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



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

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

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

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

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



- 1           (1) Requiring home care agencies to be licensed by the
- 2                   department of health; and
- 3           (2) Appropriating funds for a position in the department
- 4                   to assist with licensure and monitoring of home care
- 5                   agencies.

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

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

12           (b) The department shall adopt rules in accordance with  
13 chapter 91 that shall:

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

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

17           (c) For purposes of this section:

18           "Home care agency" means any organization that provides  
19 home care services to clients in the client's residence.

20           "Home care services" includes nursing services,  
21 rehabilitation therapy services, social services, personal care  
22 services, and companion services that promote the health and



1 safety of a client based upon an assessment of the client's  
2 needs and the development of a plan of care prepared by the home  
3 care agency."

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

6 "§321-11 **Subjects of health rules, generally.** The  
7 department pursuant to chapter 91 may adopt rules that it deems  
8 necessary for the public health and safety respecting:

- 9 (1) Nuisances, foul or noxious odors, gases, vapors,  
10 waters in which mosquitoes breed or may breed, sources  
11 of filth, and causes of sickness or disease, within  
12 the respective districts of the State, and on board  
13 any vessel;
- 14 (2) Adulteration and misbranding of food or drugs;
- 15 (3) Location, air space, ventilation, sanitation,  
16 drainage, sewage disposal, and other health conditions  
17 of buildings, courts, construction projects,  
18 excavations, pools, watercourses, areas, and alleys;
- 19 (4) Privy vaults and cesspools;
- 20 (5) Fish and fishing;
- 21 (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 [7] but not  
2 limited to [7] those built under federal funding;
- 3 (12) Laboratories;
- 4 (13) Any place or building where noisome or noxious trades  
5 or manufacturers are carried on, or intended to be  
6 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:
- 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~~] state as may be necessary to prevent the  
9 introduction, transmission, or spread of disease or  
10 the introduction or spread of any insect or other  
11 vector of significance to health;

12 (24) Fumigation, including the process by which substances  
13 emit or liberate gases, fumes, or vapors which may be  
14 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 99-  
22 519; 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 may require any certificates, permits, or  
6            licenses that it may deem necessary to adequately regulate the  
7            conditions or businesses referred to in this section."

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

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



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

4 SECTION 5. There is appropriated out of the general  
5 revenues of the State of Hawaii the sum of \$107,000 or so much  
6 thereof as may be necessary for fiscal year 2008-2009 for one  
7 full-time equivalent position in the department of health to  
8 assist in licensure and monitoring of home care agencies.

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

11 SECTION 6. Statutory material to be repealed is bracketed.  
12 New statutory material is underscored.

13 SECTION 7. This Act shall take effect on July 1, 2008, and  
14 shall be repealed on June 30, 2013, and sections 321-11 and 321-  
15 11.5, Hawaii Revised Statutes, shall be reenacted in the forms  
16 in which they read prior to the effective date of this Act.

17

INTRODUCED BY:   
JAN 21 2008



**Report Title:**

Home Care Agencies; Licensing

**Description:**

Requires home care agencies to be licensed by the Department of Health. Appropriates funds.

