

## ACT 175

S.B. NO. 597

A Bill for an Act Relating to the State Council on Developmental Disabilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 333E-1, Hawaii Revised Statutes, is amended to read as follows:

**“§333E-1 Findings and purpose.** The legislature finds that:

- (1) The State of Hawaii has a responsibility to provide support and services for ~~[its developmentally disabled citizens]~~ individuals with developmental disabilities in order to [aid] support them in living ~~[as complete and normal lives as possible.]~~ self-determined lives according to section 333F-8;
- (2) Several departments of the State are responsible for various support and services to ~~[the developmentally disabled, namely the department of health provides health services, the department of education provides educational services, and the department of human services provides vocational rehabilitation and other social services.]~~ individuals with developmental disabilities;
- (3) Lack of coordination among the services and planning activities of the various departments of the State results in gaps in the spectrum of needed services, duplication of services, lack of clarity in responsibility for services, and poorly articulated inter-agency programs, thereby reducing the quality of programs for ~~[the developmentally disabled.]~~ individuals with developmental disabilities;
- (4) Because of specific mandates of the departments, it is essential that a body responsible for coordinating services and planning for ~~[the developmentally disabled]~~ individuals with developmental disabilities be established outside the departments responsible for support and services[.];
- (5) There exists within the state department of health for administrative purposes only, a state [planning] council on developmental disabilities

- appointed by the governor and mandated by federal legislation, supported in large part by federal moneys and required by federal law to provide [~~coordination and planning in the field of developmental disabilities;~~] advocacy, capacity building, systemic change, planning, and coordinating activities, promoting interagency collaboration, and enhancing coordination to better serve individuals with developmental disabilities and their families;
- (6) The purpose of this chapter is to establish the state [~~planning~~] council on developmental disabilities as the state agency responsible for coordinating services to [~~the developmentally disabled residents of~~] individuals with developmental disabilities in Hawaii[-];
- (7) [~~Deinstitutionalization of the developmentally disabled is a major goal of the State, thus state and county agencies should adopt policies and regulations which will encourage the development of suitable housing for this group within the community.~~] Community participation is a major goal of the State, thus state and county agencies should adopt policies and regulations which will support individuals and their families to fully participate in their communities; and
- (8) Family support is another major goal of the State in providing families of children with disabilities the support services necessary to support the family; to enable families of children with disabilities to nurture and enjoy their children at home; to enable families of children with disabilities to make informed choices and decisions regarding the nature of support, resources, services, and other assistance made available to the families; and to support family caregivers of adults with disabilities.”

SECTION 2. Section 333E-2, Hawaii Revised Statutes, is amended to read as follows:

**“§333E-2 Developmental disabilities, definitions.** For the purposes of this chapter, [~~“developmental disabilities”~~] the term “developmental disability” means a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, [~~and~~] economic sufficiency; and
- (5) Reflects the [~~person’s~~] individual’s need for a combination and sequence of special, interdisciplinary, or generic [~~care, treatment, or other services which are of~~] services, individualized support, or other forms of assistance that are lifelong or extended duration and are individually planned and coordinated. An individual from birth to age nine, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described above, if the individual, without services and support, has a high probability of meeting those criteria later in life.”

SECTION 3. Section 333E-3, Hawaii Revised Statutes, is amended to read as follows:

“§333E-3 State **[planning] council on developmental disabilities.** The state **[planning] council on developmental disabilities** (hereinafter referred to as the **[state council or] the<sup>1</sup> council**) shall be placed in the department of health for administrative purposes only and assigned the following responsibilities:

- (1) Planning. The state council shall:
  - (A) Develop, prepare, adopt, and periodically review and revise, as necessary, the state plan for developmentally disabled individuals with developmental disabilities (hereinafter called the state plan) in conformance with federal substantive and procedural requirements therefor. The state plan shall guide the development and delivery of all services to individuals with developmental disabilities. The state council shall transmit the state plan to the governor for approval, and upon approval shall be submitted to the federal government for appropriate approval. The state plan and revisions thereto shall be effective upon the governor’s approval thereof. The state plan shall include establishment of goals and priorities of the State in meeting the needs of the developmentally disabled; individuals with developmental disabilities, including the [establishment] recommendation of priorities for the distribution of public funds for comprehensive services to [the developmentally disabled] individuals with developmental disabilities within the State and other matters deemed necessary to achieve [normalization of lives of the developmentally disabled.] productivity, integration, inclusion, self-determination, and independence of individuals with developmental disabilities. The state plan shall [in addition provide for] guide the coordinated delivery and establishment of comprehensive services, facilities, and programs for [the developmentally disabled.] individuals with developmental disabilities;
  - (B) Review and comment upon implementation plans prepared and carried out by the various departments of the State in carrying out the state plan for [the developmentally disabled.] individuals with developmental disabilities; and
  - (C) Review and comment upon any other state plans which affect services to [the developmentally disabled.] individuals with developmental disabilities;
- (2) Coordination of departments and private agencies. The council shall:
  - (A) Identify services duplicated by departments and private agencies and coordinate and assist in the elimination of unnecessary duplication[-];
  - (B) Encourage efficient and coordinated use of federal, state, and private resources in the provision of services[-];
  - (C) [Designate] Recommend areas of responsibility for services to both public and private agencies serving [developmentally disabled clients,] individuals with developmental disabilities, reviewing [such] designations as necessary. Identify gaps in services to [the developmentally disabled] individuals with developmental disabilities and coordinate responsibilities of various public or private agencies for such missing services[-]; and
  - (D) [Ensure] Ensure that implementation planning by the various departments is effectively coordinated and that interdepartmental programs receive the full support of all departments involved[-];
- (3) Evaluation. The council shall:

- (A) Monitor, evaluate, and comment upon implementation plans of the various public and private agencies for ~~[the developmentally disabled.]~~ individuals with developmental disabilities;
  - (B) Monitor all ongoing projects relating to developmental disabilities of the various public and private agencies~~[-];~~
  - (C) ~~[Monitor deinstitutionalization of Waimano training school and hospital and insure that individualized habilitation plans are being implemented for each resident transferred from Waimano.]~~ Participate in the planning, design, or redesign, and monitoring of state quality assurance systems that affect individuals with developmental disabilities;
- (4) Advocacy. The council shall:
- (A) Advocate for the needs of ~~[the developmentally disabled]~~ individuals with developmental disabilities before the legislature and the public and to the governor~~[-];~~
  - (B) Act in an advisory capacity to the governor, the legislature, and all concerned department heads on all issues affecting ~~[the developmentally disabled.]~~ individuals with developmental disabilities; and
  - (C) ~~[Serve as a channel for complaints by consumers of services for the developmentally disabled, following up on such complaints and taking such action as may be warranted.]~~ Support and conduct outreach activities to identify individuals with developmental disabilities and their families to obtain services, individualized supports, and other forms of assistance, including access to special adaptation of generic community services or specialized services;
- and<sup>2</sup>
- (5) Report. The council shall:
- (A) Prepare and submit ~~[annual]~~ reports to the governor, the legislature, and all concerned department heads on the implementation of the state plan~~[-. The report presented to the legislature shall be submitted ten days prior to the convening of the legislature.];~~
  - (B) Prepare and submit to the United States Secretary of ~~[Health, Education and Welfare,]~~ Health and Human Services, through the governor, any periodic reports the Secretary may reasonably request~~[-]; and~~
  - (C) Prepare other reports necessary to accomplish its duties under this chapter.
- ~~[(6) Rules. The council shall adopt, amend, and repeal rules under chapter 91, necessary for the implementation of this chapter.]”~~

SECTION 4. Section 333E-4, Hawaii Revised Statutes, is amended to read as follows:

**“§333E-4 Membership on the state council.** The state council shall consist of ~~[twenty-five]~~ voting members~~[-, appointed by the governor]~~ as described in federal law, for staggered terms ~~[in the manner prescribed by section 26-34].~~ The members of the council shall be residents of the State. The council shall at all times include in its membership six representatives from the neighbor islands with a minimum of one representative from Hawaii, Kauai, and Maui county and representatives of the following, unless these programs are no longer in existence in the State: [principal state agencies, higher education training facilities, each university affiliated facility or satellite center in the State,] state entities that administer funds provided under

federal law relating to individuals with disabilities, including the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), and titles V and XIX of the Social Security Act (42 U.S.C. 701 et seq. and 1396 et seq.), university centers for excellence in developmental disabilities education, research, and service, and the state protection and advocacy system, and local [agencies or] and nongovernmental agencies [or], and private nonprofit groups concerned with services [to persons] for individuals with developmental disabilities in this State.

- (1) [At least one-half] Not less than sixty per cent of the membership of the council shall consist of [consumers] individuals who are:
  - (A) [Persons] Individuals with developmental disabilities or their parents[-]; or
  - (B) Immediate relatives or guardians of such persons, and who are not employees of a state agency which receives funds or provides services under the state council, or managing employees, or persons with an ownership or controlling interest of any other entity which receives funds or provides services under the state council[-];
- (2) Of the members of the council described in paragraph (1):
  - (A) At least one-third shall be [persons] individuals with developmental disabilities[-]; and
  - (B) At least one-third shall be immediate relatives or guardians of such person, of which at least one shall be an immediate relative or guardian of an institutionalized [person] individual with developmental disabilities[-];

and
- (3) The members of the state council shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with the performance of their duties under this chapter.”

SECTION 5. Section 333E-5, Hawaii Revised Statutes, is amended to read as follows:

**“§333E-5 Officers, committees, staff.** The state council shall, by majority vote of the voting members, elect its own chairperson from among the appointed members, and shall establish such committees as it deems necessary or desirable. The state council may appoint an executive [secretary] administrator subject to chapters 76 and 77 who may appoint persons to such staff positions subject to chapters 76 and 77 as the council may authorize within available funds. The affirmative votes of a majority of the members of the council shall be necessary for the appointment or removal of the executive [secretary-] administrator.”

SECTION 6. Section 333F-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**“(a)** The department shall develop, lead, administer, coordinate, monitor, evaluate, and set direction for a comprehensive system of supports and services for persons with developmental disabilities or mental retardation within the limits of state or federal resources allocated or available for the purposes of this chapter. The department shall administer or may provide available supports and services based on a client-centered plan, which resulted from client choices and decision-making that allowed and respected client self-determination.

The department’s responsibility for persons with developmental disabilities or mental retardation shall be under one administrative unit for the purpose of coordination, monitoring, evaluation, and delivery of services. Not later than June

30, 1999, all programs and services falling under this chapter shall be provided in the community, including services presently provided at Waimano training school and hospital. When the private sector does not provide or is not able to provide the services, the department shall provide the services. Clients at Waimano training school and hospital shall be placed into community-based programs provided appropriate support services are available.

The department shall convene a panel not later than August 1, 1995, to create a plan to provide services in the community and to ensure that the transition of Waimano training school and hospital residents to the community will be client-centered, taking into consideration the health, safety, and happiness of the residents and the concerns of their families. The panel shall consist of but not be limited to consumers, families, representatives from the private sector, employees and employee representatives, professionals, representatives of the University of Hawaii affiliate program, and representatives of the state [planning] council on developmental disabilities.’’

SECTION 7. Section 333F-18, Hawaii Revised Statutes, is amended to read as follows:

“**[§333F-18]** **Rules.** The director, in consultation with the state [planning] council on developmental disabilities, private agencies, users of services under this chapter, and other interested parties, shall adopt rules pursuant to chapter 91 necessary or appropriate to carry out this chapter, which shall include[-] but not be limited to:

- (1) Establishment of eligibility requirements for participation in services provided under this chapter;
- (2) Establishment of standards of transfer from one facility to another;
- (3) Provision for the involvement of the person and, where appropriate, the parents, guardian, or other representatives of the person in the determination of eligibility under this chapter, the preparation of the person’s individualized service plan, and the selection or rejection of services under this chapter;
- (4) Protection and enhancement of the rights of persons receiving or applying for services under this chapter, including the right to privacy and confidentiality;
- (5) A fair, timely, and impartial grievance procedure to provide administrative due process and recourse for persons aggrieved by any action or failure to act on the part of the department under this chapter; and
- (6) Other provisions required or appropriate to implement the purposes of this chapter.’’

SECTION 8. Section 348-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The council shall coordinate with other councils within the State including the statewide independent living council, the state [planning] council on developmental disabilities, the state council on mental health, the advisory panel of individuals with disabilities in education, and the state workforce development council. The council shall establish working relationships between the vocational rehabilitation division of the department and other councils and coordinate other functions as deemed appropriate under federal law.’’

SECTION 9. Section 560:5-610, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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“(a) There is established the reproductive rights protection committee within the department of health for administrative purposes. The committee shall consist of not fewer than five nor more than seven persons appointed, with the consent of the senate, by the governor for staggered terms as provided in section 26-34. The state [planning] council on developmental disabilities shall provide the governor with a list of nominees. The governor shall not be limited to the nominees provided in appointing the members of the committee. The committee shall include a person with a disability or the parent or guardian of such a person and persons from at least the following disciplines:

- (1) Law;
- (2) Medicine;
- (3) Theological or philosophical ethics;
- (4) Social work; and
- (5) Psychology or psychiatry.”

SECTION 10. Statutory material to be repealed is bracketed and ~~stricken~~.  
New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

**Notes**

- 1. “The” should be bracketed.
- 2. “And” should be underscored.