



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony in OPPOSITION to SCR 119/SR 93

**REQUESTING THE DEPARTMENT OF HEALTH TO CHANGE ITS
ELIGIBILITY CRITERIA FOR THE HOME AND COMMUNITY-BASED
SERVICES MEDICAID WAIVER FOR INDIVIDUALS HAVING
INTELLECTUAL OR DEVELOPMENTAL DISABILITIES, OR MENTAL
ILLNESSES.**

SENATOR JARRETT KEOHOKALO, CHAIR
SENATE COMMITTEE ON HEALTH

SENATOR JOY SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES

Hearing Date: March 29, 2021

Room Number: Via Teleconference

1 **Department Position:** The Department of Health (Department) is committed to working with
2 the Legislature, the Department of Human Services, and stakeholders to best serve the
3 population of Hawaii residents with intellectual and developmental disabilities, and mental
4 illness. The Department respectfully **OPPOSES** SCR 119 / SR 93 for the following reasons:

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

12 The Department of Human Services (DHS), Med-QUEST Division (MQD), is the State
13 Medicaid agency. DHS and DDD have a Memorandum of Agreement which designates DDD as

1 the operating agency for the 1915(c) Medicaid Home and Community-Based Services for People
2 with Intellectual and Developmental Disabilities (I/DD) (Medicaid I/DD Waiver). Through the
3 Medicaid I/DD Waiver, DDD draws down over \$79 million a year in Federal Medical Assistance
4 Percentage (FMAP) to augment state funds to ensure the population is served in the community
5 versus institutional settings.

6 Hawaii's Medicaid I/DD Waiver is subject to review and approval by the federal Centers for
7 Medicare and Medicaid Services (CMS). Notably, per the federal Social Security Act
8 individuals must meet both eligibility requirements as well as the requisite institutional level of
9 care in order to qualify for home and community-based services (HCBS) under the Medicaid
10 I/DD Waiver.

11 SCR 119 / SR 93 requests the Department:

- 12 (1) To change its eligibility criteria for the Medicaid I/DD Waiver;
- 13 (2) To repeal Hawaii Administrative Rules (HAR) sec. 11-88.1-5(a)(3) where the repeal does
14 not violate any federal or state law or any agreement with "federal authorities";
- 15 (3) To remove any prohibiting factors that preclude the repeal of the above; and
- 16 (4) To submit a status report on development of new eligibility criteria, including any
17 proposed legislation.

18 As stated above, the eligibility for the Medicaid I/DD waiver is approved by CMS, and waiver
19 participants must meet the institutional level of care at the Intermediate Care Facility for
20 Individuals with Intellectual Disabilities level. That is, waiver participants must have intellectual
21 and/or developmental disability that is the cause of their impairment(s), and be at a level of
22 functioning where they would be served in an institution without the services and supports
23 afforded through the HCBS I/DD waiver.

24 MQD uses two waiver authorities to provide services to Medicaid beneficiaries, the other being
25 the 1115 waiver operated by the QUEST Integration health plans. Behavioral health services are

1 provided to all Medicaid beneficiaries through the DHS-MQD QUEST Integration health plans.
2 All Medicaid I/DD Waiver participants are enrolled in Medicaid and receive primary and acute
3 care and behavioral health services through their Medicaid health plan. Specialized behavioral
4 health services for Medicaid beneficiaries with serious mental illness (SMI) or serious persistent
5 mental illness (SPMI) are provided by DHS-MQD through the Community Care Services (CCS)
6 plan. Thus, some of the services needed to treat people with conditions such as those listed in
7 SCR 119 / SR 93 are designed to be provided through the QUEST Integration health plan and
8 other programs (impairments primarily from dementia, mental illness, an emotional disorder,
9 substance abuse, sensory impairment, a learning disability, attention deficit hyperactivity
10 disorder, a spinal cord injury, or a neuromuscular disorder).

11 Expanding the definition and changing eligibility criteria as SCR 119 / SR 93 request will
12 require the Department to conduct various studies, including those for prevalence, cost, and
13 feasibility. An appropriation would be needed to conduct these analyses to comply with SCR 119
14 / SR 93. Any expanded definition of who would be required to receive services through the
15 Medicaid I/DD waiver would require an increased appropriation request, especially since any
16 services to populations that do not meet 1915(c) waiver institutional level of care requirement
17 would have to be paid using 100% state funds as they would not be eligible to receive FMAP.

18 **Fiscal Implications:** If changes to the eligibility requirement were to be made to expand the
19 criteria, studies of prevalence, cost, and feasibility of the expanded populations would be
20 required. The Department has established other divisions including Adult Mental Health, Child
21 and Adolescent Mental Health, Alcohol and Drug Abuse to support those with primary or solely
22 mental health conditions. The requirement of the Medicaid I/DD waiver is to provide habilitative
23 supports versus medical treatments. Expanding the definition would require substantial funding
24 as it asks for access to HCBS programs without meeting the level of care requirement. Further,
25 it is unclear if CMS would approve this approach, which means the State would have to fully
26 finance service for people that do not meet the HCBS level of care requirements.

27 Thank you for the opportunity to testify.

SCR-119

Submitted on: 3/26/2021 7:51:38 PM

Testimony for HTH on 3/29/2021 1:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Support	No

Comments:

We are in strong support of this Concurrent Resolution. The current eligibility rules of the DD Division are not just needlessly exclusionary, but also beyond the scope of the authority that has been delegated to the Department of Health by the Legislature.

The Resolution correctly points out that the HRS contains a definition of "developmental disability" that includes a wide array of physical and/ or intellectual deficits that impact a number of activities of daily living. The statute then says that the Department shall promulgate regulations to carry out the purposes of the Act. However, when the Department last promulgated implementing regulations, it went beyond the scope of its authority and added a number of exclusionary criteria based on specific diagnoses. We pointed that out to the Department back in 2014 when it conducted public hearings. Nonetheless the Department ignored those comments. We attempted to secure a meeting with then Governor Abercrombie to urge him not to sign the regulations. However, his office never followed through with that meeting and he signed the regulations in the waning days of his administration.

We continue to believe that the regulations are "illegal" in the sense that they exceed the statutory authority of the Department. We know of several cases of individuals who could have benefited from DD services and who otherwise met the criteria for their level of impairment but who have been excluded. To be clear, not all of the exclusions are necessarily inappropriate. For example, we would not argue that a mental health condition would qualify as a developmental disability. Dementia, which is excluded, would almost always appear beyond the onset date of the requirements in any event. However, there is no reason to exclude spinal cord or neuromuscular injuries. We currently are representing one individual who has a spinal cord injury. He has been "in the DD system" for several years but DD is currently attempting to terminate him from their system. He depends daily on the Home and Community Based services he receives from DD.

We urge the legislature to support this measure and to direct the Department to amend their regulations to better align them with the true needs of the DD population.

DAVID Y. IGE
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
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March 29, 2021

The Honorable Senator Jarrett Keohokalole, Chair
Senate Committee on Health
The Honorable Senator Joy A. San Buenaventura, Chair
Senate Committee on Human Services
The Thirty-First Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Senator Keohokalole, Senator San Buenaventura, and Members of the Committee:

SUBJECT: SCR 119/SR 93 – Change eligibility criteria for the Home and Community-Based Services for individuals having intellectual or developmental disabilities or mental illness.

The Hawaii State Council on Developmental Disabilities **appreciated the intent of SCR119/SR 93**, which seeks to change the eligibility criteria for the Home and Community-based services for individuals with intellectual/developmental disabilities and or mental health.

While the Council appreciates the intent, there is a need for more clarity within this resolution. Specifically, on page 2, lines 21-23 regarding “the Department of Health is requested to change its eligibility criteria for Home and Community-Based Services.” How is the Department of Health changing their eligibility? The process? The criteria? What criteria or metric will the Department of Health be required to use? What rules would be affected? The Council believes this is a critical part of this resolution, and it is a discussion that needs to happen.

For this reason, we respectfully suggest that the Department of Health Developmental Disabilities Division be required to convene a task force to design the eligibility criteria and process.

Thank you for the opportunity to submit testimony appreciating the **intent of SCR119/SR 93**.

Sincerely,

A handwritten signature in blue ink that reads "Daintry Bartoldus".

Daintry Bartoldus
Executive Administrator