
SENATE CONCURRENT RESOLUTION

URGING THE UNITED STATES CONGRESS TO OPPOSE SPECIFIED PROPOSED
RULE AMENDMENTS FOR THE DEVELOPMENTAL DISABILITIES PROGRAM,
73 FED. REG. 19,708 (APRIL 10, 2008) (TO BE CODIFIED AT 45
C.F.R. PT. 1385-88) THAT IMPLEMENT THE DEVELOPMENTAL
DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000, AND
TO SUPPORT NEW SECTIONS IN THE UPCOMING REAUTHORIZATION.

1 WHEREAS, pursuant to section 333F-8.5, Hawaii Revised
2 Statutes, the State of Hawaii has designated an entity to
3 provide advocacy services to persons with developmental
4 disabilities and mental illness; and
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6 WHEREAS, the designated advocacy service provider, direct
7 service providers, and governmental organizations provide vital
8 services to the disabled community and it is imperative that
9 entities serving this population work in cooperation with each
10 other to more effectively serve the community; and
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12 WHEREAS, the federal Developmental Disabilities Assistance
13 and Bill of Rights Act of 2000 provides wide powers and
14 discretion to the designated advocacy service provider to carry
15 out its mission but fails to provide meaningful state or local
16 oversight over services to the disabled; and
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18 WHEREAS, in 2008 the Legislature ordered a financial and
19 management audit of the designated advocacy service provider
20 based on concerns about the advocacy service's fulfillment of
21 its mission; and
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23 WHEREAS, the state agency's attempt to comprehensively
24 review the performance of the designated advocacy service
25 provider has been suspended due to vaguely worded directions
26 from current laws and the lack of sufficient criteria for
27 evaluation; and
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1 WHEREAS, designated advocacy service providers have the
2 power to advocate for and protect victims in cases of abuse or
3 neglect, but do not have the legal power to enforce laws
4 regarding abuse and neglect; and
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6 WHEREAS, the Administration on Developmental Disabilities
7 published a notice of rule change in the Federal Register on
8 April 10, 2008, 73 Fed. Reg. 19,708 (to be codified at 45 C.F.R.
9 pt. 1385-88), proposing clarifications and new requirements in
10 implementing the Developmental Disabilities Assistance and Bill
11 of Rights Act of 2000 that would:
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- 13 (1) Allow designated advocacy services wide discretion in
14 defining what amounts to "abuse";
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- 16 (2) Eliminate judicial review of any finding of "probable
17 cause" by designated advocacy service providers;
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- 19 (3) Reduce the power of guardians and families to review a
20 designated advocacy service provider's actions
21 involving disabled family members;
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- 23 (4) Further reduce state oversight over advocacy service
24 providers;
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- 26 (5) Allow designated advocacy service providers to
27 continue to endanger disabled persons by refusing to
28 share vital information regarding abuse and neglect
29 with state and local law enforcement agencies; and
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- 31 (6) Reduce the State's power to redesignate its advocacy
32 service provider; and
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34 WHEREAS, the Developmental Disabilities Assistance and Bill
35 of Rights Act of 2000 is scheduled for reauthorization in 2009;
36 now, therefore,
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38 BE IT RESOLVED by the Senate of the Twenty-fifth
39 Legislature of the State of Hawaii, Regular Session of 2009, the
40 House of Representatives concurring, that this body stands
41 opposed to the following proposed amendments to the
42 Developmental Disabilities Assistance and Bill of Rights Act of
43 2000, and urges the United States Congress to oppose the same:
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- 1 (1) In Subpart B, section 1386.19, Definitions, redefining
2 "abuse", "complaint", and "probable cause"; see
3 Developmental Disabilities Program, 73 Fed. Reg.
4 19,713 (April 10, 2008) (to be codified at 45 C.F.R.
5 pt. 1386);
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- 7 (2) Redesignating and renaming section 1386.22 to 1386.25
8 to be included in a new section titled Subpart C,
9 Access to Records, Service Providers and Service
10 Recipients, and amending section 1386.25(a)(iii), as
11 redesignated; see 73 Fed. Reg. at 19,716;
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- 13 (3) Replacing section 1386.22(e) with a new section,
14 1386.28, Confidentiality of Protection and Advocacy
15 Systems Records; see 73 Fed. Reg. at 19,717; and
16
- 17 (4) Revising section 1386.34, Designated State Agency; see
18 73 Fed. Reg. at 19,718; and
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20 BE IT FURTHER RESOLVED that in the process of
21 reauthorization, the Developmental Disabilities Assistance and
22 Bill of Rights Act of 2000 should include the following:
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- 24 (1) Clear provisions for meaningful state oversight over
25 designated advocacy service providers;
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- 27 (2) Provisions for protocol and transparency regarding the
28 designated advocacy service providers' oversight and
29 investigative practices;
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- 31 (3) Provisions for compulsory cooperation by designated
32 advocacy service providers with state agencies
33 regarding abuse and neglect, unless a state entity is
34 the subject of investigation; and
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- 36 (4) Provisions enumerating rights for entities that are
37 subject to oversight by designated advocacy service
38 providers; and
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40 BE IT FURTHER RESOLVED that certified copies of this
41 Concurrent Resolution be transmitted to Hawaii's congressional
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1 delegation, the Governor, Director of Health, Director of Human
2 Services, President and Majority Leader of the United States
3 Senate, and Speaker of the United States House of
4 Representatives.