
A BILL FOR AN ACT

RELATING TO HEALTH CARE.

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

1 SECTION 1. The legislature finds that the growth rate of
2 the elderly population in the State, those sixty-five years and
3 older, is expected to accelerate. The United States Census
4 Bureau reports that the proportion of Hawaii's population
5 classified as elderly is expected to increase from 12.6 per cent
6 in 1995 to 15.9 per cent in 2025. The increasing proportion of
7 the elderly requires that the State take action to anticipate
8 and prepare for the future health care needs of Hawaii's
9 population.

10 The United States Congress has already recognized the need
11 for health care reform and enacted the Patient Protection and
12 Affordable Care Act in 2010. The Patient Protection and
13 Affordable Care Act is intended to improve health care in
14 America by, among other things, establishing a competitive
15 health insurance market, ending discrimination against pre-
16 existing health conditions, expanding medicaid coverage,
17 enhancing the quality of health care, and reducing health care
18 fraud and waste. The legislature finds that Hawaii should take



1 similar actions to improve health care in the State. One
2 organizational change that could improve government efficiency
3 and health care is to consolidate certain health care services
4 that are currently managed by the department of health and the
5 department of human services.

6 The legislature finds that the department of health has
7 already established an office of health care assurance that
8 manages state licensing and federal certification of medical and
9 health care facilities, agencies, and services provided
10 throughout the State to ensure compliance with established
11 standards of care. Given the office's existing functions, the
12 legislature finds that health care services currently provided
13 by the department of human services and the department of health
14 should be consolidated under the jurisdiction of the office of
15 health care assurance to improve the efficiency, capacity, and
16 quality of state health care services.

17 The purpose of this Act is to consolidate the authority,
18 duties, responsibilities, and jurisdiction of the department of
19 human services and the department of health, as they relate to
20 various health care services, by transferring to the department
21 of health office of health care assurance on July 1, 2014, the
22 programs of the department of human services relating to:



- 1 (1) Home and community-based case management;
- 2 (2) Community care foster family homes; and
- 3 (3) Adult day care.

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

7 "PART . HOME AND COMMUNITY-BASED CASE MANAGEMENT
8 AGENCIES AND COMMUNITY CARE FOSTER FAMILY HOMES

9 §321-A Definitions. As used in this part:

10 "Certificate of approval" means the certificate issued by
11 the department or its designee that authorizes a person, agency,
12 or organization to operate a community care foster family home.

13 "Client" means any person who receives home and community-
14 based case management services to reside in a community care
15 foster family home, expanded adult residential care home, or
16 assisted living facility.

17 "Community care foster family home" or "home" means a home
18 that:

- 19 (1) Is regulated by the department in accordance with
20 rules that are equitable in relation to rules that
21 govern expanded adult residential care homes;



- 1 (2) Is issued a certificate of approval by the department
2 or its designee to provide, for a fee, twenty-four-
3 hour living accommodations, including personal care
4 and homemaker services, for not more than two adults
5 at any one time, at least one of whom shall be a
6 medicaid recipient, who are at the nursing facility
7 level of care, who are unrelated to the foster family,
8 and who are receiving the services of a licensed home
9 and community-based case management agency; provided
10 that the department, in its discretion, may certify a
11 home for a third adult who is at the nursing level of
12 care and a medicaid recipient; provided further that
13 the:
- 14 (A) Home has been certified and in operation for not
15 less than one year;
- 16 (B) Primary caregiver is a certified nurse aide, as
17 defined in section 457A-1.5, who has completed a
18 state-approved training program and other
19 training as required by the department; and
- 20 (C) Substitute caregiver is a nurse aide, as defined
21 in section 457A-1.5, who has completed a state-



1 approved training program and other training as
2 required by the department; and

3 (3) Does not include expanded adult residential care homes
4 or assisted living facilities.

5 "Department" means the department of health.

6 "Designee" means a person, institution, organization, or
7 agency authorized by the department to issue certificates of
8 approval to community care foster family homes and to monitor
9 these homes for certificate compliance and quality assurance.
10 The department's designee shall perform these functions for the
11 department and shall not, at the same time, function as a home
12 and community-based case management agency or a community care
13 foster family home as defined in this section.

14 "Expanded adult residential care home" means any facility
15 providing twenty-four hour living accommodations, for a fee, to
16 adults unrelated to the family, who require at least minimal
17 assistance in the activities of daily living, personal care
18 services, protection, and health care services, and who may need
19 the professional health services provided in an intermediate or
20 skilled nursing facility.

21 "Home and community-based case management agency" means any
22 person, agency, or organization licensed by the department to

1 provide, coordinate, and monitor comprehensive services to meet
2 the needs of clients whom the agency serves in a community care
3 foster family home or any medicaid clients in an expanded adult
4 residential care home, or an assisted living facility.

5 "License" means an approval issued by the department or its
6 authorized agents for a person, agency, or organization to
7 operate as a home and community-based case management agency.

8 §321-B Home and community-based case management agency,
9 authority over and evaluation of. (a) Any person, agency, or
10 organization engaged in providing, coordinating, or monitoring
11 comprehensive services to clients in community care foster
12 family homes, or medicaid clients in expanded adult residential
13 care homes, and assisted living facilities, shall meet the
14 standards of conditions, management, and competence set by the
15 department, and hold a license in good standing issued for this
16 purpose by the department.

17 (b) The department shall adopt rules pursuant to chapter
18 91 relating to:

19 (1) Standards for the organization and administration of
20 home and community-based case management agencies;

21 (2) Standards of conditions, management, and competence of
22 home and community-based case management agencies;



1 (3) Procedures for obtaining and renewing a license from
2 the department; and

3 (4) Minimum grievance procedures for clients of case
4 management services.

5 (c) As a condition for obtaining a license, a person,
6 agency, or organization shall comply with rules adopted under
7 subsection (b) (1), (2), and (3), and satisfy the background
8 check requirements under section 321-D. The department may deny
9 a license if:

10 (1) An operator, employee, or new employee of the home and
11 community-based case management agency has been
12 convicted of a crime other than a minor traffic
13 violation involving a fine of \$50 or less;

14 (2) The department finds that the criminal history record
15 of an operator, employee, or new employee poses a risk
16 to the health, safety, or well-being of adults
17 receiving care in community care foster family homes,
18 expanded adult residential care homes, or assisted
19 living facilities;

20 (3) An operator, employee, or new employee of the home and
21 community-based case management agency is a
22 perpetrator of abuse as defined in section 346-222; or



1 (4) The holder of or an applicant for a home and
2 community-based case management agency license, or one
3 of its employees, has a certificate of approval to
4 operate a community care foster family home, or a
5 license from the department to operate an adult
6 residential care home, expanded adult residential care
7 home, or assisted living facility.

8 (d) Upon approval of any home and community-based case
9 management agency, the department or its authorized agents shall
10 issue a license, which shall continue in force for one year, or
11 for two years if a home and community-based case management
12 agency has been licensed for at least one year and is in good
13 standing pursuant to standards adopted by the department, unless
14 sooner revoked for cause. The department or its authorized
15 agents shall renew the license only if, after an annual or
16 biennial evaluation, the agency continues to meet the standards
17 established by the department.

18 (e) The department shall evaluate the home and community-
19 based case management agency to determine compliance with the
20 requirements established under this section:

21 (1) Annually or biennially; or



1 (2) Upon receipt of a complaint that the home and
2 community-based case management agency is in violation
3 of the requirements established under this section.

4 (f) The department may suspend or revoke a license if the
5 department deems that the agency is unwilling or unable to
6 comply with the rules adopted under this section; provided that:

7 (1) Upon suspension or revocation of a license, the home
8 and community-based case management agency shall no
9 longer be licensed and shall immediately notify the
10 agency's clients and community care foster family
11 homes, expanded adult residential care homes, and
12 assisted living facilities in which the agency is
13 providing services to clients;

14 (2) A home and community-based case management agency
15 whose license has been suspended or revoked may appeal
16 the suspension or revocation to the department through
17 its established process, but the appeal shall not stay
18 the suspension or revocation;

19 (3) A suspended or revoked license may be reinstated if
20 the department deems that the agency is willing and
21 able to comply with the rules adopted under this
22 section; and



1 (4) A revoked license shall be restored only after a new
2 application is made and reviewed under this part.

3 (g) Any home and community-based case management agency
4 shall be subject to investigation by the department at any time
5 and in the manner, place, and form as provided in the
6 department's rules.

7 (h) The department shall adopt standard forms of contract
8 that the home and community-based case management agency shall
9 use with each of its clients, community care foster family
10 homes, expanded adult residential care homes, and assisted
11 living facilities.

12 (i) The home and community-based case management agency
13 shall have a fiduciary duty to each client it serves.

14 (j) A home and community-based case management agency
15 shall not enter into an agreement that requires a community care
16 foster family home to accept that agency's clients exclusively.

17 **§321-C Community care foster family home, authority over**
18 **and evaluation of.** (a) Any person in any household who wants
19 to take in, for a fee, any adult who is at the nursing facility
20 level of care and who is unrelated to anyone in the household,
21 for twenty-four hour living accommodations, including personal
22 care and homemaker services, may do so only after the household



1 meets the required standards established for certification and
2 obtains a certificate of approval from the department or its
3 designee.

4 (b) The department shall adopt rules pursuant to chapter
5 91 relating to:

- 6 (1) Standards of conditions and competence for the
7 operation of community care foster family homes;
- 8 (2) Procedures for obtaining and renewing a certificate of
9 approval from the department;
- 10 (3) Minimum grievance procedures for clients of community
11 care foster family home services; and
- 12 (4) Requirements for primary and substitute caregivers
13 caring for three clients in community care foster
14 family homes including:
 - 15 (A) Mandating that primary and substitute caregivers
16 be twenty-one years of age or older;
 - 17 (B) Mandating that primary and substitute caregivers
18 complete a minimum of twelve hours of continuing
19 education every twelve months or at least twenty-
20 four hours of continuing education every twenty-
21 four months;



1 (C) Allowing the primary caregiver to be absent from
2 the community care foster family home for no more
3 than twenty-eight hours in a calendar week, not
4 to exceed five hours per day; provided that the
5 substitute caregiver is present in the community
6 care foster family home during the primary
7 caregiver's absence;

8 (D) Where the primary caregiver is absent from the
9 community care foster family home in excess of
10 the hours as prescribed in subparagraph (C),
11 mandating that the substitute caregiver be a
12 certified nurse aide; and

13 (E) Mandating that the substitute caregiver have, at
14 a minimum, one year prior work experience as a
15 caregiver in a community residential setting or
16 in a medical facility.

17 (c) As a condition for obtaining a certificate of
18 approval, community care foster family homes shall comply with
19 rules adopted under subsection (b) and satisfy the background
20 check requirements under section 321-D. The department or its
21 designee may deny a certificate of approval if:



- 1 (1) An operator or other adult residing in the community
2 care foster family home, except for adults receiving
3 care, has been convicted of a crime other than a minor
4 traffic violation involving a fine of \$50 or less;
- 5 (2) The department or its designee finds that the criminal
6 history record of an operator or other adult residing
7 in the home, except for adults receiving care, poses a
8 risk to the health, safety, or well-being of adults in
9 care; or
- 10 (3) An operator or other adult residing in the community
11 care foster family home, except for adults receiving
12 care, is a perpetrator of abuse as defined in section
13 346-222.
- 14 (d) Upon approval of a community care foster family home,
15 the department or its designee shall issue a certificate of
16 approval that shall continue in force for one year, or for two
17 years if a community care foster family home has been certified
18 for at least one year and is in good standing pursuant to
19 standards adopted by the department, unless sooner suspended or
20 revoked for cause. The department or its designee shall renew
21 the certificate of approval only if, after an annual or biennial



1 evaluation, the home continues to meet the standards required
2 for certification.

3 (e) Any community care foster family home shall be subject
4 to investigation by the department or its designee at any time
5 and in the manner, place, and form as provided in procedures to
6 be established by the department.

7 (f) The department or its designee may suspend or revoke a
8 certificate of approval if the department or its designee deems
9 that a community care foster family home is unwilling or unable
10 to comply with the rules adopted under subsection (b); provided
11 that:

12 (1) The suspension or revocation shall be immediate when
13 conditions exist that constitute an imminent danger to
14 the life, health, or safety of adults receiving care;

15 (2) A community care foster family home whose certificate
16 of approval has been suspended or revoked shall
17 immediately notify its clients and their case
18 managers;

19 (3) A community care foster family home whose certificate
20 of approval has been suspended or revoked may appeal
21 to the department through its established process, but



1 the appeal shall not stay the suspension or
2 revocation;

3 (4) A suspended or revoked certificate of approval may be
4 reinstated if the department or its designee deems
5 that the home is willing and able to comply with the
6 rules adopted under subsection (b); and

7 (5) A revoked certificate of approval shall be restored
8 only after a new application for a certificate of
9 approval is submitted to the department or its
10 designee and approved.

11 (g) Any community care foster family home shall be subject
12 to monitoring and evaluation by the department or its designee
13 for certification compliance and quality assurance on an annual
14 or biennial basis.

15 **§321-D Background checks.** (a) The department shall
16 develop standards to ensure the reputable and responsible
17 character of operators, employees, volunteers, and other adults
18 regularly present, except for adults in care, of the programs
19 identified in this part.

20 (b) An applicant for the programs identified in this part
21 shall:



- 1 (1) Be subject to criminal history record checks in
2 accordance with section 846-2.7;
- 3 (2) Be subject to adult abuse perpetrator checks, if the
4 individual has direct contact with a client. For the
5 purposes of this section, "adult abuse perpetrator
6 check" means a search to determine whether an
7 individual is known to the department as a perpetrator
8 of abuse as defined in section 346-222, by means of a
9 search of the individual's name and birth date in the
10 department's adult protective service file; and
- 11 (3) Provide consent to the department or its designee to
12 conduct an adult abuse perpetrator check and to obtain
13 other criminal history record information for
14 verification.
- 15 (c) New employees of the programs identified in this part
16 shall be fingerprinted within five working days of employment
17 for the purpose of complying with the criminal history record
18 check requirement.
- 19 (d) The department or its designee shall obtain criminal
20 history record information through the Hawaii criminal justice
21 data center in accordance with section 846-2.7 on applicants for
22 programs identified in this part. The Hawaii criminal justice



1 data center may assess the applicants and operators, employees,
2 and new employees a reasonable fee for each criminal history
3 record check conducted. The information obtained shall be used
4 exclusively for the stated purposes for which it was obtained
5 and shall be subject to federal laws and regulations as may be
6 now or hereafter adopted.

7 (e) The department or its designee shall make a name
8 inquiry into the criminal history records and the adult
9 protective service file for the first two years a home and
10 community-based case management agency is licensed and annually
11 or biennially thereafter depending on the licensure status of
12 the home and community-based case management agency.

13 (f) An applicant for a certificate of approval as a
14 community care foster family home, operators, and other adults
15 residing in a community care foster family home shall:

- 16 (1) Be subject to criminal history record checks in
17 accordance with section 846-2.7;
- 18 (2) Be subject to adult abuse perpetrator checks, if the
19 individual has direct contact with a client. For the
20 purposes of this section, "adult abuse perpetrator
21 check" means a search to determine whether an
22 individual is known to the department as a perpetrator



1 of abuse as defined in section 346-222, by means of a
2 search of the individual's name and birth date in the
3 department's adult protective service file; and

4 (3) Provide consent to the department to conduct an adult
5 abuse perpetrator check and to obtain other criminal
6 history record information for verification.

7 (g) The department or its designee shall obtain criminal
8 history record information through the Hawaii criminal justice
9 data center on applicants for certificates of approval as
10 community care foster family homes and operators and other
11 adults residing in community care foster family homes, except
12 for adults receiving care. The Hawaii criminal justice data
13 center may assess the applicants and operators and other adults
14 a reasonable fee for each criminal history record check
15 conducted. The information obtained shall be used exclusively
16 for the stated purpose for which it was obtained and shall be
17 subject to federal laws and regulations as may be now or
18 hereafter adopted.

19 (h) The department or its designee shall make a name
20 inquiry into the criminal history records and the adult
21 protective service file for the first two years a community care
22 foster family home is certified and annually or biennially



1 thereafter depending on the certification status of the
2 community care foster family home.

3 §321-E Penalty. Any person violating this part or any
4 rule adopted pursuant to this part shall be fined not more than
5 \$500.

6 PART . SERVICES TO ADULTS

7 §321-F Purpose. The purpose of this part is to establish
8 the nature and type of services to elders, disabled, and aged
9 who are qualified to receive social services according to
10 standards and conditions prescribed by the department of health.

11 §321-G Definitions. As used in this part:

12 "Day care center" includes a place designated for group
13 care for four or more adults or a family home providing care for
14 two or three adults.

15 "Day care center for elder disabled and aged persons" means
16 a place maintained and operated by an individual, organization,
17 or agency for the purpose of providing supportive and protective
18 care to a disabled or aged person with or without charging a fee
19 during the attendant working day.

20 "Department" means the department of health.

21 "Disabled and aged persons" means any person who lives with
22 a spouse, relative, or friend but who requires temporary



1 supervision and care during the absence of people from the home
2 or residence.

3 "Elder" means any person as may otherwise be defined by the
4 department, who desires and needs counseling, guidance, and
5 assistance to modify or resolve the social, economic,
6 educational, recreational, physical, or mental problem that
7 impedes the person's personal functioning and well-being.

8 Nothing in section 321-H shall be construed to include a
9 relative caring for another relative; a neighbor or friend
10 caring for an adult by mutual choice and agreement; or any
11 center or facility conducted primarily or solely for
12 educational, social, recreational, athletic, or other group
13 functions that may provide for twenty-four hour boarding,
14 personal, or nursing care accommodation.

15 **§321-H Day care centers for disabled and aged persons.**

16 The department shall be responsible for the recruitment and
17 licensing of day care centers for elder disabled and aged
18 persons. The department shall adopt any necessary rules,
19 regulations, and minimum standards to protect the best interests
20 of adults receiving care in day care centers. The rules and
21 regulations shall have the force and effect of law and shall be
22 administered by the department.



1 **§321-I Purchase of service.** The department may negotiate
2 the purchase of day care services for elder disabled and aged
3 recipients, including other social services from individuals or
4 other organizations, institutions, or agencies. Other social
5 services shall be necessary and essential to maximize the
6 functioning and well-being of the recipient. Purchase of day
7 care center services shall include services that enhance the
8 social functioning of each participant, promote and develop
9 activities in daily living and personal independence by
10 therapeutic arts and crafts, community excursions, hobby
11 cultivation, group dynamics, and provisions for counseling to
12 the participants and their families.

13 **§321-J Penalty.** Any individual, organization, or agency
14 operating a day care center for disabled or aged persons without
15 a license from the department shall be cited and fined an amount
16 deemed to be appropriate by the court, but not to exceed a
17 maximum of \$5,000."

18 SECTION 3. Section 346-10, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) The department and its agents shall keep records that
21 may be necessary or proper in accordance with this chapter. All
22 applications and records concerning any applicant or recipient



1 shall be confidential. The use or disclosure of information
2 concerning applicants and recipients shall be limited to:

3 (1) Persons duly authorized by the State or the United
4 States in connection with their official duties, when
5 the official duties are directly connected with the
6 administration of any form of public assistance,
7 medical assistance, food stamps, or social services;

8 (2) Purposes directly connected with any investigation,
9 prosecution, or criminal or civil proceeding conducted
10 in connection with the administration of any form of
11 public assistance, food stamps, medical assistance, or
12 social services, including disclosure by the
13 department, of information and documents to police
14 departments, prosecutors' offices, the attorney
15 general's office, or any other state, county, or
16 federal agency engaged in the detection,
17 investigation, or prosecution of violations of
18 applicable state, county, and federal laws or
19 regulations regarding any aspect of theft, fraud,
20 deception, or overpayment in connection with any
21 aspect of public assistance, food stamps, medical
22 assistance, or social services; provided that



1 disclosure by recipient agencies and personnel shall
2 be permitted under this section to the extent
3 reasonably necessary to carry out the functions for
4 which the information was provided;

5 (3) Disclosure to the extent necessary to provide services
6 for applicants and recipients, to determine
7 eligibility, or to determine the amount of public
8 assistance, including verification of information
9 provided by the recipient of public assistance,
10 medical assistance, or food stamps, or to determine
11 the type, kind, frequency, and amount of social
12 services, including health and mental health related
13 services needed;

14 (4) Disclosure to banks, financial institutions, or any
15 other payor of a public assistance warrant or check of
16 any information indicating that a public assistance
17 warrant or check honored by the bank, institution, or
18 payor has been forged or otherwise wrongfully
19 presented for payment;

20 (5) Federal agencies responsible for the administration of
21 federally assisted programs, that provide assistance
22 in cash or in kind for services directly to

1 individuals on the basis of need; and certification of
2 receipt of assistance to needy families with minor
3 dependents to an employer for purposes of claiming tax
4 credit under Public Law 94-12, the Tax Reduction Act
5 of 1975, shall be permitted;

6 (6) Employees acting within the scope and course of their
7 employment of recognized social welfare organizations
8 as may be approved by the department;

9 ~~[(7) Purposes directly connected with any investigation,~~
10 ~~prosecution, or criminal proceeding conducted in~~
11 ~~connection with the licensure or operation of an adult~~
12 ~~day care center, including disclosure by the~~
13 ~~department, of information and documents to police~~
14 ~~departments, prosecutors' offices, the attorney~~
15 ~~general's office, or any other state, county, or~~
16 ~~federal agency engaged in the detection,~~
17 ~~investigation, or prosecution of violations of~~
18 ~~applicable state, county, and federal laws or~~
19 ~~regulations;~~

20 ~~(8)]~~ (7) Disclosure to the child support enforcement
21 agency for obtaining or enforcing a child support
22 order under chapter 576D;



1 ~~[(9)]~~ (8) Purposes directly connected to and necessary for
2 the career planning, job training, education, job
3 placement, or employment of participants in the
4 workfare program under part IX;

5 ~~[(10)]~~ (9) Disclosure of a recipient's residence and
6 business address to law enforcement officers who
7 request information if the information is needed for
8 an official administrative, civil, or criminal law
9 enforcement purpose to identify a recipient as a
10 fugitive felon or parole violator, and in cases where
11 the information is needed for an official purpose and
12 where the department has informed the recipient of the
13 circumstances in which the recipient's address may be
14 released under section 92F-19(a)(1), (3), or (4); and

15 ~~[(11)]~~ (10) Disclosure of reports and records relating to
16 child abuse or neglect to the extent allowed by rules
17 adopted under section 350-1.4."

18 SECTION 4. Section 346-53, Hawaii Revised Statutes, is
19 amended by amending subsections (c) and (d) to read as follows:

20 "(c) The director, pursuant to chapter 91, shall determine
21 the rate of payment for domiciliary care, including care
22 provided in licensed developmental disabilities domiciliary



1 homes, community care foster family homes, and certified adult
2 foster homes, to be provided to recipients who are eligible for
3 Federal Supplementary Security Income or public assistance, or
4 both. The director shall provide for level of care payment as
5 follows:

6 (1) Beginning on July 1, 2008, for adult residential care
7 homes classified as facility type I, licensed
8 developmental disabilities domiciliary homes as
9 defined under section 321-15.9, community care foster
10 family homes as defined under section [~~346-331,~~
11 321-A, and certified adult foster homes as defined
12 under section 321-11.2, the state supplemental payment
13 shall not exceed \$651.90; and

14 (2) Beginning on July 1, 2008, for adult residential care
15 homes classified as facility type II, the state
16 supplemental payment shall not exceed \$759.90.

17 If the operator does not provide the quality of care
18 consistent with the needs of the individual to the satisfaction
19 of the department, the department may remove the recipient to
20 another facility.

21 The department shall handle abusive practices under this
22 section in accordance with chapter 91.



1 Nothing in this subsection shall allow the director to
2 remove a recipient from an adult residential care home or other
3 similar institution if the recipient does not desire to be
4 removed and the operator is agreeable to the recipient
5 remaining, except where the recipient requires a higher level of
6 care than provided or where the recipient no longer requires any
7 domiciliary care.

8 (d) On July 1, 2006, and thereafter, as the department
9 determines a need, the department shall authorize a payment, as
10 allowed by federal law, for resident clients receiving
11 supplemental security income in adult residential care home type
12 I and type II facilities, licensed developmental disabilities
13 domiciliary homes as defined under section 321-15.9, community
14 care foster family homes as defined under section [~~346-331,~~
15 321-A, and certified adult foster homes as defined under section
16 321-11.2, when state funds appropriated for the purpose of
17 providing payments under subsection (c) for a specific fiscal
18 year are not expended fully within a period that meets the
19 requirements of the department's maintenance of effort agreement
20 with the Social Security Administration.

21 The payment shall be made with that portion of state funds
22 identified in this subsection that has not been expended.



1 The department shall determine the rate of payment to
2 ensure compliance with its maintenance of effort agreement with
3 the Social Security Administration."

4 SECTION 5. Section 346-97, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending subsection (b) to read:

7 "(b) The department shall adopt rules pursuant to chapter
8 91 establishing standards regarding the reputable and
9 responsible character of service providers who have direct
10 contact with individuals receiving services under this part,
11 including:

12 ~~[(1) Licensed adult day care center operators, employees,~~
13 ~~new employees, subcontracted service providers and~~
14 ~~their employees, and adult volunteers,~~

15 ~~+(2)]~~ (1) Purchase of service contracted and subcontracted
16 service providers and their employees serving clients
17 of the adult and community care services branch;

18 ~~[(3) Foster]~~ (2) The foster grandparent program, ~~[retired~~
19 ~~and senior volunteer program,]~~ senior companion
20 program, and respite companion program participants[;
21 and



1 ~~[(4)]~~ (3) Contracted and subcontracted service providers
 2 and their employees and new employees who provide home
 3 and community-based services under section 1915(c) of
 4 the Social Security Act (42 U.S.C. §1396n(c)), or
 5 under any other applicable section or sections of the
 6 Social Security Act for the purposes of providing home
 7 and community-based services."

8 2. By amending subsection (e) to read:

9 "(e) The department may take appropriate action if it
 10 finds that the criminal history of the individual identified
 11 under subsection ~~[+]~~ (b) ~~[+]~~ may pose a risk to the health,
 12 welfare, and safety of service recipients. ~~[Such]~~ An action may
 13 include~~[-]~~

14 ~~(1) Denying a certificate of approval to operate an adult~~
 15 ~~day care center; or~~

16 ~~(2) Refusing]~~ refusing to use an individual as a service
 17 provider."

18 SECTION 6. Section 346D-4.5, Hawaii Revised Statutes, is
 19 amended by amending subsection (a) to read as follows:

20 "(a) There may be established a monthly needs allowance
 21 for individuals living in:



- 1 (1) Adult residential care home type I and type II
- 2 facilities;
- 3 (2) Licensed developmental disabilities domiciliary homes
- 4 as defined in section 321-15.9;
- 5 (3) Community care foster family homes as defined in
- 6 section [~~346-331.7~~] 321-A;
- 7 (4) Certified adult foster homes as defined in section
- 8 321-11.2;
- 9 (5) Domiciliary care as defined in section 346-1;
- 10 (6) A nursing facility as defined in section 346E-1; or
- 11 (7) A community-based residence as part of the residential
- 12 alternatives community care program."

13 SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is
 14 amended by amending subsection (b) to read as follows:

15 "(b) Criminal history record checks may be conducted by:

- 16 (1) The department of health on operators of adult foster
- 17 homes or developmental disabilities domiciliary homes
- 18 and their employees, as provided by section 333F-22;
- 19 (2) The department of health on prospective employees,
- 20 persons seeking to serve as providers, or
- 21 subcontractors in positions that place them in direct
- 22 contact with clients when providing non-witnessed



1 direct mental health services as provided by section
2 321-171.5;

3 (3) The department of health on all applicants for
4 licensure for, operators for, prospective employees,
5 and volunteers at one or more of the following:
6 skilled nursing facility, intermediate care facility,
7 adult residential care home, expanded adult
8 residential care home, assisted living facility, home
9 health agency, hospice, adult day health center,
10 special treatment facility, therapeutic living
11 program, intermediate care facility for individuals
12 with intellectual disabilities, hospital, rural health
13 center and rehabilitation agency, and, in the case of
14 any of the above facilities operating in a private
15 residence, on any adult living in the facility other
16 than the client as provided by section 321-15.2;

17 (4) The department of education on employees, prospective
18 employees, and teacher trainees in any public school
19 in positions that necessitate close proximity to
20 children as provided by section 302A-601.5;

21 (5) The counties on employees and prospective employees
22 who may be in positions that place them in close



- 1 proximity to children in recreation or child care
2 programs and services;
- 3 (6) The county liquor commissions on applicants for liquor
4 licenses as provided by section 281-53.5;
- 5 (7) The department of human services on operators and
6 employees of child caring institutions, child placing
7 organizations, and foster boarding homes as provided
8 by section 346-17;
- 9 (8) The department of human services on prospective
10 adoptive parents as established under section
11 346-19.7;
- 12 (9) The department of human services on applicants to
13 operate child care facilities, prospective employees
14 of the applicant, and new employees of the provider
15 after registration or licensure as provided by section
16 346-154;
- 17 (10) The department of human services on persons exempt
18 pursuant to section 346-152 to be eligible to provide
19 child care and receive child care subsidies as
20 provided by section 346-152.5;
- 21 (11) The department of [~~human services~~] health on operators
22 and employees of home and community-based case



1 management agencies and operators and other adults,
2 except for adults in care, residing in foster family
3 homes as provided by section [~~346-335;~~] 321-D;

4 (12) The department of human services on staff members of
5 the Hawaii youth correctional facility as provided by
6 section 352-5.5;

7 (13) The department of human services on employees,
8 prospective employees, and volunteers of contracted
9 providers and subcontractors in positions that place
10 them in close proximity to youth when providing
11 services on behalf of the office or the Hawaii youth
12 correctional facility as provided by section 352D-4.3;

13 (14) The judiciary on employees and applicants at detention
14 and shelter facilities as provided by section 571-34;

15 (15) The department of public safety on employees and
16 prospective employees who are directly involved with
17 the treatment and care of persons committed to a
18 correctional facility or who possess police powers
19 including the power of arrest as provided by section
20 353C-5;



- 1 (16) The department of commerce and consumer affairs on
2 applicants for private detective or private guard
3 licensure as provided by section 463-9;
- 4 (17) Private schools and designated organizations on
5 employees and prospective employees who may be in
6 positions that necessitate close proximity to
7 children; provided that private schools and designated
8 organizations receive only indications of the states
9 from which the national criminal history record
10 information was provided pursuant to section 302C-1;
- 11 (18) The public library system on employees and prospective
12 employees whose positions place them in close
13 proximity to children as provided by section
14 302A-601.5;
- 15 (19) The State or any of its branches, political
16 subdivisions, or agencies on applicants and employees
17 holding a position that has the same type of contact
18 with children, vulnerable adults, or persons committed
19 to a correctional facility as other public employees
20 who hold positions that are authorized by law to
21 require criminal history record checks as a condition
22 of employment as provided by section 78-2.7;



- 1 (20) The department of [~~human services~~] health on licensed
2 adult day care center operators, employees, new
3 employees, subcontracted service providers and their
4 employees, and adult volunteers as provided by section
5 [~~346-97;~~] 321-171.5;
- 6 (21) The department of human services on purchase of
7 service contracted and subcontracted service providers
8 and their employees serving clients of the adult and
9 community care services branch, as provided by section
10 346-97;
- 11 (22) The department of human services on foster grandparent
12 program, [~~retired and senior volunteer program,~~]
13 senior companion program, and respite companion
14 program participants as provided by section 346-97;
- 15 (23) The department of human services on contracted and
16 subcontracted service providers and their current and
17 prospective employees that provide home and community-
18 based services under Section 1915(c) of the Social
19 Security Act, Title 42 United States Code Section
20 1396n(c), or under any other applicable section or
21 sections of the Social Security Act for the purposes



1 of providing home and community-based services, as
2 provided by section 346-97;

3 (24) The department of commerce and consumer affairs on
4 proposed directors and executive officers of a bank,
5 savings bank, savings and loan association, trust
6 company, and depository financial services loan
7 company as provided by section 412:3-201;

8 (25) The department of commerce and consumer affairs on
9 proposed directors and executive officers of a
10 nondepository financial services loan company as
11 provided by section 412:3-301;

12 (26) The department of commerce and consumer affairs on the
13 original chartering applicants and proposed executive
14 officers of a credit union as provided by section
15 412:10-103;

16 (27) The department of commerce and consumer affairs on:
17 (A) Each principal of every non-corporate applicant
18 for a money transmitter license; and
19 (B) The executive officers, key shareholders, and
20 managers in charge of a money transmitter's
21 activities of every corporate applicant for a
22 money transmitter license,



- 1 as provided by section 489D-9;
- 2 (28) The department of commerce and consumer affairs on
3 applicants for licensure and persons licensed under
4 title 24;
- 5 (29) The Hawaii health systems corporation on:
- 6 (A) Employees;
- 7 (B) Applicants seeking employment;
- 8 (C) Current or prospective members of the corporation
9 board or regional system board; or
- 10 (D) Current or prospective volunteers, providers, or
11 contractors,
- 12 in any of the corporation's health facilities as
13 provided by section 323F-5.5;
- 14 (30) The department of commerce and consumer affairs on:
- 15 (A) An applicant for a mortgage loan originator
16 license; and
- 17 (B) Each control person, executive officer, director,
18 general partner, and manager of an applicant for
19 a mortgage loan originator company license,
20 as provided by chapter 454F; and



1 (31) Any other organization, entity, or the State, its
2 branches, political subdivisions, or agencies as may
3 be authorized by state law."

4 SECTION 8. Chapter 346, part IV, subpart A, Hawaii Revised
5 Statutes, is repealed.

6 SECTION 9. Chapter 346, part XIV, Hawaii Revised Statutes,
7 is repealed.

8 SECTION 10. All employees who occupy civil service
9 positions and whose functions are transferred to the department
10 of health by this Act shall retain their civil service status
11 (permanent or temporary). Employees shall be transferred
12 without loss of salary, seniority, retention points, prior
13 service credit, any vacation and sick leave credits previously
14 earned, and other rights, benefits, and privileges, in
15 accordance with state personnel laws and this Act, provided that
16 the employees possess the minimum qualifications and public
17 employment requirements for the class, position, or both, to
18 which transferred or appointed, as applicable, provided further
19 that subsequent changes in status may be made pursuant to
20 applicable civil service and compensation laws.

21 Any employee who prior to this Act is exempt from civil
22 service and is transferred as a consequence of this Act may



1 continue to retain the employee's exempt status, but shall not
2 be appointed to a civil service position because of this Act.
3 An exempt employee who is transferred by this Act shall not
4 suffer any loss of prior service credit, any vacation and sick
5 leave credits previously earned, or other employee benefits or
6 privileges as a consequence of this Act, provided that the
7 employees possess legal and public employment requirements for
8 the position to which transferred or appointed, as applicable;
9 provided that subsequent changes in status may be made pursuant
10 to applicable employment and compensation laws. The director
11 may prescribe the duties and qualifications of such employees
12 and fix their salaries without regard to chapter 76, Hawaii
13 Revised Statutes.

14 SECTION 11. All appropriations, records, equipment,
15 machines, files, supplies, contracts, books, papers, documents,
16 maps, and other personal property heretofore made, used,
17 acquired, or held by the department of human services relating
18 to the functions transferred to the office of health care
19 assurance in the department of health shall be transferred with
20 the functions to which they relate.

21 SECTION 12. All unencumbered moneys deposited in any
22 revolving or special fund controlled by the department of human



1 services relating to the functions transferred to the department
2 of health shall lapse to the credit of the general fund.

3 SECTION 13. All rules, policies, procedures, guidelines,
4 and other material adopted or developed by the department of
5 human services to implement provisions of the Hawaii Revised
6 Statutes and that are reenacted or made applicable to the office
7 of health care assurance in the department of health by this Act
8 shall remain in full force and effect until amended or repealed
9 by the director of health pursuant to chapter 91, Hawaii Revised
10 Statutes. In the interim, every reference to the department of
11 human services or the director of human services in those rules,
12 policies, procedures, guidelines, and other material is amended
13 to refer to the department of health, office of health care
14 assurance, or the director of health, as appropriate.

15 SECTION 14. All deeds, leases, contracts, loans,
16 agreements, permits, or other documents executed or entered into
17 by or on behalf of the department of human services pursuant to
18 the provisions of the Hawaii Revised Statutes that are reenacted
19 or made applicable to the office of health care assurance in the
20 department of health by this Act, shall remain in full force and
21 effect. From July 1, 2014, every reference to the department of
22 human services or the director of human services therein shall



1 be construed as a reference to the department of health or the
2 director of health, as appropriate.

3 SECTION 15. If any part of this Act is found to be in
4 conflict with federal requirements that are a prescribed
5 condition for the allocation of federal funds to the State, the
6 conflicting part of this Act is inoperative solely to the extent
7 of the conflict and with respect to the agencies directly
8 affected, and this finding does not affect the operation of the
9 remainder of this Act in its application to the agencies
10 concerned. The rules in effect as a result of this Act shall
11 meet federal requirements that are a necessary condition to the
12 receipt of federal funds by the State.

13 SECTION 16. The department of health and the department of
14 human services shall collaborate to implement the transfers and
15 transitions required under this Act with as little disruption as
16 is possible to the ongoing duties, responsibilities, and public
17 services each respective department currently provides.

18 SECTION 17. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so
20 much thereof as may be necessary for fiscal year 2012-2013 for
21 the department of health to fund the costs of performing the
22 services and duties required by this Act that are not



1 sufficiently funded by the funds transferred from the department
2 of human services.

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

5 SECTION 18. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 19. This Act shall take effect on January 1, 2050.



Report Title:

Health Care Services; Consolidation; Department of Human Services; Department of Health; Appropriation

Description:

Consolidates the authority, duties, responsibilities, and jurisdiction of the DHS and DOH, as they relate to various health care services; transfers the programs of DHS relating to home and community-based case management, community care foster family homes, and adult day care to DOH on 7/1/2014.

Appropriates funds to DOH for the duties that are not wholly covered by the transfer of funds from DHS. Effective 1/1/50.
(SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

