STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
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February 6, 2009

The Honorable Ryan I. Yamane, Chair
House Committee on Health
and
The Honorable John M. Mizuno, Chair
House Committee on Human Services
Twenty-Fifth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representatives Yamane and Mizuno and Members of the Committees:

SUBJECT: HB 725 – RELATING TO HEALTH CARE

The position and views expressed in this testimony do not represent nor reflect the position and views of the Departments of Health and Human Services (DHS).

The State Council on Developmental Disabilities **SUPPORTS THE INTENT OF HB 725**. The purpose of the bill is to require health care facilities and providers to notify the state-designated protection and advocacy entity or agency prior to transferring an elderly or disabled patient to an out-of-state treatment, rehabilitation, or long-term care facility.

HB 725 provides a mechanism to assure that individuals who are being considered for transfer to an out-of-state treatment, rehabilitation, or long-term care facility know their rights, are protected from unnecessary placement, and are not compromised to move out-of-state because of a lack of local resources.

The Council feels that the ongoing need to afford individuals of their rights and provide protections from unnecessary placement out-of-state, and to increase capacity of local resources to support community-based care and in-state placements, when necessary, is currently being addressed through several initiatives. The Health Care Association of Hawaii (HAH) has been convening a task force to address the issue of waitlisted individuals in long-term care facilities. Pursuant to SCR 198 (2007), HAH formed a task force to examine the problem of patients in acute care hospitals waitlisted for long-term care and proposed solutions and recommendations to the 2008 Legislature. The task force identified four areas contributing to the waitlist dilemma: reimbursement, capacity, regulatory/government, and work force, and focused their efforts on collecting data from hospitals and nursing facilities, developing two to three key short term/

immediate solutions that would have a positive impact within 6 to 12 months, and provide long-term solutions to the waitlist problem. HCR 53 and HR 51 (2008) requested that the HAH waitlist task force continue its efforts to develop solutions to the problem of patients in hospitals who are waitlisted for long-term care and report its findings and recommendations to the 2009 Legislature.

DHS was awarded $10.2 million from the Centers on Medicare and Medicaid Services to implement a "Money Follows the Person" Demonstration Grant over five years. The project will bring together the State's resources to support individuals who have resided in a health care institution for at least six months, but no longer than two years, as they transition back into the community. "Hawaii's Going Home Plus Project's" goals are to: 1) transition 415 individuals who have been unable to transition out of institutional settings (nursing homes, Intermediate Care Facilities, and hospitals) into the community, 2) increase use of community-based long-term care services, 3) develop new community-based long-term care opportunities, 4) support continuity of care and sustainability of community-based services, and 5) establish quality assurance/evaluation components.

Should the bill move forward, the Council believes that the Hawaii Disability Rights Center, as the State's designated protection and advocacy agency, would be an appropriate agency to serve as the contacting agency to receive prior notice and proposed transfers of individuals to out-of-state health care facilities.

Thank you for the opportunity to present testimony in SUPPORT OF THE INTENT of HB 725.

Sincerely,

Waynette K.Y. Cabral
Executive Administrator

HAH
Healthcare Association
of Hawaii

HOUSE COMMITTEE ON HEALTH
Rep. Ryan I. Yamane, Chair

HOUSE COMMITTEE ON HUMAN SERVICES
Rep. John M. Mizuno, Chair

Conference Room 329
Friday, February 6, 2009 at 9:00 a.m.

Testimony in OPPOSITION TO HB 725

I am Coral Andrews, Vice President of the Healthcare Association of Hawaii, which represents the entire spectrum of health care, including acute care hospitals, two-thirds of the long term care beds in Hawaii, as well as home care and hospice providers.

Thank you for this opportunity to testify in opposition to HB 725, which requires healthcare facilities and providers to notify the state-designated protection and advocacy entity or agency prior to transferring an elderly or disabled patient to an out-of-state treatment, rehabilitation, or long term care facility.

This bill was introduced because of the legitimate and compassionate concern that certain elderly or disabled individuals may have difficulty accessing specialized long term care in Hawaii.

Certain types of specialized care have not been developed in our state because the payments for these types of care are so low that they do not cover the actual costs of care. Though the need exists, the economic incentive is not sufficient to increase capacity in these types of specialized care.

Following the 2007 legislative session, where a similar discussion occurred, the Healthcare Association of Hawaii, as a result of SCR 198, initiated a Waitlist Task Force to examine this problem and to propose solutions. Four barrier categories were identified: Reimbursement, Capacity, Regulatory/Government, and Workforce.

The Task Force continued their efforts on this issue in 2008 and a more detailed report that "puts a face" on the waitlist patient was just completed.

The Healthcare Association opposes this bill because it does not fix the problem. We affirm that continued efforts should focus on addressing the barrier categories as recommended in the 2009 report to the Legislature.

For the foregoing reasons, the Healthcare Association opposes HB 725.

HCIL

A non-profit organization run by and for persons with disabilities

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Representative Ryan I. Yamane, Chair
Representative Scott Y. Nishimoto, Vice-chair
Committee on Health

Representative John M. Mizuno, Chair
Representative Tom Brower, Vice-chair
Committee on Human Services

Hawaii Centers for Independent Living

Friday, February 6, 2009, 9:00 AM

Strongly supporting HB 725, Relating to Health Care

Hawaii Centers for Independent Living is a non-profit organization operated by and for people with disabilities to ensure their rights to live independently and fully integrated in the community of their choice, outside of institutional care settings. As a non-profit, statewide resource, HCIL serves people of any age with any type of disability. HCIL was founded on the historical constitutional beliefs of civil rights and the empowerment of people with disabilities to have equal access, opportunities, and choices in life, no matter how severe their disability.

We strongly support HB725, Relating to Health Care.

The issue of long-term care patient transfers to the Mainland has made news both here and in Ohio. Ohio has been the major recipient of such transfers, due to a law there that provides financial incentives to nursing homes to fill as many beds as possible. From the *Honolulu Advertiser* of Feb. 16, 2007:

> "(a woman) *of Kaimuki, who works in teller operations at a bank, said her sister spent several months at* (a local hospital) *after suffering a stroke in September 2005. When her sister was well enough for release,* (the woman) *said the hospital told her it could not find a care home on O'ahu and that she would have to care for her.*
>
> (The woman) *said she told the hospital she was unable to care for her sister at home, and was informed that the alternative was a nursing home in Ohio.* (The woman) *sought help from the center and her sister eventually found a bed in an*

adult foster home in Kalihi. But she said she felt pressured by the hospital to agree to the Mainland transfer.

"When you're experiencing that and going through all the emotions, it's easy for people not to know what their rights are," (the woman) *said. "Basically, for the hospital, it comes down to, 'Hey, we need the bed.' "*"

Under HB725, the facility would have been required to notify Hawai'i's designated protection and advocacy agency, Hawaii Disability Rights Center, which could then have contacted this woman (or any other family member placed in this situation) and offered its assistance in understanding her rights.

We urge the committee to pass HB725. Thank you for this opportunity to testify.

Sincerely,

Mark F. Romoser

Policy and Program Analyst

THE QUEEN'S MEDICAL CENTER

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To: Representative Ryan Yamane, Chair
Representative Scott Nishimoto, Vice-Chair
HEALTH COMMITTEE

Representative John Mizuno, Chair
Representative Tom Brower, Vice-Chair
HUMAN SERVICES COMMITTEE

From: Cynthia Kamikawa, RN, MS, NE-BC
Vice President, Nursing, ED, and Chief Nursing Officer

Date: February 5, 2009

Subject: House Bill 725, Relating to Health Care

My name is Cynthia Kamikawa. I am the Vice President of Nursing and the Chief Nursing Officer at The Queen's Medical Center and would like to offer comments on House Bill 725, which requires health care facilities and providers to notify the state-designated protection and advocacy entity or agency prior to transferring an elderly or disabled patient to an out-of-state treatment, rehabilitation or long-term care facility.

The Queen's Medical Center is the largest private tertiary care hospital in the State of Hawaii. We offer specialized care in the areas of cardiology, neuroscience, orthopedics, behavioral health, oncology, women's health, emergency services and trauma. Hawaii's health care system is comprised of providers who treat patients at various levels of the care continuum ranging from primary care to acute inpatient care to long-term care. The ability of the health care system to meet the needs of all of Hawaii's patients is degraded when patients cannot access the appropriate level of care.

Over 20,000 patients are admitted to Queen's every year for acute inpatient services. Most patients can be discharged to home or to a post-acute care facility when their need for acute inpatient care has ended. However, due to the severe shortage of long-term care beds, approximately 50 patients are waiting to transfer to a long-term care facility on any given day at Queen's. And Queen's is not alone. The Wait List Task Force report to the twenty-fourth Hawaii State Legislature stated that on average, there are 200, and as many as 275, complex patients waitlisted daily for long term care in acute care hospital settings across our State. This reduces Queen's and other hospitals' capacity to serve the acute inpatient care needs of our community, resulting in problems such as extended waits in the emergency room, diverting of ambulances to other emergency rooms, and delays in transfers from other hospitals.

On rare occasions, Queen's has transferred patients out-of-state. It is only done as a last resort when all local options have been exhausted. In every instance, the clinical needs of the patient

are addressed and the family participates in the process. We recognize that it is an emotional and stressful situation for patients and families. And our nurses, social workers and case managers make every effort to support them.

Queen's agrees with the measure's findings that there is a severe lack of long-term care capacity and that it will only worsen as our population ages. We welcome the attention that has been generated in hope that efforts will be initiated to address this need.

Thank you for the opportunity to comment on this measure.

One example is that of a single female, age 45, a local Japanese American resident of Honolulu who suffered a stroke on the way to a church function. She was taken to the hospital where her condition was eventually stabilized and she no longer required the acute care provided in a hospital setting. However, social workers were having difficulty finding a care home or nursing facility into which she could be discharged. At that point, they directed her sister to either pick her up at the curb in front of the hospital or consent to their discharging her to a nursing facility in Ohio. Her sister contacted our office in despair and as a result of our intervention we were able to prevent the hospital from transferring this woman to Ohio. Once we blocked those efforts, a suitable community placement was located and this woman currently resides at an adult foster home in Kalihi. Her sister is able to visit her more regularly and her life is measurably better than it would be if she were thousands of miles away from her loved ones.

This example serves to illustrate the value of this bill. While we were able to advocate for and protect the rights of the individuals who were fortunate to contact us, we really do not fully know the extent to which this practice is occurring and we obviously are not in a position to assist those who may be unaware that the state has a designated protection and advocacy system to whom they can turn.

We recognize that some individuals may need mainland placement, particularly for short term rehabilitation and specialized treatments that may not be available in Hawaii.

We also acknowledge that facilities transferring patients to the mainland are not entirely to blame. Hawaii does not maintain a current, centralized registry of available beds in long term facilities, so it is extremely difficult to find local placements. Without the registry, hospital staff is required to call every long term facility daily to get a vacancy status and that is very time consuming. We do not have an adequate supply of community beds to meet the needs of our community. Additionally, the Medicaid reimbursement is such that in the past there has been no monetary differential to compensate facilities for caring for those with more complex medical needs. As a result there is a waitlist of several hundred individuals who reside in hospital settings rather than community placements. The Healthcare Association is well aware of the problem and has convened a Task Force to develop solutions. Some of them are contained in other bills pending this session.

We also believe that, as a state and a unique community, we do not want to send our family members with disabilities and our kupuna to far away places like Ohio for long term care. It is not something we would want to do to our own mother, or brother, or daughter.

This bill establishes a safeguard for individuals who need long term care, and are suddenly in the position of being transferred to a mainland nursing home, willing or not. It requires any facility proposing such a transfer to notify the Hawaii's protection and advocacy agency of the proposed transfer. This bill will assure that every person in such a vulnerable position has an advocate to help them understand their rights and

their options, and to assure that all possible solutions to remain in their own community have been thoroughly explored.

The Hawaii Disability Rights Center is the State of Hawaii's designated Protection and Advocacy System. This is exactly the kind of "protection" and "advocacy" for which the United States Congress first created the system in 1975. 42 U.S.C. 15043; 333F-8.5 H.R.S. Further, we would not require any additional resources to receive these reports and to serve as advocates for individuals being considered for out-of-state long term placement.

Having stated that, we do need to mention to the Committees that to our knowledge the practice of sending patients out of state has not come to our attention much in the past year. We do not have sufficient facts to state that it is either continuing or not. In our discussions with various facilities, we have the impression that the practice, if not totally eliminated, has been drastically curtailed. We have not been made aware of any recent such transfer.

We also have been participating in efforts by various state agencies as well as the Healthcare Association to address the root causes of this problem. Two years ago, the legislature recognized that the transfer of residents out of state was symptomatic of a system in need of repair. In response it passed a Concurrent Resolution requesting the Healthcare Association to convene a Task Force to address the underlying problems Since then, many entities have committed to working together to solve those problems.

For those reasons, our position is that this remains a policy decision for the legislature. If the legislature feels that this measure is worthwhile, we certainly stand ready to carry forth its mission. At the same time, we are mindful that two years ago, many stakeholders mistook HDRC's submittal of this measure as an indication that somehow this agency was seeking to interject itself into areas where perhaps other agencies would more appropriately address the issues. In light of that, we suggest that if the Committees were inclined to advance the measure, they first ascertain the extent to which the practice is currently occurring and further give consideration to whether the notice provision in the bill might more appropriately be provided to a regulatory department within the state that has jurisdiction over the licensing of the facilities involved.

We would be happy to work with the Committees to advance discussion of this important issue.

Thank you for the opportunity to provide testimony.

nishimoto2-Bryce

From: Tony Lenzer [Tlenzer@hawaii.rr.com]
Sent: Thursday, February 05, 2009 6:03 AM
To: HLTtestimony
Subject: Testimony - HLT/HUS Hearing, 2/6/09, 9:00 a.m., Room 329

TESTIMONY IN SUPPORT OF HOUSE BILL 725

Chairs Yamane and Mizuno:

My name is Anthony Lenzer. I am a Professor Emeritus and Former Director of the Center on Aging at the University of Hawaii. I am offering testimony on behalf of PABEA, the Policy Advisory Board for Elder Affairs, which is an appointed board tasked with advising the Executive Office on Aging (EOA). My testimony does not represent the views of the EOA but of the Board.

PABEA is in strong support of HB 725, which requires notification of the state protection and advocacy agency before transferring an elderly or disabled patient to an out-of-state treatment facility. HB 725 correctly notes the need to create increased capacity within the state to care for such patients. It also points to the need to assure that patients' legal rights and needs are being met, before such transfers are made.

Elderly persons needing placement in long-term care facilities in Hawaii are an extremely vulnerable population. Many are on Medicaid, and have limited financial resources. Transfer of such patients from one facility to another, even within the community, can be a traumatic experience. How much more traumatic is it to ship these patients to another state, where they may be totally isolated from family and friends. Every effort should be made to increase our ability to care for such patients in Hawaii, preferably in their home communities. While this bill does not cover the capacity issue, it does represent a small but important step towards protecting the rights of vulnerable elderly patients.

Thank you for the opportunity to testify.