
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 a public or proprietary agency, a
 19 private, non-profit organization, or a subdivision of such
 20 agency or organization, engaged in providing home care services
 21 to clients in the client's residence. This definition of home
 22 care agency shall not apply to an individual, even when the



1 individual is incorporated as a business, an unpaid or stipended
2 volunteer, nor to any home or community based service under the
3 jurisdiction of the department of human services.

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

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

7 (2) Homemaker assistance, including housekeeping,
8 shopping, and meal planning and preparation; and

9 (3) Respite care and assistance and support provided to
10 the family."

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

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

16 (1) Nuisances, foul or noxious odors, gases, vapors,
17 waters in which mosquitoes breed or may breed, sources
18 of filth, and causes of sickness or disease, within
19 the respective districts of the State, and on board
20 any vessel;

21 (2) Adulteration and misbranding of food or drugs;



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



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

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



1 program or constitutes the main purpose of the
2 facility, as defined in section 346-16 under "child
3 care institution". For the purpose of this paragraph,
4 "adult foster home" has the same meaning as provided
5 in section 321-11.2;

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

10 (12) Laboratories;

11 (13) Any place or building where noisome or noxious trades
12 or manufacturers are carried on, or intended to be
13 carried on;

14 (14) Milk;

15 (15) Poisons and hazardous substances, the latter term,
16 including but not limited to any substance or mixture
17 of substances which:

18 (A) Is corrosive;

19 (B) Is an irritant;

20 (C) Is a strong sensitizer;

21 (D) Is inflammable; or



- 1 (E) Generates pressure through decomposition, heat,
2 or other means,
3 if the substance or mixture of substances may cause
4 substantial personal injury or substantial illness
5 during or as a proximate result of any customary or
6 reasonably foreseeable handling or use, including
7 reasonably foreseeable ingestion by children;
- 8 (16) Pig and duck ranches;
- 9 (17) Places of business, industry, employment, and
10 commerce, and the processes, materials, tools,
11 machinery, and methods of work done therein; and
12 places of public gathering, recreation, or
13 entertainment;
- 14 (18) Any restaurant, theater, market, stand, shop, store,
15 factory, building, wagon, vehicle, or place where any
16 food, drug, or cosmetic is manufactured, compounded,
17 processed, extracted, prepared, stored, distributed,
18 sold, offered for sale, or offered for human
19 consumption or use;
- 20 (19) Foods, drugs, and cosmetics, and the manufacture,
21 compounding, processing, extracting, preparing,



- 1 storing, selling, and offering for sale, consumption,
2 or use of any food, drug, or cosmetic;
- 3 (20) Devices as defined in section 328-1;
- 4 (21) Sources of ionizing radiation;
- 5 (22) Medical examination, vaccination, revaccination, and
6 immunization of school children. No child shall be
7 subjected to medical examination, vaccination,
8 revaccination, or immunization, whose parent or
9 guardian objects in writing thereto on grounds that
10 the requirements are not in accordance with the
11 religious tenets of an established church of which the
12 parent or guardian is a member or adherent, but no
13 objection shall be recognized when, in the opinion of
14 the department, there is danger of an epidemic from
15 any communicable disease;
- 16 (23) Disinsectization of aircraft entering or within the
17 State as may be necessary to prevent the introduction,
18 transmission, or spread of disease or the introduction
19 or spread of any insect or other vector of
20 significance to health;
- 21 (24) Fumigation, including the process by which substances
22 emit or liberate gases, fumes, or vapors which may be



1 used for the destruction or control of insects,
2 vermin, rodents, or other pests, which, in the opinion
3 of the department, may be lethal, poisonous, noxious,
4 or dangerous to human life;

5 (25) Ambulances and ambulance equipment;

6 (26) Development, review, approval, or disapproval of
7 management plans submitted pursuant to the Asbestos
8 Hazard Emergency Response Act of 1986, Public Law 99-
9 519; and

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

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

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

19 "(b) All fees paid and collected pursuant to this section
20 and rules adopted in accordance with chapter 91 from facilities
21 seeking licensure or certification by the department of health,
22 including hospitals, nursing homes, home health agencies, home



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

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

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

20 SECTION 6. Statutory material to be repealed is bracketed.
21 New statutory material is underscored.



1 SECTION 7. This Act shall take effect on July 1, 2008, and
2 shall be repealed on June 30, 2013, and sections 321-11 and
3 321-11.5, Hawaii Revised Statutes, shall be reenacted in the
4 forms in which they read prior to the effective date of this
5 Act.



Report Title:

Home Care Agencies; Licensing; Appropriation

Description:

Requires home care agencies to be licensed by the department of health; appropriates funds. (SD1)

