

STAND. COM. REP. NO.

2701

Honolulu, Hawaii

FEB 28 2014

RE: S.B. No. 2264

S.D. 2

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2264, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CAREGIVING,"

begs leave to report as follows:

The purpose and intent of this measure is to enable
caregivers to provide competent post-hospital care to their loved
ones, at minimal cost to taxpayers, by:

- (1) Allowing a patient the opportunity, upon entry to a
hospital, to designate a caregiver;
- (2) Requiring hospitals to notify and meet with the
designated caregiver to discuss the patient's plan of
care; and
- (3) Requiring hospitals to instruct the designated caregiver
in after-care tasks upon a patient's discharge.

Your Committee received testimony in support of this measure
from the International Longshore and Warehouse Union, Local 142;
AARP Hawaii; Hawaii Alliance for Retired Americans; American
Cancer Society Cancer Action Network; Maui County Office on Aging;
and eighteen individuals. Your Committee received testimony in
opposition to this measure from the Healthcare Association of
Hawaii and The Queen's Health Systems. Your Committee received
comments on this measure from Hawaii Pacific Health.



Your Committee finds that there are approximately 247,000 unpaid family caregivers in Hawaii that serve as the backbone and support for Hawaii's aging residents and those with physical or cognitive limitations. These caregivers provide services that are valued annually at \$2,000,000,000. In addition, unpaid caregivers help prevent unnecessary hospital readmissions by providing adequate care for their family members and loved ones. Each year, \$17,000,000,000 in Medicare funds is spent on unnecessary hospital readmissions, and Hawaii's hospitals are subject to federal financial penalties due to excessive readmissions.

Your Committee further finds that the role of unpaid caregivers is expanding to include medical and nursing tasks that historically were only provided in hospitals and nursing homes or by home care professionals. The tasks most commonly performed by caregivers are medication management, help with assistive mobility devices, preparing food for special diets, and wound care. This measure recognizes the importance of unpaid caregivers and their need for adequate training and support.

Your Committee notes several concerns that were raised in submitted written testimony regarding mandating hospitals to provide training to caregivers. The Healthcare Association of Hawaii testified that this measure is duplicative because hospitals already have discharge policies and protocols in place that ensure that patients' family members and caregivers receive critical aftercare instructions and information for patients being discharged. However, according to AARP Hawaii, many caregivers have expressed that they received little or no training to perform critical aftercare tasks, which can be a tremendous source of stress for family caregivers. Thus, your Committee believes that while it may be duplicative to mandate hospitals under statute to provide caregiver training and support, further efforts are necessary to provide sufficient caregiving training to facilitate patient recovery.

However, your Committee is concerned that placing caregiver requirements in statute, even if these requirements are permissively phrased in the statute, may impose substantial liability on hospitals under this measure because "[g]enerally, a standard of conduct may be determined by reference to a statute". *Ono v. Applegate*, 62 Haw. 131, 137 (1980). "Even where a legislative enactment contains no express provision that its violation shall result in tort liability, and no implication to that effect, the court may, and in certain types of cases



customarily will, adopt the requirements of the enactment as the standard of conduct necessary to avoid liability for negligence". *Ibid.* at p. 138. Thus, while providing immunity to the hospitals and employees against any claims that may arise from this measure, as suggested by AARP Hawaii, may assist in alleviating liability concerns, your Committee believes that it is not possible to provide hospitals with a blanket immunity.

Your Committee further notes the concerns raised by the Healthcare Association of Hawaii and The Queen's Health Systems that this measure may impose significant additional costs on private and public hospitals to meet the personnel and administration costs. Specifically, the Healthcare Association of Hawaii testified that this measure may require the Legislature to make substantial appropriations to ensure that hospitals under the Hawaii Health Systems Corporation meet their obligations under this measure. As such, while your Committee supports caregivers in their efforts to provide competent post-hospital care to their loved ones, this measure merits further discussion as it moves through the legislative process to address the concerns regarding hospital liability and potential increase in personnel and administration costs.

Accordingly, your Committee has amended this measure by:

- (1) Amending the purpose section to:
 - (A) Reflect the unique positions hospitals are in to train lay caregivers and the resulting liability concerns of hospitals that such training may impose; and
 - (B) Recognize that voluntary training of lay caregivers by hospitals helps patients and lay caregivers;
- (2) Clarifying that "caregivers" are "lay caregivers" who are designated by a patient to provide after-care to the patient and may include an individual who has a significant relationship with the patient;
- (3) Permitting, rather than requiring, hospitals to allow patients the opportunity to designate a lay caregiver;
- (4) Allowing, rather than requiring, hospitals to include the designated lay caregiver in the patient's medical

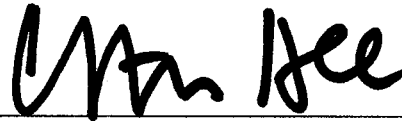


record, notify the lay caregiver an unspecified number of hours prior to the patient's transfer or discharge, consult with the lay caregiver about the patient's discharge plan, and instruct the designated lay caregivers in after-care; and

- (5) Adopting language suggested by AARP Hawaii to provide immunity to hospitals and their employees that allow patients the opportunity to designate a lay caregiver.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2264, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2264, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 2264 SD1	Committee Referral: HMS/HTH, JDL	Date: 2/26/14		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
GALUTERIA, Brickwood	✓			
IHARA, Jr., Les	✓			
SOLOMON, Malama				✓
SLOM, Sam				✓
TOTAL	5			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes