

JAN 23 2009

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# 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 changing demands of the market. The public must be assured  
4 of quality in the care that is offered by providers. Standards  
5 of quality for the growing home care industry must also be  
6 ensured.

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

14           Since different types of home care clients have a variety  
15 of needs, home care agencies provide a broad range of services,  
16 both professional and nonprofessional such as private-duty  
17 nursing services, rehabilitation therapy services, social



1 services, personal care services, and companion services. Home  
2 care is usually purchased directly by consumers or their  
3 families with personal funds since it is not a routine benefit  
4 of health insurance plans.

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

11 The legislature finds it is necessary to license home care  
12 agencies to ensure the public that minimum standards are being  
13 met. For example, licensure should require criminal background  
14 checks of home care staff who work in the homes of clients to  
15 provide personal care services.

16 The purpose of this Act is to protect consumers of home  
17 care services by:

- 18 (1) Requiring home care agencies to be licensed by the  
19 department of health; and
- 20 (2) Appropriating funds for a position in the department  
21 of health to assist with licensure and monitoring of  
22 home care agencies.



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

4 "§321- Home care agencies; licensing. (a) A home care  
5 agency shall be licensed by the department of health to ensure  
6 the health, safety, and welfare of clients.

7 (b) The department of health shall adopt rules in  
8 accordance with chapter 91 to:

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

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

12 (c) For purposes of this section:

13 "Home care agency" means a public or proprietary agency, a  
14 private, nonprofit organization, or a subdivision of an agency  
15 or organization, engaged in providing home care services to  
16 clients in the client's residence. The term "home care agency"  
17 does not apply to an individual, including an individual who is  
18 incorporated as a business, or is an unpaid or stipended  
19 volunteer.

20 "Home care services" include, but are not limited to:

21 (1) Personal care, including assistance with dressing,  
22 feeding, and personal hygiene to facilitate self-care;



- 1        (2) Homemaker assistance, including housekeeping,
- 2                shopping, and meal planning and preparation; and
- 3        (3) Respite care and assistance and support provided to
- 4                the family."

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

7                "**§321-11 Subjects of health rules, generally.** The  
8 department of health pursuant to chapter 91 may adopt rules that  
9 it deems necessary for the public health and safety respecting:

- 10              (1) Nuisances, foul or noxious odors, gases, vapors,  
11                      waters in which mosquitoes breed or may breed, sources  
12                      of filth, and causes of sickness or disease, within  
13                      the respective districts of the State, and on board  
14                      any vessel;
- 15              (2) Adulteration and misbranding of food or drugs;
- 16              (3) Location, air space, ventilation, sanitation,  
17                      drainage, sewage disposal, and other health conditions  
18                      of buildings, courts, construction projects,  
19                      excavations, pools, watercourses, areas, and alleys;
- 20              (4) Privy vaults and cesspools;
- 21              (5) Fish and fishing;
- 22              (6) Interments and dead bodies;

1 (7) Disinterments of dead human bodies, including the  
2 exposing, disturbing, or removing of these bodies from  
3 their place of burial, or the opening, removing, or  
4 disturbing after due interment of any receptacle,  
5 coffin, or container holding human remains or a dead  
6 human body or a part thereof and the issuance and  
7 terms of permits for the aforesaid disinterments of  
8 dead human bodies;

9 (8) Cemeteries and burying grounds;

10 (9) Laundries, and the laundering, sanitation, and  
11 sterilization of articles including linen and uniforms  
12 used by or in the following businesses and  
13 professions: barber shops, manicure shops, beauty  
14 parlors, electrology shops, restaurants, soda  
15 fountains, hotels, rooming and boarding houses,  
16 bakeries, butcher shops, public bathhouses, midwives,  
17 masseurs, and others in similar calling, public or  
18 private hospitals, and canneries and bottling works  
19 where foods or beverages are canned or bottled for  
20 public consumption or sale; provided that nothing in  
21 this chapter shall be construed as authorizing the  
22 prohibiting of laundering, sanitation, and



1 sterilization by those conducting any of these  
2 businesses or professions where the laundering or  
3 sterilization is done in an efficient and sanitary  
4 manner;

5 (10) Hospitals, freestanding surgical outpatient  
6 facilities, skilled nursing facilities, intermediate  
7 care facilities, adult residential care homes, adult  
8 foster homes, assisted living facilities, special  
9 treatment facilities and programs, home health  
10 agencies, home care agencies, hospices, freestanding  
11 birthing facilities, adult day health centers,  
12 independent group residences, and therapeutic living  
13 programs, but excluding youth shelter facilities  
14 unless clinical treatment of mental, emotional, or  
15 physical disease or handicap is a part of the routine  
16 program or constitutes the main purpose of the  
17 facility, as defined in section 346-16 under "child  
18 care institution". For the purpose of this paragraph,  
19 "adult foster home" has the same meaning as provided  
20 in section 321-11.2;

21 (11) Hotels, rooming houses, lodging houses, apartment  
22 houses, tenements, and residences for persons with



1 developmental disabilities including, but not limited  
2 to, those built under federal funding;

3 (12) Laboratories;

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

7 (14) Milk;

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

11 (A) Is corrosive;

12 (B) Is an irritant;

13 (C) Is a strong sensitizer;

14 (D) Is inflammable; or

15 (E) Generates pressure through decomposition, heat,  
16 or other means,

17 if the substance or mixture of substances may cause  
18 substantial personal injury or substantial illness  
19 during or as a proximate result of any customary or  
20 reasonably foreseeable handling or use, including  
21 reasonably foreseeable ingestion by children;

22 (16) Pig and duck ranches;



- 1 (17) Places of business, industry, employment, and  
2 commerce, and the processes, materials, tools,  
3 machinery, and methods of work done therein; and  
4 places of public gathering, recreation, or  
5 entertainment;
- 6 (18) Any restaurant, theater, market, stand, shop, store,  
7 factory, building, wagon, vehicle, or place where any  
8 food, drug, or cosmetic is manufactured, compounded,  
9 processed, extracted, prepared, stored, distributed,  
10 sold, offered for sale, or offered for human  
11 consumption or use;
- 12 (19) Foods, drugs, and cosmetics, and the manufacture,  
13 compounding, processing, extracting, preparing,  
14 storing, selling, and offering for sale, consumption,  
15 or use of any food, drug, or cosmetic;
- 16 (20) Devices as defined in section 328-1;
- 17 (21) Sources of ionizing radiation;
- 18 (22) Medical examination, vaccination, revaccination, and  
19 immunization of school children. No child shall be  
20 subjected to medical examination, vaccination,  
21 revaccination, or immunization, whose parent or  
22 guardian objects in writing thereto on grounds that





1 the requirements are not in accordance with the  
2 religious tenets of an established church of which the  
3 parent or guardian is a member or adherent, but no  
4 objection shall be recognized when, in the opinion of  
5 the department, there is danger of an epidemic from  
6 any communicable disease;

7 (23) Disinsectization of aircraft entering or within the  
8 State as may be necessary to prevent the introduction,  
9 transmission, or spread of disease or the introduction  
10 or spread of any insect or other vector of  
11 significance to health;

12 (24) Fumigation, including the process by which substances  
13 emit or liberate gases, fumes, or vapors [~~which~~] that  
14 may be used for the destruction or control of insects,  
15 vermin, rodents, or other pests, which, in the opinion  
16 of the department, may be lethal, poisonous, noxious,  
17 or dangerous to human life;

18 (25) Ambulances and ambulance equipment;

19 (26) Development, review, approval, or disapproval of  
20 management plans submitted pursuant to the Asbestos  
21 Hazard Emergency Response Act of 1986, Public Law  
22 99-519; and



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

5           The department of health may require any certificates,  
6           permits, or licenses that it may deem necessary to adequately  
7           regulate the conditions or businesses referred to in this  
8           section."

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

11          "(b) All fees paid and collected pursuant to this section  
12          and rules adopted in accordance with chapter 91 from facilities  
13          seeking licensure or certification by the department of health,  
14          including hospitals, nursing homes, home health agencies, home  
15          care agencies, intermediate care facilities for the mentally  
16          retarded, freestanding outpatient surgical facilities, adult day  
17          health care centers, rural health centers, laboratories, adult  
18          residential care homes, expanded adult residential care homes,  
19          developmental disability domiciliary homes, assisted living  
20          facilities, therapeutic living programs, and special treatment  
21          facilities, shall be deposited into the office of health care  
22          assurance special fund created under section 321-1.4. Any other

1 entities required by law to be licensed by the department of  
2 health shall also be subject to reasonable fees established by  
3 the department of health by rules adopted in accordance with  
4 chapter 91."

5 SECTION 5. Section 321-15.2, Hawaii Revised Statutes, is  
6 amended by amending the definition of "healthcare facility" to  
7 read as follows:

8 "Healthcare facility" means a facility or setting where a  
9 frail, elderly, or disabled adult receives care or is provided  
10 living accommodations such as a skilled nursing facility,  
11 intermediate care facility, adult residential care home,  
12 expanded adult residential care home, assisted living facility,  
13 home health agency, home care agency, hospice, adult day health  
14 center, special treatment facility, therapeutic living program,  
15 intermediate care facility for the mentally retarded, hospital,  
16 rural health center, and rehabilitation agency."

17 SECTION 6. There is appropriated out of the general  
18 revenues of the State of Hawaii the sum of \$ \_\_\_\_\_ or so  
19 much thereof as may be necessary for fiscal year 2009-2010 for  
20 one full-time equivalent position in the department of health to  
21 assist in the licensure and monitoring of home care agencies.

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

3 SECTION 7. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect on July 1, 2009, and  
6 shall be repealed on June 30, 2014; provided that sections  
7 321-11, and 321-11.5(b), and the definition of "healthcare  
8 facility" in section 321-15.2, Hawaii Revised Statutes, shall be  
9 reenacted in the form in which they read on the day before the  
10 effective date of this Act.

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**Report Title:**

Health; Home Care Agencies; Licensing; Appropriation

**Description:**

Requires the department of health to license home care agencies.  
Sunsets 6/30/2014. Makes appropriation.

