

ACT 127

H.B. NO. 3352

A Bill for an Act Relating to an Audit of the Hawaii Disability Rights Center.

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

SECTION 1. The legislature finds that Congress created a nationwide protection and advocacy system for individuals with developmental disabilities under the Developmental Disabilities Assistance and Bill of Rights Act, as amended, to aid individuals with developmental disabilities or mental illness and their families in gaining access to appropriate support and services. States are required to designate an agency or entity to provide advocacy services to persons with developmental dis-

abilities and mental illness in order to receive federal funds for programs for these persons.

The legislature notes that the Hawaii Disability Rights Center (Center) is the agency designated under section 333F-8.5, Hawaii Revised Statutes, to provide advocacy services to persons with developmental disabilities or mental illness. Section 333F-8.5(c), Hawaii Revised Statutes, grants the Center access to all records of any person with developmental disabilities or mental illness, to the extent required by federal law. However, there are also federal and state statutes, such as the Health Insurance Portability and Accountability Act, which were enacted to protect the privacy of patient records.

The legislature also finds that there is an ongoing dispute as to whether the law that provides the Center access to records overrides the privacy rights of persons receiving services and their families, with or without the appropriate waivers of these privacy rights, and, if so, what justification is necessary for the Center to demand access to records of persons with disabilities. Providers of services to individuals with disabilities are uncertain as to their obligation to disclose patient records to an entity such as the Center. Concerns have been raised about the Center, its approach to resolving the conflict between a patient's right to privacy, and its need for access to the patient and the patient's records.

The legislature also notes that the department of health has jurisdiction over state funding for the Hawaii Disability Rights Center and has responsibility for the performance of the Center. The legislature finds for purposes of this Act that the Center is a "quasi-public institution" within the scope of section 23-4, Hawaii Revised Statutes, because it is supported in whole or in part by and handles state or public funds. Although the Center is therefore subject to regular audits by the auditor, it has never been audited by the auditor.

The purpose of this Act is to direct the auditor to perform a financial and management audit of the Center to protect its vulnerable clientele and to ensure that state funds are being spent in accordance with applicable laws.

SECTION 2. (a) The auditor shall conduct a financial and management audit of the Hawaii Disability Rights Center.

(b) The auditor shall submit a report to the legislature no later than twenty days prior to convening of the regular session 2009, containing findings and recommendations, including any proposed legislation, concerning the Hawaii Disability Rights Center's handling of state funds and its approach to resolving the conflict between a patient's right to privacy and its need for access to the patient and the patient's records.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 2008.)