
A BILL FOR AN ACT

RELATING TO HOME CARE AGENCIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The health care environment is dynamic, with
2 changes occurring constantly due to new products and services
3 and the changing demands of the market. The public must be
4 assured of the quality of the care that is offered by providers
5 in the growing home care industry.

6 Home care is a relatively new component of the health care
7 continuum that is quickly expanding. The expansion is largely
8 due to the rising demand by disabled elderly individuals for
9 care in their homes whenever possible, rather than in an
10 institutional setting. In addition, many other non-elderly
11 individuals with illnesses, injuries, and disabilities also
12 prefer to receive care in the privacy of their own home.

13 Since different types of home care clients have a variety
14 of needs, home care agencies provide a broad range of services,
15 both professional and nonprofessional, such as private duty
16 nursing services, rehabilitation therapy services, social
17 services, personal care services, and companion services. Home
18 care is usually purchased directly by consumers or their



1 families with personal funds since it is not covered by health
2 insurance plans.

3 A home care worker is often the only other person in the
4 home of a client, who may be mentally or physically disabled,
5 and it is essential to ensure that home care workers are
6 adequately trained and ethically responsible. However, home
7 care agencies in Hawaii are not currently required to meet such
8 quality standards.

9 Anecdotal reports have surfaced that there are cases where
10 home care services are provided by untrained staff, posing a
11 risk to the consumer. Additionally, local media have featured
12 stories about fraud and abuse of the elderly and disabled in the
13 community.

14 It is necessary to license home care agencies to ensure the
15 public that minimum standards are being met. For example,
16 licensure should require criminal background checks of home care
17 staff who work in the homes of clients and provide personal care
18 services.

19 The purpose of this Act is to protect consumers of home
20 care services by:

21 (1) Requiring home care agencies to be licensed by the
22 department of health; and



1 (2) Appropriating funds for a position in the department
2 to assist with licensure and monitoring of home care
3 agencies.

4 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§321- Home care agencies; licensing. (a) All home
8 care agencies shall be licensed by the department to ensure the
9 health, safety, and welfare of clients.

10 (b) The department shall adopt rules in accordance with
11 chapter 91 that shall:

12 (1) Protect the health, safety, and civil rights of
13 clients of home care agencies; and

14 (2) Provide for the licensure of home care agencies.

15 (c) For purposes of this section:

16 "Home care agency" means a public or proprietary agency, a
17 private, non-profit organization, or a subdivision of an agency
18 or organization, engaged in providing home care services to
19 clients in the client's residence. Home care agency does not
20 include an individual, even when the individual is incorporated
21 as a business, an unpaid or stipended volunteer, nor to any



1 home- or community-based agency or entity providing services
2 under the jurisdiction of the department of human services.

3 "Home care services" include but are not limited to:

- 4 (1) Personal care, including assistance with dressing,
5 feeding, and personal hygiene to facilitate self-care;
6 (2) Homemaker assistance, including housekeeping,
7 shopping, and meal planning and preparation; and
8 (3) Respite care and assistance and support provided to
9 the family."

10 SECTION 3. Section 321-11, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§321-11 Subjects of health rules, generally.** The
13 department, pursuant to chapter 91, may adopt rules that it
14 deems necessary for the public health and safety respecting:

- 15 (1) Nuisances, foul or noxious odors, gases, vapors,
16 waters in which mosquitoes breed or may breed, sources
17 of filth, and causes of sickness or disease, within
18 the respective districts of the State, and on board
19 any vessel;
20 (2) Adulteration and misbranding of food or drugs;
21 (3) Location, air space, ventilation, sanitation,
22 drainage, sewage disposal, and other health conditions



- 1 of buildings, courts, construction projects,
2 excavations, pools, watercourses, areas, and alleys;
- 3 (4) Privy vaults and cesspools;
- 4 (5) Fish and fishing;
- 5 (6) Interments and dead bodies;
- 6 (7) Disinterments of dead human bodies, including the
7 exposing, disturbing, or removing of these bodies from
8 their place of burial, or the opening, removing, or
9 disturbing after due interment of any receptacle,
10 coffin, or container holding human remains or a dead
11 human body or a part thereof and the issuance and
12 terms of permits for the aforesaid disinterments of
13 dead human bodies;
- 14 (8) Cemeteries and burying grounds;
- 15 (9) Laundries, and the laundering, sanitation, and
16 sterilization of articles including linen and uniforms
17 used by or in the following businesses and
18 professions: barber shops, manicure shops, beauty
19 parlors, electrology shops, restaurants, soda
20 fountains, hotels, rooming and boarding houses,
21 bakeries, butcher shops, public bathhouses, midwives,
22 masseurs, and others in similar calling, public or



1 private hospitals, and canneries and bottling works
2 where foods or beverages are canned or bottled for
3 public consumption or sale; provided that nothing in
4 this chapter shall be construed as authorizing the
5 prohibiting of laundering, sanitation, and
6 sterilization by those conducting any of these
7 businesses or professions where the laundering or
8 sterilization is done in an efficient and sanitary
9 manner;

10 (10) Hospitals, freestanding surgical outpatient
11 facilities, skilled nursing facilities, intermediate
12 care facilities, adult residential care homes, adult
13 foster homes, assisted living facilities, special
14 treatment facilities and programs, home health
15 agencies, home care agencies, hospices, freestanding
16 birthing facilities, adult day health centers,
17 independent group residences, and therapeutic living
18 programs, but excluding youth shelter facilities
19 unless clinical treatment of mental, emotional, or
20 physical disease or handicap is a part of the routine
21 program or constitutes the main purpose of the
22 facility, as defined in section 346-16 under "child



1 care institution". For the purpose of this paragraph,
2 "adult foster home" has the same meaning as provided
3 in section 321-11.2;

4 (11) Hotels, rooming houses, lodging houses, apartment
5 houses, tenements, and residences for persons with
6 developmental disabilities, including[7] but not
7 limited to[7] those built under federal funding;

8 (12) Laboratories;

9 (13) Any place or building where noisome or noxious trades
10 or [~~manufacturers are~~] manufacturing is carried on, or
11 intended to be carried on;

12 (14) Milk;

13 (15) Poisons and hazardous substances, the latter term,
14 including but not limited to any substance or mixture
15 of substances [~~which~~] that:

16 (A) Is corrosive;

17 (B) Is an irritant;

18 (C) Is a strong sensitizer;

19 (D) Is inflammable; or

20 (E) Generates pressure through decomposition, heat,
21 or other means,



1 if the substance or mixture of substances may cause
2 substantial personal injury or substantial illness
3 during or as a proximate result of any customary or
4 reasonably foreseeable handling or use, including
5 reasonably foreseeable ingestion by children;

6 (16) Pig and duck ranches;

7 (17) Places of business, industry, employment, and
8 commerce, and the processes, materials, tools,
9 machinery, and methods of work done therein; and
10 places of public gathering, recreation, or
11 entertainment;

12 (18) Any restaurant, theater, market, stand, shop, store,
13 factory, building, wagon, vehicle, or place where any
14 food, drug, or cosmetic is manufactured, compounded,
15 processed, extracted, prepared, stored, distributed,
16 sold, offered for sale, or offered for human
17 consumption or use;

18 (19) Foods, drugs, and cosmetics, and the manufacture,
19 compounding, processing, extracting, preparing,
20 storing, selling, and offering for sale, consumption,
21 or use of any food, drug, or cosmetic;

22 (20) Devices as defined in section 328-1;



- 1 (21) Sources of ionizing radiation;
- 2 (22) Medical examination, vaccination, revaccination, and
3 immunization of school children. No child shall be
4 subjected to medical examination, vaccination,
5 revaccination, or immunization, whose parent or
6 guardian objects in writing thereto on grounds that
7 the requirements are not in accordance with the
8 religious tenets of an established church of which the
9 parent or guardian is a member or adherent, but no
10 objection shall be recognized when, in the opinion of
11 the department, there is danger of an epidemic from
12 any communicable disease;
- 13 (23) Disinsectization of aircraft entering or within the
14 State as may be necessary to prevent the introduction,
15 transmission, or spread of disease or the introduction
16 or spread of any insect or other vector of
17 significance to health;
- 18 (24) Fumigation, including the process by which substances
19 emit or liberate gases, fumes, or vapors [~~which~~] that
20 may be used for the destruction or control of insects,
21 vermin, rodents, or other pests, which, in the opinion



1 of the department, may be lethal, poisonous, noxious,
2 or dangerous to human life;

3 (25) Ambulances and ambulance equipment;

4 (26) Development, review, approval, or disapproval of
5 management plans submitted pursuant to the Asbestos
6 Hazard Emergency Response Act of 1986, Public Law 99-
7 519; and

8 (27) Development, review, approval, or disapproval of an
9 accreditation program for specially trained persons
10 pursuant to the Residential Lead-Based Paint Hazard
11 Reduction Act of 1992, Public Law 102-550.

12 The department may require any certificates, permits, or
13 licenses that it may deem necessary to adequately regulate the
14 conditions or businesses referred to in this section."

15 SECTION 4. Section 321-11.5, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

17 "(b) All fees paid and collected pursuant to this section
18 and rules adopted in accordance with chapter 91 from facilities
19 seeking licensure or certification by the department of health,
20 including hospitals, nursing homes, home health agencies, home
21 care agencies, intermediate care facilities for the mentally
22 retarded, freestanding outpatient surgical facilities, adult day



1 health care centers, rural health centers, laboratories, adult
2 residential care homes, expanded adult residential care homes,
3 developmental disability domiciliary homes, assisted living
4 facilities, therapeutic living programs, and special treatment
5 facilities, shall be deposited into the office of health care
6 assurance special fund created under section 321-1.4. Any other
7 entities required by law to be licensed by the department of
8 health shall also be subject to reasonable fees established by
9 the department of health by rules adopted in accordance with
10 chapter 91."

11 SECTION 5. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$ or so much
13 thereof as may be necessary for fiscal year 2008-2009 for one
14 full-time equivalent position in the department of health to
15 assist in the licensure and monitoring of home care agencies.

16 The sum appropriated shall be expended by the department of
17 health for the purposes of this Act.

18 SECTION 6. Statutory material to be repealed is bracketed.
19 New statutory material is underscored.

20 SECTION 7. This Act shall take effect on July 1, 2008, and
21 shall be repealed on June 30, 2013; provided that sections 321-



1 11 and 321-11.5, Hawaii Revised Statutes, shall be reenacted in
2 the form in which they read on June 30, 2008.



Report Title:

Home Care Agencies; Licensing; Appropriation

Description:

Requires home care agencies to be licensed by the department of health; appropriates funds. (SB2857 SD2)

