA) whose statutory mandate is to assure a
5 comprehensive statewide behavioral health care system by leveraging and coordinating public,
6 private and community resources. Through the BHA, the Department is committed to carrying
7 out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and
8 person centered. The BHA's Developmental Disabilities Division (DDD) provides the following
9 testimony on behalf of the Department:

10 The intent of HB 2098 is to require the Department of Human Services (DHS) to establish and
11 implement home and community based services (HCBS) for an at-risk population of individuals
12 with autism, intellectual disabilities, or developmental disabilities through a Medicaid section
13 1115 waiver through a state plan amendment by December 2020. This population is identified as
14 individuals with autism, intellectual and developmental disabilities who are at risk of, but do not
15 meet the level of care criteria for, an intermediate care facility. The bill specifies an array of
16 HCBS to be provided to this population. The bill also appropriates funds for such purposes.

17 The DDD has participated in a number of meetings with stakeholders in partnership with the
18 DHS, MedQUEST Division (MQD) on the issues that families face in accessing services

1 especially for youth transitioning from the Department of Education into adulthood. Thus, the
2 DOH appreciates the intent of HB 2098 to respond to the needs of this population in order to
3 support their transition into a successful life in the community. However, as written, HB 2098
4 may be problematic to achieving the goal for a number of reasons:

- 5 • A key concern of the DOH is the use of the Development Disabilities Division’s statutory
6 definition in § 333F for “intellectual disability” in the proposed § 346-B which requires a
7 specific level of functional limitations. The use of this definition in § 346-B would
8 duplicate the definition of the intended at-risk population with the current population of
9 people served through the Medicaid 1915(c) waiver for individuals with intellectual and
10 developmental disabilities (IDD) waiver population. The definition of “developmental
11 disability” in the proposed § 346-B also duplicates that in § 333F, but uses the citation of
12 § 321-502, the statute that governs DDD’s mortality review.
- 13 • The State of Hawaii currently provides HCBS services for people with I/DD who meet
14 the federal government’s intermediate care facility (ICF) level of care standard through a
15 memorandum of agreement between DHS and DOH that designates DDD as the
16 operating agency for the Medicaid 1915(c) waiver. The proposed § 346-B would create a
17 different program that duplicates many of the services provided through the 1915(c)
18 waiver for people with IDD.
- 19 • HB 2098 requires DHS to provide services to the population by January 1, 2021.
20 Processes for development of waivers that include stakeholder engagement, public
21 comment periods, and review and approval of states’ applications, rarely happen in
22 several months. If the Centers for Medicare and Medicaid Services (CMS) does not
23 approve a state plan amending the 1115 waiver including within the timeframe in the
24 measure, this puts the state at risk for assuming entire cost of the program. The timeframe
25 may also be problematic if CMS recommends a different mechanism for covering these
26 services than the 1115 waiver.

- 1 • HB 2098 prescribes an array of services which may be more intensive and
2 expansive than needed by an at-risk population. A number of the services in the
3 array listed are not services currently covered even in the 1915(c) I/DD waiver
4 for people with more intensive support needs, or are already available as a
5 benefit in the 1115 waiver or through EPSDT. The array cited in the bill,
6 depending on numbers in this population, may come with a large budget
7 requirement. Any program implementing support for people at the magnitude
8 described would also need to develop the workforce and supports infrastructure
9 to provide the services. If funded as described, this may impact funding and
10 resources for people with a higher level of need, creating risk of harm for this
11 population. A more measured, stepwise approach based on a needs assessment
12 may be warranted.

13 HB 2098 states that individuals in the “at-risk” group must have been found through a functional
14 assessment to be at risk of deteriorating to the institutional level of care, and have been found
15 ineligible to receive Medicaid long term services and supports (LTSS) or the I/DD waiver. DOH
16 is not aware of functional assessments normed specifically for the purpose of measuring whether
17 an individual is at risk of deteriorating to an institutional level of care, so a clear eligibility
18 description based on level of need would need to be operationalized, which is a requirement of
19 Medicaid HCBS waivers. Further, if there is unclear eligibility criteria, it could cause confusion
20 and overlap of eligibility criteria of the population served through the current 1915(c) waiver for
21 individuals with I/DD, which includes individuals with functional limitations in three or more
22 life areas. As well, requiring people to first be found ineligible for Medicaid LTSS or the I/DD
23 waiver might be a barrier in accessing timely services. For these reasons, while the intent of HB
24 2098 is to expand access to services for people with autism and other I/DDs, the best way to
25 move forward may be through working with DHS and stakeholders to clearly define the specific
26 population of Medicaid beneficiaries and eligibility criteria for the people that would benefit
27 from a program for at-risk individuals with intellectual and developmental disabilities. As well,
28 the service needs of the population would need to be defined in order to estimate annual costs.

1 **Suggested Amendments:**

2 DOH respectfully recommends the following amendments:

- 3 • Add a clear definition of the specific population of Medicaid beneficiaries and
4 eligibility criteria for the people that would benefit from a program for at-risk
5 individuals with intellectual and developmental disabilities, and specify that the law
6 applies to the defined population.
- 7 • Delete the word autism throughout HB 2098 as the term developmental disabilities
8 encompasses autism.
- 9 • Add language that the law takes effect upon approval from CMS.
- 10 • SECTION 2, in § 346-C:
- 11 ○ (a) Delete “additional” on page 5 , line 8 and on line 9, “including long term
12 services and supports”
- 13 ○ (a) (2) Delete “functional” on page 5, line 16, and “if certain long-term
14 services and supports are not provided” on page 5, lines 18-19.
- 15 ○ (a) (3) Delete “[h]ave been found ineligible under Medicaid for treatment at
16 an intermediate care facility” and substituting “[a]re ineligible for other
17 Medicaid waiver programs for individuals with intellectual or developmental
18 disabilities” on page 5, lines 20-21.
- 19 • Delete SECTION 4 on page 7, lines 3 through 7. This would allow DHS to work
20 with CMS and stakeholders to determine the best delivery system.

21

1 **Fiscal Implications:** A full cost study based on definition of the eligible population, prevalence
2 in Hawaii, and specific services to be funded is needed to estimate cost. DOH suggests a
3 comprehensive rate study must be conducted to accurately project annual cost for services to this
4 population.

5

6 Thank you very much for the opportunity to testify.

7

HB-2098

Submitted on: 1/30/2020 5:57:24 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments	Yes

Comments:

We definitely want to see more coverage for the entire population that is set forth in this bill. We have long advocated that there are many individuals who may not meet the strict criteria for either DD eligibility or for the Medicaid Level of Care requirements. Yet, they have real needs and may not have any services. For those reasons, we welcome this bill.

That said, we seem to recall that last session the Department of Human Services indicated that CMS requirements might preclude the provisions this bill seeks to advance and so we would like to hear their input on this proposal. In any event, this bill offers an excellent vehicle for discussion as to how we can serve this population in the most effective and efficient way.

HB-2098

Submitted on: 1/30/2020 3:59:48 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sean Sullivan	PRIDE Industries	Support	No

Comments:

January 30, 2020

To: Representative Joy A. San Buenaventura, Chair

And Members of the Committee on Human Services and Homelessness

Testimony in Support of HB2098 Relating to Home- and Community-based Services

to At-Risk Individuals with Developmental Disabilities

I am a Human Resource professional with 30+ years experience in employment. I currently work as a Job Developer/Employment Manager for PRIDE Industries, a non-profit here on Oahu that works with state agencies and employers to create jobs for people with disabilities.

Over the years I have assisted individuals with Fetal Alcohol Spectrum Disorders (FASD) in their employment search and found the person often lacks some of the basic skills necessary to function successfully in the workplace. When I ask individuals or family members as to why the person is not more prepared for work, often the reason given is because the person was mis-diagnosed or simply did not qualify for supportive services that would have better prepared them to secure a job and maintain employment long-term.

FASD is a developmental disability and when people are properly diagnosed with this disability they can should then receive the support necessary to be better prepared to function more successfully and independently in our community.

By supporting HB2098, you will also be helping these individuals avoid homelessness, substance abuse, victimization, and other adverse life situations.

HB2098 will provide improved services for individuals with functional disabilities who are currently ineligible for services.

With your support of HB2098, you will be helping people diagnosed with FASD have a better chance in life by increasing their opportunity for employment and helping them move from a tax recipient to a contributing tax-payer.

Thank you for your consideration of HB2098.

Sincerely,

Sean Sullivan

HB-2098

Submitted on: 2/3/2020 8:12:32 AM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Julie Yurie Takishima-Lacasa	Hawai'i Psychological Association	Support	No

Comments:

Testimony in Support of HB 2098 – Relating to Health
Hearing on February 5, 2020, 9:00 am
Conference Room 329 of the State Capitol

TO: Committee on Human Services & Homelessness
Rep Joy Buenaventura, Chair
Rep Nadine Nakamura, Vice Chair

FR: Alan Shinn
2869 Park Street
Honolulu, HI 96817
(808) 261-9612

Please accept my testimony in support of HB 2098- Relating to Health, that requires the State DHS to establish and implement a program for providing additional home and community-based services to at-risk individuals with autism, intellectual disabilities or developmental disabilities. Individuals must meet certain criteria and DHS to seek a section 1115 waiver to amend the state Medicaid plan for specific disabilities. This bill includes an appropriation of funds.

I am a volunteer member of the Fetal Alcohol Spectrum Disorder (FASD) Action Group with a mission to raise awareness on the impact of FASD on individuals, their families, and the community through education, advocacy, and research in Hawaii.

Autism, intellectual and developmental disabilities are life-long disabilities and require on-going supportive services in the home and community for these individuals to live as normalized a lifestyle possible in the community. Currently they are not afforded continuum-of-care support. This puts a tremendous emotional and financial burden on the families with disabled members who lack resources.

Thank you for the opportunity to submit testimony in support of HB 2098.

January 30, 2020

To: Representative Joy A. San Buenaventura, Chair

And Members of the Committee on Human Services and Homelessness

**Testimony in Support of HB2098 Relating to Home- and Community-based Services
to At-Risk Individuals with Developmental Disabilities**

I am a psychologist and marriage and family therapist who treats/assists individuals with Fetal Alcohol spectrum disorders (FASD) and their families. FASDs are developmental disabilities. Individuals can present with functional disabilities ranging from very serious to somewhat mild. Many individuals with FASD function at a high enough level that disqualifies them for home and community-based services. Yet, without support, they have difficulty functioning independently and can be at high-risk for unemployment, homelessness, substance abuse, victimization, and other adverse life situations.

For example, many families provide the structure necessary for their children with FASD to succeed in the home and at school. Once they “age out” of school-based services, parents, grandparents, and other relatives find few support services for adults. Without ongoing support, families are concerned about the safety and future of their children. Indeed, some have become unemployed, homeless, and/or addicted to drugs/alcohol.

This bill will fill some of the gaps in service for individuals with functional disabilities who are currently ineligible for services. Supportive services across the lifespan will help keep them safe and productive and give them a chance at a purposeful and meaningful life.

Thank you for your consideration.

Sincerely,

Ann S. Yabusaki, Ph.D., MFT

HB-2098

Submitted on: 1/31/2020 10:40:30 AM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cleota Brown	Individual	Support	No

Comments:

I offer this testimony strongly favoring HB2098 as a Mother, Grandmother and Community Advocate for nonprofit agencies who touch the lives of people with Fetal Alcohol Spectrum Disorder and their families.

HB2098 requiring the Department of Human Services to establish and implement a program for providing additional home-and community-based services to at-risk individuals with autism, intellectual disabilities, or developmental disabilities who meet certain criteria and who do not meet Medicaid's criteria for treatment at an intermediate care facility. Requiring the department to seek a section 1115 waiver to amend the state Medicaid plan to cover home-and community-based services for individuals with autism, intellectual disabilities, or developmental disabilities is the right thing for our State to do in support of those who are currently in need but denied do to a lack of awareness for these spectrum disorders.

I appreciate your consideration.

Sincerely,

Cleota G. Brown

January 30, 2020

To: Representative Joy A. San Buenaventura, Chair

And Members of the Committee on Human Services and Homelessness

**Testimony in Support of HB2098 Relating to Home- and Community-based Services
to At-Risk Individuals with Developmental Disabilities**

I am a retired biochemist and have researched some of the biochemical processes that contribute to fetal alcohol spectrum disorder (FASD). From what I have researched, in a culture and society where consumption of alcohol is a living issue, FASD is a permanent and life-long brain disorder that lead to compromised adaptive functioning behaviors. individuals born with FASD are “Born into an Impossible World”. It is our responsibility to make the World “possible” for not only those afflicted with FASD, but all developmental/functional disabilities. Part of this responsibility and making the world “possible” for those with DDs (including FASD) is having access and qualifying for home and community-based services. Many with FASD fall into gaps that disqualify them for these much-needed services because of age limits and/or IQ score. We tend to forget the caregivers of those afflicted by DDs who must advocate for the aforementioned services. I strongly support passage of HB2098 as it will help those with FASD and all developmental disabilities have access to a productive life of “possibilities”. Thank you for your consideration in passage of HB 2098.

Respectfully,

Kenichi K. Yabusaki, Ph.D.

HB-2098

Submitted on: 1/31/2020 1:15:23 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa	Individual	Support	No

Comments:

January 31, 2020

To: Representative Joy A. San Buenaventura, Chair

And Members of the Committee on Human Services and Homelessness

Testimony in Support of HB2098 Relating to Home- and Community-based Services

to At-Risk Individuals with Developmental Disabilities

Individuals with Fetal Alcohol Spectrum Disorders (FASD) and their families often struggle to provide necessary medical, social, and financial needs in Hawaii. I am a psychologist who provides psychotherapy and advocacy for these individuals and families. FASDs are often ignored in treatment and resources despite being developmental disabilities. Individuals can present with functional disabilities such as impaired intelligence, social skills, and functional skills necessary to attaining and maintaining daily needs. Many individuals with FASD function at a high enough level that disqualifies them for home and community-based services. Yet, without support, they have difficulty functioning independently and can be at high-risk for unemployment, homelessness, substance abuse, victimization, and other adverse life situations. As a result, they're needs then become a heavier financial burden to themselves, the state, and their families.

This bill will allow many of these individuals to meet and even exceed necessary skills for independence, allowing them to become healthy contributing citizens. Supportive services across the lifespan will help keep them safe and productive and give them a chance at a purposeful and meaningful life.

Mahalo for your consideration.

Sincerely,

Lisa Garcia, PSYD, CCTP

HB-2098

Submitted on: 2/2/2020 1:36:15 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Jones	Individual	Support	No

Comments:

My son is 4 years old and has Autism. He is bright but have Behavioral issues and limited communication. We have private insurance and looking into getting Medicaid waiver to help with some of his therapies. He has very good days and currently going through regression. I don't know what the future will be like for him but I know HB2098 is so important and affects many in our community.

Linda Jones

Representative Joy A. San Buenaventura, Chair
Representative Nadine K. Nakamura, Vice Chair
Committee on Human Services & Homelessness

Precious Yasay

Monday, February 3, 2020

Support for H.B. No. 2098, Relating to Health

I am a concerned citizen who is passionate about ensuring that all individuals are given the opportunity to succeed to their highest potential in all aspects of life. I strongly support H.B. No. 2098, Relating to Health, which would require the Department of Human Services to establish and implement a program to provide additional home- and community-based services to at-risk individuals with autism, intellectual disabilities, or developmental disabilities. This includes individuals who meet and who do not meet certain criteria in the current treatment with Medicaid.

People should not be forced to pay out of pocket for home- and community-based services for individuals with autism, intellectual disabilities, or developmental disabilities. I was a Registered Behavioral Therapist that worked with children and adolescents on the autism spectrum for many years and I see how home- and community-based services is truly necessary for individuals with autism, intellectual disabilities or developmental disabilities. Depending on where the individual is on the spectrum of autism or depending on their course of treatment, individuals may need treatment services everyday from one hour to eight hours. However, some of the insurances that these individuals have may not qualify for 40+ hours of treatment services per week and be left with paying money out of pocket for more hours of treatment services. There are some families who refuse to even seek treatment, despite the need for it, because of the high costs of services for these individuals.

Some individuals diagnosed with autism, intellectual disabilities, or developmental disabilities are restricted by their insurances, such as those with Medicaid, and I believe that this bill (H.B. 2098) will be able to grant these individuals with the best possible treatment to reach their highest potential in both academically and physically, but also become helpful citizens in the community.

In amending the state Medicaid plan to provide coverage for home- and community-based services for Medicaid eligible individuals with are diagnosed with autism, intellectual disabilities, or developmental disabilities, we are creating a foundation for these individuals and for future generations. We are removing any barriers that the individual and their families may have in seeking and receiving services. I urge the committee to pass H.B. 818. Thank you for this opportunity to testify.

HB-2098

Submitted on: 2/4/2020 8:16:50 AM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Eri Rodrigues	Individual	Support	No

Comments:

February 4, 2020

To: Representative Joy A. San Buenaventura, Chair and the Members of the Committee on Human Services and Homelessness

Date and Time of Hearing: February 5, 2020 at 9:00 a.m.

Testimony in Support of HB2098 Relating to Home- and Community-based Services

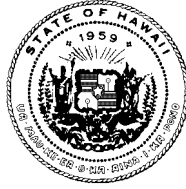
to At-Risk Individuals with Developmental Disabilities

I am writing to express my support for this measure for additional home- and community-based services to be created for at-risk individuals with developmental disabilities, including individuals with Fetal Alcohol Spectrum Disorder (FASD). As a social worker, I have had opportunities to work with individuals as well as families impacted by FASD in our community. Studies and services from other states and countries overseas present that individuals with FASD benefit from structure and supports that cater to their unique needs. Currently however in this state, individuals as well as families are under-identified and served due to limitations in accessibility and provision of services. And this measure, I believe will create means for services and supports to be developed to fill those gaps.

Thank you for your consideration and allowing me to express my support toward this measure.

Sincerely,

Eri N. Rodrigues, LSW



LATE

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 4, 2020

TO: The Honorable Representative Joy A. San Buenaventura, Chair
House Committee on Human Services & Homelessness

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 2098 – RELATING TO HEALTH**

Hearing: February 5, 2020, 9:00 a.m.
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the bill in regard to expanding access to Home- and Community-Based Services (HCBS) to an at-risk population, offers comments with concerns, and offers amendments.

PURPOSE: The purpose of this bill is to require DHS to provide HCBS to individuals with autism, intellectual disabilities, or developmental disabilities in its managed care program and to create a new program to provide HCBS to individuals with autism, intellectual disabilities, or developmental disabilities who are at-risk of requiring institutionalization.

Since last legislative session, DHS has regularly met with stakeholders to discuss ways that the present system and continuum of care can be improved for individuals who are transitioning out of services provided by state agencies such as Department of Education (DOE) and the Department of Health (DOH) Child & Adolescent Mental Health Division (CAMHD). These individuals are often at-risk of institutionalization because they do not receive supports. DHS appreciates the intent of this bill, but does not think that it reflects our common understanding with stakeholders on a pathway forward. DHS prefers the Senate version of a similar bill, SB 3122 as a starting point.

The Definitions and Managed Care Sections of the Bill Result in Unintended Consequences

DHS recommends an amendment to delete the content of the bill from page 2, line 14 through page 5, line 4. These parts have no relation to the at-risk program, which is the second part of the bill, that DHS has discussed with stakeholders. Furthermore, these first parts of the bill create misalignment with current law and programs that could lead to operational disruptions and additional state expenditures. DHS believes the intent of this bill was to focus on the at-risk population and recommends that the bill be focused on that population. DHS describes below its particular concerns with the content that we recommend be deleted.

First, existing definitions in Chapters 346, Hawaii Revised Statutes (HRS) or 346D, HRS are sufficient. The proposed section 346-A contains definitions that will create overlap and confusion between the at-risk population and the existing population of individuals with intellectual or developmental disabilities that receive State services.

Second, DHS has an inter-agency agreement with DOH Developmental Disabilities Division (DDD) to administer the services described in the proposed section 346-B(b). The proposed section 346-B conflicts with how the State currently provides HCBS for individuals with autism, intellectual disabilities, and developmental disabilities who meet the federal government's intermediate care facility (ICF) level of care standard.

This bill would seemingly create a separate program that duplicates the services that DDD oversees. While DHS currently does provide HCBS for aged and disabled populations in managed care, we believe that individuals with autism, intellectual disabilities, and developmental disabilities are a special population that benefit from receiving their services through the DDD system. DDD is the best division to be administering this program for this population through the Medicaid 1915(c) waiver. Having two different programs to provide the same services to the same sub-population is duplicative and unnecessarily burdensome for DHS to monitor and oversee.

Third, as drafted the two different "notwithstanding" clauses conflict and are contradictory; it is unclear whether section 346-B is a major expansion of HCBS eligibility using state dollars or if it is intended to reinforce the current program that observes the federal government's ICF level of care standard. In section 346-B(a), DHS is required to provide services "notwithstanding any law to the contrary." In section 346-B(d), the bill reads

“[n]otwithstanding any other law to the contrary, the provisions of this section shall comply with the applicable federal requirements related to utilization, coverage, and reimbursement for services provided to individuals who have been diagnosed with autism, intellectual disabilities, or developmental disabilities.”

DHS currently oversees the Medicaid 1915(c) waiver in compliance with applicable federal requirements related to utilization, coverage, and reimbursement for services as well as Chapter 346D, HRS. However, if the intent is for DHS to provide coverage of HCBS notwithstanding any law to the contrary then the bill could be interpreted to mean that DHS is required to provide the services without regard to federal requirements. DHS could not collect federal matching dollars if it did not meet federal requirements for this program. The State would have to pick up the entirety of the costs.

DHS Appreciates the Intent to Expand Access to HCBS to Individuals At-Risk of Institutionalization

DHS appreciates the intent to expand access to HCBS for individuals at-risk of institutionalization. Expanding access to services would help these individuals engage in their communities and provide support for their families, who must often struggle on their own to support their child. As a general principle, DHS supports expanding access to some HCBS to this population provided that expanding access does not replace or adversely impact budget priorities identified in the executive budget.

DHS believes the prudent and fiscally sound way forward is to conduct a rate study before passing this legislation. A rate study would have to be completed before DHS could submit a request to the Centers for Medicare and Medicaid Services (CMS) to cover HCBS for an at-risk population. A completed rate study would give DHS, stakeholders, and the legislature the best idea of what the appropriation would be for this program. A rate study would not be an additional, unneeded next step, and could support program sustainability with federal matching funds once approved by CMS.

DHS would collaborate with DOH and stakeholders on the rate study. The rate study process could be used to further refine a potential at-risk program in regard to the services

offered and the individuals covered. The rate study would give the Legislature the best idea of what the cost of this program would be.

DHS understands that the Legislature may want to pass a bill this year to begin covering this population. If the Legislature moves forward with this bill without a rate study, then DHS will estimate the potential expenditures for the program to the best of its ability. DHS counsels that a large general fund appropriation may be necessary because of unknowns surrounding the potential population and their use of services.

If the Legislature wishes to move forward without a rate study, DHS again notes that it would prefer the Senate version of a similar bill, SB 3122, as a starting point for discussion. DHS recommends the Senate version so that the following changes could be made:

- 1) Clarify whether the population covered under this bill be determined by DHS to be eligible for federally-funded Medicaid assistance;
- 2) Condition the effective date to only take effect upon approval from CMS;
- 3) Change the date on page 1, line 16 and the date on page 6, line 15 to "June 30, 2021" and delete all specific mentions to the §1115 waiver throughout the bill. It would be better to simply say that "DHS shall seek approval from CMS for the at-risk program."
 - These changes are necessary because DHS would not be able to complete all the work necessary to develop and submit a § 1115 waiver between the effective date of this bill and December 31, 2020.
 - Additionally, a § 1115 waiver may not be the appropriate vehicle to request CMS authorization for an at-risk program. It would be better if DHS was given the flexibility to work with CMS to find the best vehicle to request authorization and additional time to submit a request. DHS would also recommend deleting "amend the state Medicaid plan" on page 6, line 16 for the same reason.
- 4) In Section 3 of the bill, specify that this law applies to Medicaid eligible individuals with intellectual or developmental disabilities who are at risk of institutionalization;

- 5) Delete “additional” on page 5, line 8 and “including long term services and supports” as home- and community-based services is a sufficient term for the services that would be provided;
- 6) Delete “functional” on page 5, line 16, and “if certain long-term services and supports are not provided” on page 5, lines 18-19. DHS would also recommend deleting “[h]ave been found ineligible under Medicaid for treatment at an intermediate care facility” and substituting “[a]re ineligible for other Medicaid waiver programs for individuals with intellectual or developmental disabilities” on page 5, lines 20-21. These changes align better with the Medicaid programs;
- 7) Delete section 4 on page 7, lines 3 through 7. If the bill were to pass, DHS would like to work with stakeholders to find the best way to deliver these services. The best way may not be through managed care. DHS should have the flexibility to collaborate with stakeholders to determine the best delivery system;
- 8) Delete the word autism throughout the law, as autism is already covered under the State’s existing definition of a developmental disability; and
- 9) Clarify when individuals residing in a shelter would be eligible for services as the individual or entity that makes the determination on whether services are appropriate for an individual’s living environment has been left blank in this version of the bill.

Finally, if the Legislature is intent on creating a second program within DHS, DHS recommends adding to 346D, or creating a new chapter, 346H, for example. The proposed numbering of the new sections may create a lot of confusion in Chapter 346 since that Chapter has twenty parts that begins with Part I. section 346-1, through Part XX, 346-407.

Thank you for the opportunity to testify on this bill.

LATE

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that there are Medicaid
2 beneficiaries in the State with ~~autism,~~ intellectual
3 disabilities, or developmental disabilities who are unable to
4 access home- and community-based services. These individuals are
5 at higher risk for future institutionalization, because they may
6 lack independent daily living skills and may be unable to manage
7 their own care or the necessary supports to maintain
8 independence.

9 Accordingly, the purpose of this Act is to:

- 10 (1) Require the department of human services upon approval
11 from the centers for Medicare and Medicaid services (CMS)
12 to establish and implement a program to offer home- and
13 community-based services to individuals with ~~autism,~~
14 intellectual disabilities—~~or developmental disabilities~~
15 who are found, through an functional assessment, to be at
16 risk of institutionalization;
- 17 (2) Require the department of human services to utilize
18 any vehicle available including but not limited to a
19 state plan amendment or a waiver to the 1115
20 demonstration project. ~~apply by December 31, 2020, for an~~
21 ~~amendment to the QUEST integration section 1115~~

1 ~~demonstration project to provide coverage for home- and~~
2 ~~community-based services for individuals with autism,~~
3 ~~intellectual disabilities, and developmental~~
4 ~~disabilities; and~~

5 (3) Appropriate moneys for the department's program for
6 at-risk individuals who do not meet medicaid's criteria
7 for treatment at an intermediate care facility.

8 SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended
9 by adding a new part to be appropriately designated and to
10 read as follows:

11 **PART HOME- AND COMMUNITY-BASED SERVICES FOR INDIVIDUALS**
12 **WITH AUTISM, INTELLECTUAL DISABILITIES, OR DEVELOPMENTAL**
13 **DISABILITIES**

14 ~~§346-A Definitions. As used in this part, unless the~~
15 ~~context requires otherwise:~~

16 ~~"Autism" has the same meaning as defined in section~~
17 ~~431:10A-133.~~

18 ~~"Developmental disability" has the same meaning as defined~~
19 ~~in section 321-502-333F-1.~~

20 ~~"Intellectual disability" has the same meaning as defined~~
21 ~~in section 333F-1.~~

22 ~~"Therapeutic care" means services provided by licensed~~
23 ~~speech pathologists, psychiatrists, psychologists, social~~
24 ~~workers, clinical social workers, and physical therapists and~~
25 ~~registered occupational therapists.~~

26 ~~§346-B Individuals with autism, intellectual disabilities,~~
27 ~~or developmental disabilities; eligibility for home- and~~

1 ~~community-based services.~~ (a) ~~Beginning January 1, 2021, and~~
2 ~~notwithstanding any law to the contrary, the State's~~ medicaid
3 ~~managed care and fee-for-service programs shall not deny~~
4 ~~coverage for home- and community-based services to individuals~~
5 ~~who have been diagnosed with autism, intellectual~~
6 ~~disabilities, or developmental disabilities.~~

7 ~~(b) Services covered under this section shall include, but~~
8 ~~not be limited to:~~

9 ~~(1) Assistive technology;~~

10 ~~(2) Career planning, including vocational assessment and~~
11 ~~job placement services;~~

12 ~~(3) Community transition services;~~

13 ~~(4) Day habilitation;~~

14 ~~(5) Family support;~~

15 ~~(6) Home modifications;~~

16 ~~(7) Nutritional consultation;~~

17 ~~(8) Residential habilitation;~~

18 ~~(9) Respite care;~~

19 ~~(10) Specialized skill development, including behavioral~~
20 ~~specialists, community support programs, and systematic~~
21 ~~skill building services;~~

22 ~~(11) Supported employment, including extended employment~~
23 ~~support and intensive job coaching;~~

24 ~~(12) Temporary supplemental services;~~

25 ~~(13) Therapeutic care;~~

26 ~~(14) Transitional work services;~~

27 ~~(15) Vehicle modifications;~~

1 ~~(16) Supportive housing; and~~

2 ~~(17) Access to medicaid's early and periodic screening,~~
3 ~~diagnosis, and treatment program for eligible individuals~~
4 ~~under the age of twenty-one.~~

5 ~~(c) Services covered pursuant to this section shall be~~
6 ~~consistent with all federal and state privacy, security, and~~
7 ~~confidentiality laws.~~

8 ~~(d) Notwithstanding any other law to the contrary, the~~
9 ~~provisions of this section shall comply with the applicable~~
10 ~~federal requirements related to utilization, coverage, and~~
11 ~~reimbursement for services provided to individuals who have~~
12 ~~been diagnosed with autism, intellectual disabilities, or~~
13 ~~developmental disabilities.~~

14 **§346-BC Program for at-risk individuals with autism,**
15 **intellectual disabilities, or developmental disabilities.** (a)

16 The department shall establish and implement a program for
17 providing additional home- and community-based services,
18 ~~including long term services and supports,~~ to at-risk
19 individuals with ~~autism,~~ intellectual disabilities, or
20 developmental disabilities who do not meet medicaid's
21 institutional level of care criteria for home and community
22 based services. ~~treatment at an intermediate care facility.~~

23 Individuals eligible for services under this program shall:

- 24 (1) Have been diagnosed with ~~autism,~~ an intellectual
25 disability, or a developmental disability;
- 26 (2) Have been found through a functional assessment to be
27 at risk of deteriorating to the institutional level of

1 care; ~~if certain long-term services and supports are not~~
2 ~~provided~~

3 (3) Are not authorized to receive medicaid long term
4 services and supports or the I/DD waiver; Have been found
5 ineligible under medicaid for treatment at an
6 intermediate care facility; and

7 (4) Reside in his or her own home; provided that
8 individuals who reside in a community shelter may receive
9 at-risk services that are appropriate for their living
10 environment as determined by provided further that
11 services under this section shall not be provided to
12 individuals already residing in a care facility,
13 including but not limited to a care home, foster home,
14 hospital, nursing facility, or hospice facility.

15 (b) ~~Services covered under this section shall be provided~~
16 ~~for a maximum of one year, based on the needs of the eligible~~
17 ~~individual, but may be renewed in yearly increments if a~~
18 ~~functional assessment of the individual indicates that~~
19 Eligibility is assessed annually to determine if ongoing at-risk
20 services are medically necessary."

21 SECTION 3. No later than ~~December 31, 2020~~ June 30, 2021,
22 the department of human services shall seek a ~~waiver pursuant to~~
23 ~~section 1115 of the Social Security Act and other approvals from~~
24 the centers for medicare and medicaid services that may be
25 necessary to ~~amend the state medicaid plan~~ to provide coverage
26 for home- and community-based services for medicaid eligible
27 individuals ~~who have been diagnosed with autism,~~ intellectual

1 disabilities, or developmental disabilities who are at risk for
2 institutionalization.

3 ~~SECTION 4. The provision of home- and community-based~~
4 ~~services for individuals diagnosed with autism, intellectual~~
5 ~~disabilities, or developmental disabilities shall apply to all~~
6 ~~plans issued under medicaid managed care and fee-for-service~~
7 ~~programs in the State.~~

8 SECTION 45. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ _____ or so much
10 thereof as may be necessary for fiscal year ~~2020-2021~~ _____
11 for the department of human services to establish and implement
12 a program for providing home- and community-based services to
13 at-risk individuals with ~~autism,~~ intellectual disabilities, or
14 developmental disabilities; provided that the sum appropriated
15 shall be in addition to the base budget of the department of
16 human services.

17 The sum appropriated shall be expended by the department of
18 human services for the purposes of this Act.

19 SECTION 6. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.

22 SECTION 7. If any provision of this Act, or the application
23 thereof to any person or circumstance, is held invalid, the
24 invalidity does not affect other provisions or applications of
25 the Act that can be given effect without the invalid provision
26 or application, and to this end the provisions of this Act are
27 severable.

1 SECTION 8. New statutory material is underscored.

2 SECTION 9. This Act shall take effect on July 1, 2020.

Representative Joy A. San Buenaventura, Chair
Representative Nadine K. Nakamura, Vice Chair
House Committee on Human Services and Homelessness

Kassandra Feliciano
kdubois@hawaii.edu



Wednesday, February 5, 2020
House Conference Room 329, State Capitol

I am testifying in support of H.B. No. 2098, Relating to Health

Good morning. Thank you, Chair Buenaventura, Vice Chair Nakamura, and members of the House Committee on Human Services and Homelessness, for holding this hearing this morning so that myself and others may provide their perspective on H.B. No. 2098. My name is Kassandra Feliciano, and I am currently a master's student majoring in Social Work at the University of Hawai'i at Mānoa. I am testifying in favor of H.B. No. 2098.

This bill is an important initiative to effectively treat our keiki diagnosed with mental health disorders including; autism spectrum disorder (ASD), and intellectual and developmental disabilities (IDD), who are at an increased risk of institutionalization. Commonly, social functioning is often impaired for individuals diagnosed with ASD or IDD. Hence, research conducted by Leutz et al., concluded that intensive and ongoing treatment that involved collaboration between systems, providers and families increased efficacy for treating ASD (Leutz et al, 2015). Thus, H.B. No. 2098 which focuses on integrating care into the child's community and home, bridges a gap between systems and promotes collaboration between systems, providers and the client's family.

Important to note, are the increased incidences of ASD and IDD diagnoses within the last decade. According to Boyle et al., as referenced through the Center for Disease Control and Prevention, ASD diagnoses have increased 289.5% since 2000. Additionally, 1.8 million more children have been diagnosed with a developmental disorder (DD) in comparison to the preceding decade (Boyle et al., 2011). Needless to say, increasing services for an increased need is a must.

My hope is that with the success of this bill, we will see an increase in social functioning amongst effected children and alleviate the need for future institutionalization. I am testifying in support of H.B. No. 2098 and implore you to support this bill as well. Your time and attention are deeply appreciated.

References:

- Boyle CA, Boulet S, Schieve L, Cohen RA, Blumberg SJ, Yeargin-Allsopp M, Visser S, Kogan MD. Trends in the Prevalence of Developmental Disabilities in US Children, 1997–2008. *Pediatrics*. 2011
- Leutz, W., Warfield, M. E., Timberlake, M., & Chiri, G. (2015). Infrastructure of Participant Direction for Medicaid-Funded In-Home Autism Services for Children in Massachusetts. *Journal of Policy & Practice in Intellectual Disabilities*, 12(1), 27–36.

HB-2098

Submitted on: 2/4/2020 2:03:20 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Jana-Macy Moya	Self-Employed	Support	No

Comments:

February 4, 2020

To: Representative Joy A. San Buenaventura, Chair

And Members of the Committee on Human Services and Homelessness

Testimony in Support of HB2098 Relating to Home- and Community-based Services

to At-Risk Individuals with Developmental Disabilities

Aloha! My name is Jana Moya and I am a licensed marriage and family therapist in private practice for the last 8 years. I first learned about Fetal Alcohol Spectrum Disorder (FASD) 12 years ago. It is a developmental disability that affects the central nervous system and impair key areas of the brain. Many people with FASD can also develop secondary issues such as substance use, anxiety, and depression. They need our support as many people with FASD struggle with relationships, living independently, and maintaining employment. As many as 60% of those involved in the criminal justice system are thought to have this brain-based impairment.

I am in support of this bill as it would help those with this type of functional disability possibly meet the eligibility criteria for services they need. I know supporting this bill will be a step in the direction of more comprehensive services for those who need it.

Thank you for your time and consideration.

Sincerely,

Jana Moya, MS, LMFT

HB-2098

Submitted on: 2/4/2020 10:01:55 PM

Testimony for HSH on 2/5/2020 9:00:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Cynthia Bartlett	Hawaii Autism Foundation	Comments	Yes

Comments:

I greatly appreciate the effort and intent behind this bill. However after many meetings with many at risk persons in the named diagnostic categories and a informative meeting with the Department of Health, I request to use only the wording now inside SB3122 to replace this current wording in HB2098. We want to identify "at risk" persons instead of any diagnosis and we also want to remove mention of specific services so that these at risk persons described in SB3122 will fit into the budget that we have to work with at this time .

The way SB3122 is written, it will cover at risk individuals with intellectual or developmental disabilities who do not meet medicaid's institutional level of care criteria but still need support. They can easily fail with no support and become homeless, end up in jail, or in an institution which would cost the state a considerable amount of additional money and cause a great setback to the individual.. In this case there is no need to identify a particular diagnosis such as autism or FASD because we are identifying the at risk category.

Thank you again for this effort and work to protect this at risk and underserved population. . Cynthia Bartlett, Hawaii Autism Foundation

HB-2098

Submitted on: 2/4/2020 9:12:25 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Jeanette White	Individual	Support	No

Comments:

LATE

HB-2098

Submitted on: 2/4/2020 10:00:31 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
terra daniel	Individual	Support	No

Comments:

I am the mother of a daughter with Fetal Alcohol Syndrome. While she has extreme cognitive delays, most individuals with an FASD do not fall under the IQ mark that qualifies them for services due to developmental delay. There is a large number of individuals who represent this gap area and are in need of services but are unable to receive the services.

Studies have shown that the majority of homeless individuals have an FASD, at least 70% of those in foster care and it is estimated that over 60% of those in the prison system also have an FASD. By continuing to ignore this problem and denying the services these individuals need we are continuing to build on a human rights issue that has been ignored for too long.

This bill will fill some of the gaps in service for individuals with functional disabilities who are currently ineligible for services. Supportive services across the lifespan will help keep them safe and productive and give them a chance at a purposeful and meaningful life.

If you think this doesn't effect you, you are wrong. Please support this bill.

Makela Aluesi
(704)258-8345



Wednesday, February 4, 2020

SUPPORT HB2098

As a Social Worker and someone who also worked as a Registered Behavior Technician (RBT) delivering direct behavior-analytic services to children with autism, I strongly support H.B. 2098, requiring home and community-based services for individuals with autism and other intellectual or developmental disabilities. During my time working as an RBT I was able to see how home and community-based services can impact the lives of children who have autism.

The first three clients that I worked with as an RBT were ages 3, 5, and 6 with the 3 year old being the highest functioning. These children ranged from mildly autistic to severely autistic. The 5 and 6 year old functioned at the level of a 3 year old. The 5 year old was well below grade level and had minimal functional skills and the 6 year old didn't speak unless it was reciting lines of a favorite show or movie. The 6 year old did not respond to her name, rarely made eye contact and never called for her mom or dad. In less than a year the 5 year old had not only caught up but was performing above grade level in reading and math and had also improved in social areas. The six year old had also made significant progress where she could now answer questions and began to speak when she wanted items. The most touching change was the first time she called her dad "dad" and the look of joy on his face was one I cannot forget.

Although both children showed great improvement, there were certain factors that prevented the services from taking as well as they could have. The main difficulty that these children, and many other like them is insurance. Some children require 40 or more hours of services, but insurance does not cover it. Imagine what could have been accomplished if these children were able to access the services they need. Imagine how many more families, individuals, and children could benefit from receiving services.

These are only a few examples of how home and community-based services effect children with autism there are so many more stories I could tell if time permitted. Providing a way for individuals to access these services is something I whole-heartedly support with the appropriate funds also being allocated to make this program possible. Thank you very much for your time.

LATE

HB-2098

Submitted on: 2/5/2020 5:47:38 AM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joelle Branch	Individual	Support	No

Comments: