A BILL FOR AN ACT

RELATING TO HEALTH.

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

SECTION 1. The legislature finds that existing state law regulates home care services provided by home care agencies, but does not regulate personal care services provided by individuals. The legislature further finds that, in Hawaii, there are more individuals providing personal care services to residents than any other form of care, including home health services and home care services. The legislature also finds that Hawaii residents want to hire individual personal caregivers to provide personal care services to their loved ones in their homes. These services may include assistance with regular daily activities, as well as skilled nursing services like medication administration and wound care. Unfortunately, most individual personal caregivers work without any supervision, making Hawaii's elderly population and other persons requiring personal care services potentially vulnerable to receiving improper care services.
The legislature finds that the administration of individual personal care services is vital and necessary when a person requiring care prefers to remain in the person's residence. However, in order to promote public health and welfare, individuals providing care should be supervised by registered nurses acting as case managers.

The purpose of this Act is to protect Hawaii's seniors and other persons that need home-based personal care by requiring the department of health to regulate individual personal caregivers and requiring the supervision of such individuals by registered nurses acting as case managers.

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

"§321- Individual personal care providers. (a) An individual who is not licensed by the department may provide personal care services in this State only if the individual meets the requirements of this section.

(b) An individual personal caregiver who is not employed by a home care agency may provide personal care services outside of a regulated facility only under the supervision of a nurse
case manager. An individual personal caregiver may provide personal care services under the supervision of one or more nurse case managers; provided that each service recipient has a nurse case manager.

(c) Each nurse case manager shall provide the following information to the department on a monthly basis:

(1) The name of each individual personal caregiver supervised by the nurse case manager; and

(2) Subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and title 45 Code of Federal Regulations part 164, the name and address of each service recipient.

(d) Each nurse case manager shall:

(1) Ensure that each individual personal caregiver providing personal care services under the nurse case manager's supervision:

(A) Is certified in first aid and cardiopulmonary resuscitation;

(B) Obtains a tuberculosis clearance certificate prior to providing personal care services and
thereafter obtains an annual tuberculosis clearance certificate;

(C) Has completed a background check substantially similar to the background check required in section 321-15.2, to the extent permitted under applicable law, and has no disqualifying information, as defined in section 321-15.2, or other background check information that the nurse case manager finds may pose a risk to the health, safety, or welfare of service recipients; and

(D) Has completed a course of instruction on medication conducted by the nurse case manager;

(2) Ensure that each residence where personal care services are provided by an individual personal caregiver under the nurse case manager's supervision:

(A) Has been inspected by the nurse case manager within the preceding twelve months and is suitable for the personal care services to be administered;

(B) Is not the residence of any individual personal caregiver under the nurse case manager's
(C) Is not owned by any individual personal caregiver under the nurse case manager's supervision providing personal care services at the residence or by the spouse of the individual personal caregiver; and

(3) Maintain written records in compliance with the requirements of this subsection, which shall be subject to inspection by the department upon at least forty-eight hours' prior written request.

(e) Each nurse case manager shall obtain and maintain professional liability insurance with respect to the nurse case manager's supervision of individual personal caregivers under this section with limits of no less than $1,000,000 per occurrence and $5,000,000 in the aggregate; provided that the director may adopt rules pursuant to chapter 91 to establish different minimum coverage limits as appropriate. Each nurse case manager shall provide proof of such insurance to the department on an annual basis.
(f) The care and supervision provided by nurse case managers under this section shall be subject to exclusive regulation by the board pursuant to chapter 457. The board shall adopt rules pursuant to chapter 91 to carry out the purposes of this section.

(g) An organization that provides referrals to individual personal caregivers or to nurse case managers, or that promulgates voluntary standards of practice and care for individual personal caregivers or nurse case managers, shall not be required to be licensed by the department; provided that the organization charges fees to individual personal caregivers, nurse case managers, or service recipients based upon the number of such referrals.

(h) The director may impose an administrative fine on any person that violates this section or rule adopted pursuant to this section after notice and opportunity for an administrative hearing held in accordance with chapter 91. The fine shall not exceed $________; provided that the fine for any violation occurring within five years of a prior violation shall not exceed $________.
(i) The director may apply for an injunction in any court of competent jurisdiction to enjoin any person from providing personal care services in violation of this section. Upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise, may issue a temporary injunction, without notice or bond, enjoining the individual personal caregiver from providing further personal care services in violation of this section. A copy of the verified complaint shall be served upon the individual personal caregiver, and the proceedings shall thereafter be conducted pursuant to civil procedure. If it is established that the individual personal caregiver has been or is providing personal care services in violation of this section, the court or judge may enter a decree enjoining the person from further providing personal care services in violation of this section. In the event the injunction is breached, the court may summarily try and impose penalties for contempt of court. The injunction proceeding shall be in addition to, and not in lieu of, fines and other remedies provided in this section.

(j) This section shall not apply to home care services provided in a regulated facility or by a home care agency, an
individual providing personal care services without
compensation, an individual providing personal care services to
a grandparent, parent, sibling, spouse, or reciprocal
beneficiary, child, grandchild, aunt, uncle, cousin, legal
guardian, or a practitioner of medicine or surgery licensed
under section 453-2.

(k) As used in this section, unless the context otherwise
requires:

"Board" means the state board of nursing.

"Department" means the department of health.

"Director" means the director of health.

"Individual personal caregiver" means an individual who
receives compensation for providing personal care services under
this section.

"Nurse case manager" means a registered nurse who
supervises individual personal caregivers as provided in this
section.

"Personal care services" means services including but not
limited to assistance with dressing, feeding, and personal
hygiene, performing chores, housekeeping, shopping, meal
planning and preparation, respite care services, and skilled
nursing services, such as medication administration and wound
care, performed on behalf of a service recipient who desires or
requires such services due to advanced age, disability, injury,
or illness.

"Registered nurse" means an individual licensed as a
registered nurse under chapter 457.

"Regulated facility" means an adult day health center,
adult day care center, community care foster family home,
developmental disabilities domiciliary home, adult foster home,
special treatment facility, adult residential care home,
expanded adult residential care home, assisted living facility,
intermediate care facility, nursing facility, skilled nursing
facility, or long-term care facility.

"Residence" means the premises in which a service recipient
resides, which may be owned, leased, or rented by the service
recipient, or by a responsible relative or other adult. This
term shall not include a regulated facility.

"Service recipient" means an individual receiving personal
care services under this section."

SECTION 3. New statutory material is underscored.
SECTION 4. This Act shall take effect upon July 1, 2019.

INTRODUCED BY:

JAN 24 2019
Report Title: Department of Health; Individual Personal Caregiver; Registered Nurse; Residential Personal Care Services

Description: Authorizes individual personal caregivers providing in-home care services to be exempt from licensure under certain conditions, including being supervised by a registered nurse. Requires supervising registered nurses to complete certain training and make reports to the department of health.

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