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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 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.



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S.D. 2  
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**Report Title:**

Health; Home Care Agencies; Licensing

**Description:**

Requires the department of health to license home care agencies.  
Sunsets 6/30/2014. (CD1)

