



GOV. MSG. NO. 823

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 15, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB415 SD2 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB415 SD2 HD1 CD1

A BILL FOR AN ACT
RELATING TO HOME CARE AGENCIES.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 15, 2009

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 415

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 415, entitled "A Bill for an Act Relating to Home Care Agencies."

The purpose of this bill is to require the Department of Health to license home care agencies from July 1, 2010 until June 30, 2014.

This bill is objectionable because it exempts home care agencies under contract with the City and County of Honolulu's Elderly Affairs Division from the licensing requirement. Therefore, the City and County of Honolulu will be allowed to contract with unlicensed home care agencies. All other counties will be subject to the licensing requirement even though they have administrative entities similar to the City and County of Honolulu's Elderly Affairs Division. The bill does not provide a basis for granting the single exemption, nor does it reconcile the differential treatment of the municipalities. The specific exemption for the City and County of Honolulu appears to be a special law rather than a general law, which is prohibited by Article VIII, Section 1 of the Hawaii Constitution. Home care licensing requirements should be applied uniformly throughout all political subdivisions of the State.

This bill is also objectionable because a new program should not be added to the Department of Health. Authority to

STATEMENT OF OBJECTIONS
SENATE BILL NO. 415
Page 2

license home care agencies should be placed with the Department of Human Services and not the Department of Health. The Department of Human Services has expertise in monitoring health services through its history with the certification of Community Care Foster Family Homes and the 1915(c) Medicaid Waiver and Chore Service programs. The Department currently has regulatory and support functions established through its Social Services Division, Adult and Community Care Services Branch, that will be capable of establishing a home care agency licensing program at a future time when the State's fiscal condition has improved.

For the foregoing reasons, I am returning Senate Bill No. 415 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

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 homes.

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 including 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 clients or their families
3 with personal funds since it is not a routine benefit of health
4 insurance plans.

5 Because a home care worker is often the only other person
6 in the home of a client, who may be mentally or physically
7 disabled, 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
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 that 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 requiring home care agencies to be licensed by
18 the department of health.

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



1 "§321- Home care agencies; licensing. (a) Beginning
2 July 1, 2010, each home care agency shall be licensed by the
3 department of health to ensure the health, safety, and welfare
4 of clients.

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

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

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

10 (c) A service provider agency under contract for services
11 with the city and county of Honolulu elderly affairs division
12 shall be exempt from the licensing requirement of this section.

13 (d) For purposes of this section:

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

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



- 1 (1) Personal care, including assistance with dressing,
- 2 feeding, and personal hygiene to facilitate self-care;
- 3 (2) Homemaker assistance, including housekeeping,
- 4 shopping, and meal planning and preparation; and
- 5 (3) Respite care and assistance and support provided to
- 6 the family."

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

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

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



- 1 (5) Fish and fishing;
- 2 (6) Interments and dead bodies;
- 3 (7) Disinterments of dead human bodies, including the
- 4 exposing, disturbing, or removing of these bodies from
- 5 their place of burial, or the opening, removing, or
- 6 disturbing after due interment of any receptacle,
- 7 coffin, or container holding human remains or a dead
- 8 human body or a part thereof and the issuance and
- 9 terms of permits for the aforesaid disinterments of
- 10 dead human bodies;
- 11 (8) Cemeteries and burying grounds;
- 12 (9) Laundries, and the laundering, sanitation, and
- 13 sterilization of articles including linen and uniforms
- 14 used by or in the following businesses and
- 15 professions: barber shops, manicure shops, beauty
- 16 parlors, electrology shops, restaurants, soda
- 17 fountains, hotels, rooming and boarding houses,
- 18 bakeries, butcher shops, public bathhouses, midwives,
- 19 masseurs, and others in similar calling, public or
- 20 private hospitals, and canneries and bottling works
- 21 where foods or beverages are canned or bottled for
- 22 public consumption or sale; provided that nothing in



1 this chapter shall be construed as authorizing the
2 prohibiting of laundering, sanitation, and
3 sterilization by those conducting any of these
4 businesses or professions where the laundering or
5 sterilization is done in an efficient and sanitary
6 manner;

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



- 1 (11) Hotels, rooming houses, lodging houses, apartment
2 houses, tenements, and residences for persons with
3 developmental disabilities including [~~but not limited~~
4 to,] those built under federal funding;
- 5 (12) Laboratories;
- 6 (13) Any place or building where noisome or noxious trades
7 or [~~manufacturers are~~] manufacturing is carried on, or
8 intended to be carried on;
- 9 (14) Milk;
- 10 (15) Poisons and hazardous substances, the latter term
11 including [~~but not limited to~~] any substance or
12 mixture of substances [~~which+~~] that:
- 13 (A) Is corrosive;
 - 14 (B) Is an irritant;
 - 15 (C) Is a strong sensitizer;
 - 16 (D) Is inflammable; or
 - 17 (E) Generates pressure through decomposition, heat,
18 or other means,
- 19 if the substance or mixture of substances may cause
20 substantial personal injury or substantial illness
21 during or as a proximate result of any customary or



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



1 subjected to medical examination, vaccination,
2 revaccination, or immunization, whose parent or
3 guardian objects in writing thereto on grounds that
4 the requirements are not in accordance with the
5 religious tenets of an established church of which the
6 parent or guardian is a member or adherent, but no
7 objection shall be recognized when, in the opinion of
8 the department, there is danger of an epidemic from
9 any communicable disease;

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

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

21 (25) Ambulances and ambulance equipment;



1 (26) Development, review, approval, or disapproval of
2 management plans submitted pursuant to the Asbestos
3 Hazard Emergency Response Act of 1986, Public Law
4 99-519; and

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

9 The department of health may require any certificates,
10 permits, or licenses that it may deem necessary to adequately
11 regulate the conditions or businesses referred to in this
12 section."

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

15 "(b) All fees paid and collected pursuant to this section
16 and rules adopted in accordance with chapter 91 from facilities
17 seeking licensure or certification by the department of health,
18 including hospitals, nursing homes, home health agencies, home
19 care agencies, intermediate care facilities for the mentally
20 retarded, freestanding outpatient surgical facilities, adult day
21 health care centers, rural health centers, laboratories, adult
22 residential care homes, expanded adult residential care homes,



1 developmental disability domiciliary homes, assisted living
2 facilities, therapeutic living programs, and special treatment
3 facilities, shall be deposited into the office of health care
4 assurance special fund created under section 321-1.4. Any other
5 entities required by law to be licensed by the department of
6 health shall also be subject to reasonable fees established by
7 the department of health by rules adopted in accordance with
8 chapter 91."

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

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

21 SECTION 6. The department of health shall report to the
22 legislature, no later than twenty days prior to the convening of



1 the regular session of 2010, any recommended proposals to ensure
2 the prevention of financial exploitation of home care agency
3 clients and to improve the home care licensing program.

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

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

