

JAN 23 2009

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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 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



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

5 A home care worker is often the only other person in the  
6 home of a client, who may be mentally or physically disabled,  
7 and 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 such  
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 who 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:

- 18 (1) Requiring home care agencies to be licensed by the  
19 department of health; and
- 20 (2) Appropriating funds for a position in the department  
21 of health to assist with licensure and monitoring of  
22 home care agencies.



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

4 "§321- Home care agencies; licensing. (a) A home care  
5 agency shall be licensed by the department of health to ensure  
6 the health, safety, and welfare of clients.

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

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

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

12 (c) For purposes of this section:

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

20 "Home care services" include, but are not limited to:

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



- 1        (2) Homemaker assistance, including housekeeping,
- 2                    shopping, and meal planning and preparation; and
- 3        (3) Respite care and assistance and support provided to
- 4                    the family."

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

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

- 10           (1) Nuisances, foul or noxious odors, gases, vapors,
- 11                waters in which mosquitoes breed or may breed, sources
- 12                of filth, and causes of sickness or disease, within
- 13                the respective districts of the State, and on board
- 14                any vessel;
- 15           (2) Adulteration and misbranding of food or drugs;
- 16           (3) Location, air space, ventilation, sanitation,
- 17                drainage, sewage disposal, and other health conditions
- 18                of buildings, courts, construction projects,
- 19                excavations, pools, watercourses, areas, and alleys;
- 20           (4) Privy vaults and cesspools;
- 21           (5) Fish and fishing;
- 22           (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, but not limited  
2 to, those built under federal funding;

3 (12) Laboratories;

4 (13) Any place or building where noisome or noxious trades  
5 or [~~manufacturers are~~] manufacturing is carried on, or  
6 intended to be 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~~] that:

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 as may be necessary to prevent the introduction,  
9 transmission, or spread of disease or the introduction  
10 or spread of any insect or other vector of  
11 significance to health;

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

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

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

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

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

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

17 SECTION 6. There is appropriated out of the general  
18 revenues of the State of Hawaii the sum of \$ or so  
19 much thereof as may be necessary for fiscal year 2009-2010 for  
20 one full-time equivalent position in the department of health to  
21 assist in the licensure and monitoring of home care agencies.



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

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

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

11

INTRODUCED BY:

H. Keli Gosh

Arnold Y Ige

Josh Green

JM

Shianne Chun Oallaul

Ronald H Bob

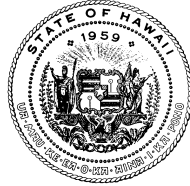
Carol Fuhunaga

Heather J

Norman Sakuma



LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

**SENATE COMMITTEES ON HEALTH AND COMMERCE AND CONSUMER  
PROTECTION**

**SB 0415, RELATING TO HOME CARE AGENCIES**

**Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health**

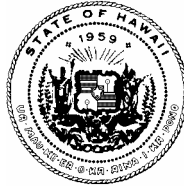
**February 10, 2009  
8:30 a.m.**

1 **Department's Position:** The department appreciates the intent of this bill, but must respectfully  
2 oppose.

3 **Fiscal Implications:** At least one registered nurse (RN V) position would be required. Along with  
4 travel cost (mileage and neighbor island travel), annual expenses are expected to be approximately  
5 \$120,000.

6 **Purpose and Justification:** A new program cannot be added at the same time that established programs  
7 are being cut and other funding cuts may be required. A similar bill was supported by the department in  
8 the past, but the state's financial climate has changed requiring a rethinking of priorities and of  
9 establishing new programs.

10 Thank you for the opportunity to testify.



STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809

February 10, 2009

MEMORANDUM

**LATE TESTIMONY**

TO: Honorable David Y. Ige, Chair  
Senate Committee on Health

Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce and Consumer Protection

FROM: Lillian B. Koller, Director

SUBJECT: S.B. 415 - RELATING TO HOME CARE AGENCIES  
Hearing: Tuesday, February 10, 2009, 8:30 a.m.  
Conference Room 229, State Capitol

**PURPOSE:** The purpose of S.B. 415 is to protect consumers of home care services by requiring the licensure of home care agencies by the Department of Health.

**DEPARTMENT'S POSITION:** The Department of Human Services respectfully opposes this bill. It would not be prudent to enact this bill into law at this time as it requires considerable general funds at a time when such funding is not available.

However, should funding become available in the future, we recommend that the authority to license these agencies be placed in the Department of Human Services, Adult and Community Care Services Branch, which has considerable expertise in monitoring these types of services through its history with the 1915(c) Medicaid Waivers and the Chore Program.

The Department would require an appropriation of \$420,000 in general funds to conduct this type of licensing program: \$300,000  
AN EQUAL OPPORTUNITY AGENCY

for contracting with an agency to carry out the licensure process with home care agencies; and \$120,000 for a Registered Nurse V position to write the rules and to manage the licensure program. Additionally, the Department strongly recommends that the language in this bill defining "home care agency" be replaced with the following language:

"Home care agency" means a public or proprietary agency, a private, non-profit organization, or a subdivision of such agency or organization, engaged in providing home care services to clients in the client's residence. The term "home care agency" does not apply to an individual, including an individual who is incorporated as a business, or is an unpaid or stipended volunteer, nor to any home and community- based service under the jurisdiction of the department of human services."

This language will exempt licensure requirements for senior service programs administered by the Department and family members, neighbors, and friends who provide chore, personal care, and respite services for their loved ones, including those individuals participating in the State Medicaid Home and Community-Based Program and the Chore Service Program. It also avoids an unnecessary expenditure for agencies that are providing personal assistance through the Department of Human Services. These providers are already monitored and regulated by State agencies for quality and through criminal and protective service background checks.

Thank you for this opportunity to testify.

DEPARTMENT OF COMMUNITY SERVICES  
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 311 • HONOLULU, HAWAII 96813 • AREA CODE 808 • PHONE: 768-7762 • FAX: 768-7792



MUFI HANNEMANN  
MAYOR

DEBORAH KIM MORIKAWA  
DIRECTOR

ERNEST Y. MARTIN  
DEPUTY DIRECTOR

February 6, 2009

The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on  
Commerce and Consumer Protection  
The Honorable David Y. Ige, Chair  
and Members of the Committee on Health  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Baker, Chair Ige, and Members:

**Subject: Providing Comments on S.B. 415  
Relating to Home Care Agencies**

The City and County of Honolulu's Elderly Affairs Division is Honolulu's designated Area Agency on Aging and operates in accordance with the Older Americans Act of 1965 to coordinate, advocate, and improve or expand our services to assist older persons in leading independent, meaningful, and dignified lives in their own homes and communities for as long as possible. We strongly urge the committee to consider amending S.B. 415 to exclude the service provider agencies contracted under the Elderly Affairs Division from the licensure requirements included in S.B. 415.

The Elderly Affairs Division contracts with non-profit agencies to provide home and community-based services including Kupuna Care services such as personal care, case management, chore, home delivered meals, transportation, and attendant care services as well as other supportive services such as caregiver, congregate meals and health maintenance services. These services allow Hawaii's senior citizens live in the environment of their choice for as long as possible. Without such services our seniors are at risk for possible neglect and/or premature institutionalization.

Although the Elderly Affairs Division supports the intent of licensing home care agencies, S.B. 415 would appear to also include the agencies with which we contract for the provision of home and community based services. Thus, this licensure requirement may compromise the ability of our contracted service provider agencies to



The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on  
Commerce and Consumer Protection  
The Honorable David Y. Ige, Chair  
and Members of the Committee on Health  
February 6, 2009  
Page 2

deliver these much needed and cost effective services to Hawaii's rapidly increasing aging population. Many of our contracted service providers rely on volunteer workers and donations to supplement the funding they receive from the Elderly Affairs Division and licensure would dramatically increase the cost of delivering these services. Further, the Elderly Affairs Division closely monitors its contracted home and community-based agencies on a monthly basis and also conducts a formal on-site assessment annually.

Thank you for the opportunity to submit this testimony.

Sincerely,

  
Deborah Kim Morikawa  
Director

  
Karen K. Miyake  
County Executive on Aging  
Elderly Affairs Division

KM:ab  
sb 415



**Testimony to the Senate Committees on Health and Commerce and Consumer Protection  
Tuesday, February 10, 2009 at 8:30 a.m.  
Conference Room 229, State Capitol**

**RE: SENATE BILL NO. 415 RELATING TO HOME CARE AGENCIES**

Chairs Ige and Baker, Vice Chair Green, and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber supports Senate Bill 415 relating to Home Care Agencies.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure requires the Department of Health to license home care agencies..

Quality health care is critical to the people and economy of Hawaii. As one of the largest private industries in Hawaii, the health care industry plays an important role in our economy, particularly through attractive, well-paying jobs and through the purchase of goods and services that contribute to our state's economy. As such, the health care industry plays a crucial role in the economic development and sustainability of our state and all of Hawaii's businesses. Also, Hawaii's healthcare system provides quality care for our families and serves to attract and retain a professional workforce, new companies, and even tourists to our state.

However, the quality healthcare that Hawaii has enjoyed for years is now in jeopardy. It is on the verge of declining because healthcare providers are no longer being paid for essential services at a level sufficient to cover annually increasing costs. The health care system must be maintained and challenges must be addressed.

Therefore, The Chamber supports improvements to the quality of our health care system that will increase long term care capacity and access statewide. Implementing a license requirement of home care agencies is the first step in the right direction in ameliorating the current state and quality of health care in Hawaii.

In light of the above, The Chamber of Commerce of Hawaii supports SB 415. Thank you for the opportunity to testify.



## LATE TESTIMOMNY

SENATE COMMITTEE ON HEALTH  
Senator David Y. Ige, Chair

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
Senator Rosalyn H. Baker, Chair

Conference Room 229  
February 10, 2009 at 8:30 a.m.

### **Testimony in support of SB 415.**

I am Coral Andrews, Vice President of the Healthcare Association of Hawaii which represents the entire spectrum of health care, including acute care hospitals, two-thirds of the long term care beds in Hawaii, as well as home care and hospice providers.

Thank you for this opportunity to testify in strong support of support of SB 415, which requires all home care agencies to be licensed.

The mandatory licensure of home care agencies is designed to assure the public that the services provided by such agencies comply with appropriate standards. Without mandatory licensure, these assurances cannot be given.

Home care is a rapidly growing sector of the health care continuum. It is a cost-effective service for many individuals who are recuperating from a hospital stay and also for many who, because of a functional or cognitive disability, are unable to take care of themselves.

Elderly and disabled people increasingly prefer to remain living in their homes rather than being institutionalized. Home care reinforces and supplements care provided in the home by family members and friends, maintaining the recipient's dignity and independence.

Unfortunately, home care is often confused with other types of health care. Home health agencies are currently licensed by the Department of Health. Home health is directed by a physician and focuses on services provided by licensed professionals, such as registered nurses, physical and occupational therapists, and speech therapists.

On the other hand, the Department of Health does not license home care agencies. Home care services are consumer directed, focusing primarily on services provided by non-medical personnel, often called custodial care. Home care services include assistance with tasks of daily living such as bathing and meal preparation, laundry, light housekeeping, errands, shopping, transportation, and companionship.

Also, the similarity between the terms "home care" and "care homes" may be confusing. Since care homes are licensed, many people incorrectly believe that home care agencies are also licensed.

Without licensure, the safety of those who receive home care is at risk, especially since home care is in many cases provided to frail and elderly consumers. Unlike in an institutional setting, the home care worker is often alone with the consumer of services.

The State has an obligation to protect consumers from improper care, exploitation, and abuse. At a minimum, the competence of home care agency employees should be established, and criminal background checks should be performed.

This bill directs the Department of Health (DOH) to establish a licensure system that protects the health and safety of clients receiving services from home care agencies. Any home care agency that is not licensed would not be allowed to operate.

This bill has been needed for some time now to protect the many elderly and disabled people who receive home care. Any delay will only extend the potential for abuse at a time when the demand for home care is increasing.

For the foregoing reasons, the Healthcare Association of Hawaii strongly supports SB 415.

**From:** Tomoso Home [jtomoso@hawaii.rr.com]  
**Sent:** Saturday, February 07, 2009 7:30 PM  
**To:** CPN Testimony  
**Subject:** SB 415

TO: COMMITTEE ON HEALTH  
TO: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
TESTIMONY ON: SB 415 RELATING TO HOME CARE AGENCIES  
HEARING: Tuesday, February 10, 2009, 8:30 a.m.  
State Capitol Conference Room 229

I wish to provide this testimony, in that I am an advocate not only for home and community-based services that allow for individuals who want to “age in place” in their own homes, but also for necessary consumer protection. This bill requires the Department of Health to license home care agencies, with a sunset of 6/20/2014. The reality of aging is not only an opportunity but also a “marketplace”. Thus, we will all, as we age, become consumers. I believe government not only helps a “safety net” to stay in place but also helps citizens who are within it, to remain so with dignity, respect and consumer protection, which already provided for in other areas of this particular “marketplace”.

Mahalo for your consideration of this bill.

John A. H. Tomoso, MSW, ACSW, LSW  
51 Ku’ula Street  
Kahului, Maui, Hawai’i 96732-2906  
[jtomoso@hawaii.rr.com](mailto:jtomoso@hawaii.rr.com)

**BCC: Maui JACOSA ListServe, Maui County State Legislators**