

STATE OF HAWAI'I
OFFICE OF THE AUDITOR
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State Auditor

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October 10, 2008

To Whom It May Concern:

The State Legislature, through Act 127, Session Laws of Hawai'i, 2008, required our office to conduct a management and financial audit of the Hawai'i Disabilities Rights Center.

Our preliminary research has led us to conclude that we could not perform some of the tasks specified in Act 127 while others are already addressed by existing processes. Attached is a letter that provides in greater detail the support for our conclusion.

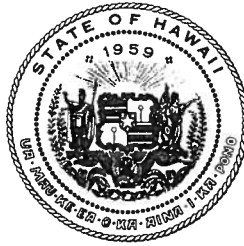
A copy of the letter to the Legislature and governor is attached. Also, a copy has been sent to the Hawai'i Disabilities Rights Center and other stakeholders and will be made available on our website (www.state.hi.us/auditor/).

Sincerely,

A handwritten signature in cursive script, appearing to read "marion m higa".

Marion M. Higa
State Auditor

Enclosure



October 10, 2008

The Honorable Colleen Hanabusa
President of the Senate
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President:

We regret to inform you that we are suspending further audit work on the Hawai'i Disabilities Rights Center (HDRC) as required by Act 127, Session Laws of Hawai'i 2008. The act directs the Office of the Auditor to conduct a management and financial audit to determine the appropriateness of the center's expenditure of state funds and its approach to resolving the conflict between its right to access client records and the right of those individuals to privacy. Upon the completion of our preliminary research, we have concluded that continued work to meet Act 127's requirements is not warranted for the following reasons:

- Processes attesting to the propriety of HDRC's spending of the small amount of state funds already exist. The majority of HDRC's revenues are funded by federal grants. At \$167,500 per year, state funding represents only 9.5 percent, of HDRC's total revenues, and simply pays for a proportional share of federally approved spending. State funds do not support an identifiable, discrete program.
- The conflict over accessing records subject to privacy protections is governed by federal laws and regulations. Absent any other available criteria we lack a means to evaluate HDRC's approach; the federal courts are the proper venue to resolve this conflict. Moreover, the particular dispute that reportedly spurred Act 127 has already been placed under federal judicial review.

Following is a more detailed discussion of the issues that lead us to this conclusion.

Handling of State Funds

Since 1975, the federal government has required states to establish a system of support to protect the welfare, health, and civil rights of persons with various disabilities. One of Hawai'i's components of this system is a Protection and Advocacy (P&A) agency, namely, the Hawai'i Disabilities Rights Center (HDRC). Incorporated in 1977, the HDRC was designated Hawai'i's Protection and Advocacy agency by a governor's executive order that year. This non-profit organization contracts with the State to administer the State's P&A and assistance programs for disabled persons according to federal laws and guidelines.

As the designated agency for Hawai‘i, HDRC, with its \$1.8 million budget, is subject to annual independent financial statement audits that include audit procedures required by the federal guidelines (Circular A-133). The financial audits include procedures to ensure compliance with the federal requirements of the grants that make up almost 80 percent of HDRC’s annual budget. We reviewed the reports of these audits for the past three years and found no material issues indicating non-compliance on HDRC’s part. In addition, the State Department of Labor and Industrial Relations’ Office of Community Services, which administers the State’s contract with HDRC, maintains a reporting and monitoring process to meet the State’s obligation to account for proper and appropriate expenditure of federal funds.

Additional compliance requirements and scrutiny are imposed on the Hawai‘i Disabilities Rights Center by virtue of its status as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. The 501(c)(3) status limits expenditures to defined purposes and also places limits on political lobbying. To date, no significant issues in this area have been reported.

Finally, the five federal agencies that oversee the nine programs that the Hawai‘i Disabilities Rights Center administers require compliance with grant guidelines and federal laws for continued funding. At least two federal programs include formal reviews of the management, governance, and operations of this Protection and Advocacy agency. A 2005 review by a team of experts, including a financial consultant for the federal Center for Mental Health Services, presented a favorable report on HDRC with only minor issues for recommended improvements, which were subsequently addressed.

We have concluded that existing audit requirements and levels of oversight over the Hawai‘i Disabilities Rights Center’s spending of state and federal funds provide a high degree of confidence in the center’s compliance with applicable laws and rules.

Approach to resolving the conflict between access to records and privacy rights

To protect individuals with disabilities and mental illnesses, federal law gives Protection and Advocacy agencies the authority to investigate incidents of abuse and neglect whenever a complaint is filed or an agency determines that probable cause exists. The Protection and Advocacy agency is the final arbiter of what constitutes probable cause. In addition, the agency is authorized to access relevant confidential records if a patient or a patient’s legal representative gives permission for access although, under certain conditions, such permission is not required. There are no rules, regulations, or guides for best practices on appropriate methods of obtaining access. Access issues have been the subject of court cases in other states. The HDRC also has sought to resolve access issues through the courts, including a case that has been cited by legislators as one of the reasons for Act 127. We believe that the courts are the proper arbiters of any dispute on the interpretations of the applicable laws to protect privacy and the determination of any exemptions for oversight.

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It has been Congress' intention to provide the Protection and Advocacy system with wide-ranging discretion in choosing its approach to represent the interests and wellbeing of the disabled and the mentally ill. The National Disability Rights Network, a nationwide membership organization for all state Protection and Advocacy agencies, stresses the importance of state Protection and Advocacy agencies to have freedom from interference in protecting the interests and welfare of the disabled and the mentally ill. The importance of this independence is underlined by the federal laws that do not allow the state Protection and Advocacy agencies to be subject to any state agency that provides services to the disabled. Further, termination of a state's designated agency can be accomplished only for good cause.

State Protection and Advocacy agencies are given some federal guidelines on priorities but have significant latitude as to the cases and priorities they pursue. Among the multitude of enabling laws, rules, and regulations we reviewed, we found a requirement for procedures to maximize good faith negotiations and mediation before resorting to legal action for two of HDRC's nine programs, but found no similar requirements for the other P&A programs. The Hawai'i Disabilities Rights Center established a mandated public input process to give the general public a chance to voice concerns over HDRC's priorities. Public community meetings are held during the months of July and August and notices of these meetings are posted on the agency's website.

Whether these meetings are effective means for obtaining public or stakeholder input is difficult to say, given the vaguely worded directions from federal laws and rules, and the lack of sufficient criteria to evaluate HDRC's approach to advocacy. When this advocacy involves accessing records subject to privacy protections that other groups or individuals believe has exceeded a Protection and Advocacy agency's mandate, the courts are the more appropriate forum for setting the boundaries.

For the reasons presented above, we have suspended further work on this project. Please do not hesitate to contact me if there are any questions.

Sincerely,



Marion M. Higa
State Auditor