



GOV. MSG. NO. 1194

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 30, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

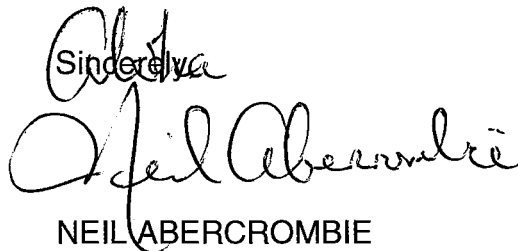
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 30, 2012, the following bill was signed into law:

SB2126 SD2 HD2

RELATING TO HEALTH CARE.
Act 093 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO HEALTH CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the growth rate of
2 the elderly population in the State, those sixty-five years and
3 older, is expected to accelerate. The United States Census
4 Bureau reports that the proportion of Hawaii's population
5 classified as elderly is expected to increase from 12.6 per cent
6 in 1995 to 15.9 per cent in 2025. The increasing proportion of
7 the elderly requires that the State take action to anticipate
8 and prepare for the future health care needs of Hawaii's
9 population.

10 The United States Congress has already recognized the need
11 for health care reform and enacted the Patient Protection and
12 Affordable Care Act in 2010. The Patient Protection and
13 Affordable Care Act is intended to improve health care in
14 America by, among other things, establishing a competitive
15 health insurance market, ending discrimination against pre-
16 existing health conditions, expanding medicaid coverage,
17 enhancing the quality of health care, and reducing health care
18 fraud and waste. The legislature finds that Hawaii should take



1 similar actions to improve health care in the State. One
2 organizational change that could improve government efficiency
3 and health care is to consolidate certain health care services
4 that are currently managed by the department of health and the
5 department of human services.

6 The legislature finds that the department of health has
7 already established an office of health care assurance that
8 manages state licensing and federal certification of medical and
9 health care facilities, agencies, and services provided
10 throughout the State to ensure compliance with established
11 standards of care. Given the office's existing functions, the
12 legislature finds that health care services currently provided
13 by the department of human services and the department of health
14 should be consolidated under the jurisdiction of the office of
15 health care assurance to improve the efficiency, capacity, and
16 quality of state health care services.

17 The purpose of this Act is to consolidate the authority,
18 duties, responsibilities, and jurisdiction of the department of
19 human services and the department of health, as they relate to
20 various health care services, by transferring to the department
21 of health office of health care assurance on July 1, 2014, the
22 programs of the department of human services relating to:



- 1 (1) Home and community-based case management;
- 2 (2) Community care foster family homes; and
- 3 (3) Adult day care.

4 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
 5 amended by adding two new parts to be appropriately designated
 6 and to read as follows:

7 "PART . HOME AND COMMUNITY-BASED CASE MANAGEMENT
 8 AGENCIES AND COMMUNITY CARE FOSTER FAMILY HOMES

9 §321-A Definitions. As used in this part:

10 "Certificate of approval" means the certificate issued by
 11 the department or its designee that authorizes a person, agency,
 12 or organization to operate a community care foster family home.

13 "Client" means any person who receives home and community-
 14 based case management services to reside in a community care
 15 foster family home, expanded adult residential care home, or
 16 assisted living facility.

17 "Community care foster family home" or "home" means a home
 18 that:

- 19 (1) Is regulated by the department in accordance with
- 20 rules that are equitable in relation to rules that
- 21 govern expanded adult residential care homes;



1 (2) Is issued a certificate of approval by the department
2 or its designee to provide, for a fee, twenty-four-
3 hour living accommodations, including personal care
4 and homemaker services, for not more than two adults
5 at any one time, at least one of whom shall be a
6 medicaid recipient, who are at the nursing facility
7 level of care, who are unrelated to the foster family,
8 and who are receiving the services of a licensed home
9 and community-based case management agency; provided
10 that the department, in its discretion, may certify a
11 home for a third adult who is at the nursing level of
12 care and a medicaid recipient; provided further that
13 the:
14 (A) Home has been certified and in operation for not
15 less than one year;
16 (B) Primary caregiver is a certified nurse aide, as
17 defined in section 457A-1.5, who has completed a
18 state-approved training program and other
19 training as required by the department; and
20 (C) Substitute caregiver is a nurse aide, as defined
21 in section 457A-1.5, who has completed a state-



1 approved training program and other training as
2 required by the department; and

3 (3) Does not include expanded adult residential care homes
4 or assisted living facilities.

5 "Department" means the department of health.

6 "Designee" means a person, institution, organization, or
7 agency authorized by the department to issue certificates of
8 approval to community care foster family homes and to monitor
9 these homes for certificate compliance and quality assurance.
10 The department's designee shall perform these functions for the
11 department and shall not, at the same time, function as a home
12 and community-based case management agency or a community care
13 foster family home as defined in this section.

14 "Home and community-based case management agency" means any
15 person, agency, or organization licensed by the department to
16 provide, coordinate, and monitor comprehensive services to meet
17 the needs of clients whom the agency serves in a community care
18 foster family home or any medicaid clients in an expanded adult
19 residential care home, or an assisted living facility.

20 "License" means an approval issued by the department or its
21 authorized agents for a person, agency, or organization to
22 operate as a home and community-based case management agency.



1 **§321-B Home and community-based case management agency,**
2 **authority over and evaluation of.** (a) Any person, agency, or
3 organization engaged in providing, coordinating, or monitoring
4 comprehensive services to clients in community care foster
5 family homes, or medicaid clients in expanded adult residential
6 care homes, and assisted living facilities, shall meet the
7 standards of conditions, management, and competence set by the
8 department, and hold a license in good standing issued for this
9 purpose by the department.

10 (b) The department shall adopt rules pursuant to chapter
11 91 relating to:

- 12 (1) Standards for the organization and administration of
- 13 home and community-based case management agencies;
- 14 (2) Standards of conditions, management, and competence of
- 15 home and community-based case management agencies;
- 16 (3) Procedures for obtaining and renewing a license from
- 17 the department; and
- 18 (4) Minimum grievance procedures for clients of case
- 19 management services.

20 (c) As a condition for obtaining a license, a person,
21 agency, or organization shall comply with rules adopted under
22 subsection (b)(1), (2), and (3), and satisfy the background



1 check requirements under section 321-D. The department may deny
2 a license if:

3 (1) An operator, employee, or new employee of the home and
4 community-based case management agency has been
5 convicted of a crime other than a minor traffic
6 violation involving a fine of \$50 or less;

7 (2) The department finds that the criminal history record
8 of an operator, employee, or new employee poses a risk
9 to the health, safety, or well-being of adults
10 receiving care in community care foster family homes,
11 expanded adult residential care homes, or assisted
12 living facilities;

13 (3) An operator, employee, or new employee of the home and
14 community-based case management agency is a
15 perpetrator of abuse as defined in section 346-222; or

16 (4) The holder of or an applicant for a home and
17 community-based case management agency license, or one
18 of its employees, has a certificate of approval to
19 operate a community care foster family home, or a
20 license from the department to operate an adult
21 residential care home, expanded adult residential care
22 home, or assisted living facility.



1 (d) Upon approval of any home and community-based case
2 management agency, the department or its authorized agents shall
3 issue a license, which shall continue in force for one year, or
4 for two years if a home and community-based case management
5 agency has been licensed for at least one year and is in good
6 standing pursuant to standards adopted by the department, unless
7 sooner revoked for cause. The department or its authorized
8 agents shall renew the license only if, after an annual or
9 biennial evaluation, the agency continues to meet the standards
10 established by the department.

11 (e) The department shall evaluate the home and community-
12 based case management agency to determine compliance with the
13 requirements established under this section:

14 (1) Annually or biennially; or

15 (2) Upon receipt of a complaint that the home and
16 community-based case management agency is in violation
17 of the requirements established under this section.

18 (f) The department may suspend or revoke a license if the
19 department deems that the agency is unwilling or unable to
20 comply with the rules adopted under this section; provided that:

21 (1) Upon suspension or revocation of a license, the home
22 and community-based case management agency shall no



1 longer be licensed and shall immediately notify the
2 agency's clients and community care foster family
3 homes, expanded adult residential care homes, and
4 assisted living facilities in which the agency is
5 providing services to clients;

6 (2) A home and community-based case management agency
7 whose license has been suspended or revoked may appeal
8 the suspension or revocation to the department through
9 its established process, but the appeal shall not stay
10 the suspension or revocation;

11 (3) A suspended or revoked license may be reinstated if
12 the department deems that the agency is willing and
13 able to comply with the rules adopted under this
14 section; and

15 (4) A revoked license shall be restored only after a new
16 application is made and reviewed under this part.

17 (g) Any home and community-based case management agency
18 shall be subject to investigation by the department at any time
19 and in the manner, place, and form as provided in the
20 department's rules.

21 (h) The department shall adopt standard forms of contract
22 that the home and community-based case management agency shall



1 use with each of its clients, community care foster family
2 homes, expanded adult residential care homes, and assisted
3 living facilities.

4 (i) The home and community-based case management agency
5 shall have a fiduciary duty to each client it serves.

6 (j) A home and community-based case management agency
7 shall not enter into an agreement that requires a community care
8 foster family home to accept that agency's clients exclusively.

9 **§321-C Community care foster family home, authority over**
10 **and evaluation of.** (a) Any person in any household who wants
11 to take in, for a fee, any adult who is at the nursing facility
12 level of care and who is unrelated to anyone in the household,
13 for twenty-four hour living accommodations, including personal
14 care and homemaker services, may do so only after the household
15 meets the required standards established for certification and
16 obtains a certificate of approval from the department or its
17 designee.

18 (b) The department shall adopt rules pursuant to chapter
19 91 relating to:

20 (1) Standards of conditions and competence for the
21 operation of community care foster family homes;



- 1 (2) Procedures for obtaining and renewing a certificate of
- 2 approval from the department;
- 3 (3) Minimum grievance procedures for clients of community
- 4 care foster family home services; and
- 5 (4) Requirements for primary and substitute caregivers
- 6 caring for three clients in community care foster
- 7 family homes including:
- 8 (A) Mandating that primary and substitute caregivers
- 9 be twenty-one years of age or older;
- 10 (B) Mandating that primary and substitute caregivers
- 11 complete a minimum of twelve hours of continuing
- 12 education every twelve months or at least twenty-
- 13 four hours of continuing education every twenty-
- 14 four months;
- 15 (C) Allowing the primary caregiver to be absent from
- 16 the community care foster family home for no more
- 17 than twenty-eight hours in a calendar week, not
- 18 to exceed five hours per day; provided that the
- 19 substitute caregiver is present in the community
- 20 care foster family home during the primary
- 21 caregiver's absence;



1 (D) Where the primary caregiver is absent from the
2 community care foster family home in excess of
3 the hours as prescribed in subparagraph (C),
4 mandating that the substitute caregiver be a
5 certified nurse aide; and

6 (E) Mandating that the substitute caregiver have, at
7 a minimum, one year prior work experience as a
8 caregiver in a community residential setting or
9 in a medical facility.

10 (c) As a condition for obtaining a certificate of
11 approval, community care foster family homes shall comply with
12 rules adopted under subsection (b) and satisfy the background
13 check requirements under section 321-D. The department or its
14 designee may deny a certificate of approval if:

15 (1) An operator or other adult residing in the community
16 care foster family home, except for adults receiving
17 care, has been convicted of a crime other than a minor
18 traffic violation involving a fine of \$50 or less;

19 (2) The department or its designee finds that the criminal
20 history record of an operator or other adult residing
21 in the home, except for adults receiving care, poses a



1 risk to the health, safety, or well-being of adults in
2 care; or

3 (3) An operator or other adult residing in the community
4 care foster family home, except for adults receiving
5 care, is a perpetrator of abuse as defined in section
6 346-222.

7 (d) Upon approval of a community care foster family home,
8 the department or its designee shall issue a certificate of
9 approval that shall continue in force for one year, or for two
10 years if a community care foster family home has been certified
11 for at least one year and is in good standing pursuant to
12 standards adopted by the department, unless sooner suspended or
13 revoked for cause. The department or its designee shall renew
14 the certificate of approval only if, after an annual or biennial
15 evaluation, the home continues to meet the standards required
16 for certification.

17 (e) Any community care foster family home shall be subject
18 to investigation by the department or its designee at any time
19 and in the manner, place, and form as provided in procedures to
20 be established by the department.

21 (f) The department or its designee may suspend or revoke a
22 certificate of approval if the department or its designee deems



1 that a community care foster family home is unwilling or unable
2 to comply with the rules adopted under subsection (b); provided
3 that:

4 (1) The suspension or revocation shall be immediate when
5 conditions exist that constitute an imminent danger to
6 the life, health, or safety of adults receiving care;

7 (2) A community care foster family home whose certificate
8 of approval has been suspended or revoked shall
9 immediately notify its clients and their case
10 managers;

11 (3) A community care foster family home whose certificate
12 of approval has been suspended or revoked may appeal
13 to the department through its established process, but
14 the appeal shall not stay the suspension or
15 revocation;

16 (4) A suspended or revoked certificate of approval may be
17 reinstated if the department or its designee deems
18 that the home is willing and able to comply with the
19 rules adopted under subsection (b); and

20 (5) A revoked certificate of approval shall be restored
21 only after a new application for a certificate of



1 approval is submitted to the department or its
2 designee and approved.

3 (g) Any community care foster family home shall be subject
4 to monitoring and evaluation by the department or its designee
5 for certification compliance and quality assurance on an annual
6 or biennial basis.

7 **§321-D Background checks.** (a) The department shall
8 develop standards to ensure the reputable and responsible
9 character of operators, employees, volunteers, and other adults
10 regularly present, except for adults in care, of the programs
11 identified in this part.

12 (b) An applicant for the programs identified in this part
13 shall:

14 (1) Be subject to criminal history record checks in
15 accordance with section 846-2.7;

16 (2) Be subject to adult abuse perpetrator checks, if the
17 individual has direct contact with a client. For the
18 purposes of this section, "adult abuse perpetrator
19 check" means a search to determine whether an
20 individual is known to the department of human
21 services as a perpetrator of abuse as defined in
22 section 346-222, by means of a search of the



1 individual's name and birth date in the department of
2 human services's adult protective service file; and
3 (3) Provide consent to the department or its designee to
4 conduct an adult abuse perpetrator check and to obtain
5 other criminal history record information for
6 verification.

7 (c) New employees of the programs identified in this part
8 shall be fingerprinted within five working days of employment
9 for the purpose of complying with the criminal history record
10 check requirement.

11 (d) The department or its designee shall obtain criminal
12 history record information through the Hawaii criminal justice
13 data center in accordance with section 846-2.7 on applicants for
14 programs identified in this part. The Hawaii criminal justice
15 data center may assess the applicants and operators, employees,
16 and new employees a reasonable fee for each criminal history
17 record check conducted. The information obtained shall be used
18 exclusively for the stated purposes for which it was obtained
19 and shall be subject to federal laws and regulations as may be
20 now or hereafter adopted.

21 (e) The department or its designee shall make a name
22 inquiry into the criminal history records and the adult



1 protective service file for the first two years a home and
2 community-based case management agency is licensed and annually
3 or biennially thereafter depending on the licensure status of
4 the home and community-based case management agency.

5 (f) An applicant for a certificate of approval as a
6 community care foster family home, operators, and other adults
7 residing in a community care foster family home shall:

- 8 (1) Be subject to criminal history record checks in
9 accordance with section 846-2.7;
- 10 (2) Be subject to adult abuse perpetrator checks, if the
11 individual has direct contact with a client. For the
12 purposes of this section, "adult abuse perpetrator
13 check" means a search to determine whether an
14 individual is known to the department of human
15 services as a perpetrator of abuse as defined in
16 section 346-222, by means of a search of the
17 individual's name and birth date in the department of
18 human services' adult protective service file; and
- 19 (3) Provide consent to the department to conduct an adult
20 abuse perpetrator check and to obtain other criminal
21 history record information for verification.



1 (g) The department or its designee shall obtain criminal
2 history record information through the Hawaii criminal justice
3 data center on applicants for certificates of approval as
4 community care foster family homes and operators and other
5 adults residing in community care foster family homes, except
6 for adults receiving care. The Hawaii criminal justice data
7 center may assess the applicants and operators and other adults
8 a reasonable fee for each criminal history record check
9 conducted. The information obtained shall be used exclusively
10 for the stated purpose for which it was obtained and shall be
11 subject to federal laws and regulations as may be now or
12 hereafter adopted.

13 (h) The department or its designee shall make a name
14 inquiry into the criminal history records and the adult
15 protective service file for the first two years a community care
16 foster family home is certified and annually or biennially
17 thereafter depending on the certification status of the
18 community care foster family home.

19 **§321-E Penalty.** Any person violating this part or any
20 rule adopted pursuant to this part shall be fined not more than
21 \$500.



1 educational, recreational, physical, or mental problem that
2 impedes the person's personal functioning and well-being.

3 Nothing in section 321-H shall be construed to include a
4 relative caring for another relative; a neighbor or friend
5 caring for an adult by mutual choice and agreement; or any
6 center or facility conducted primarily or solely for
7 educational, social, recreational, athletic, or other group
8 functions that may provide for twenty-four hour boarding,
9 personal, or nursing care accommodation.

10 **§321-H Day care centers for disabled and aged persons.**

11 The department shall be responsible for the recruitment and
12 licensing of day care centers for elder disabled and aged
13 persons. The department shall adopt any necessary rules,
14 regulations, and minimum standards to protect the best interests
15 of adults receiving care in day care centers. The rules and
16 regulations shall have the force and effect of law and shall be
17 administered by the department.

18 **§321-I Purchase of service.** The department may negotiate
19 the purchase of day care services for elder disabled and aged
20 recipients, including other social services from individuals or
21 other organizations, institutions, or agencies. Other social
22 services shall be necessary and essential to maximize the



1 functioning and well-being of the recipient. Purchase of day
2 care center services shall include services that enhance the
3 social functioning of each participant, promote and develop
4 activities in daily living and personal independence by
5 therapeutic arts and crafts, community excursions, hobby
6 cultivation, group dynamics, and provisions for counseling to
7 the participants and their families.

8 **§321-J Penalty.** Any individual, organization, or agency
9 operating a day care center for disabled or aged persons without
10 a license from the department shall be cited and fined an amount
11 deemed to be appropriate by the court, but not to exceed a
12 maximum of \$5,000.

13 **§321-K Criminal history record checks.** (a) For the
14 purposes of this section:

15 "Conviction for a relevant crime" means any federal or
16 state conviction for any relevant crime as defined in this
17 section.

18 "Criminal history record name inquiry" means a search by
19 name and other identifying information using the state
20 computerized criminal history record information system.

21 "Department" means the department of health.



1 "Name inquiry" means a criminal history record check
2 conducted using the name and other identifying information of
3 the individual in lieu of a fingerprint check.

4 "Relevant crime" means:

- 5 (1) Any offense described in Title 42 United States Code
6 section 1320a-7 (section 1128(a) of the Social
7 Security Act); or
8 (2) A crime of such a serious nature or circumstance that
9 the department finds its perpetrator to pose a risk to
10 the health, safety, or well-being of a patient or
11 resident. This shall include but not be limited to
12 murder; manslaughter; assault; sex offenses; domestic
13 violence; and the use, sale, manufacture, or
14 distribution of dangerous drugs or controlled
15 substances.

16 (b) The department shall adopt rules pursuant to chapter
17 91 to establish standards regarding the reputable and
18 responsible character of service providers who have direct
19 contact with individuals receiving services under this part,
20 including licensed adult day care center operators, employees,
21 subcontracted service providers and their employees, and adult
22 volunteers.



- 1 (c) Individuals identified under subsection (b) shall:
- 2 (1) Meet the standards regarding the reputable and
- 3 responsible character of service providers;
- 4 (2) Be subject to criminal history record checks in
- 5 accordance with section 846-2.7;
- 6 (3) Sign a waiver stating that the department shall not be
- 7 liable to the individual; and
- 8 (4) Provide consent to the department or its designee to
- 9 obtain criminal history record information for
- 10 verification.

11 New employees and adult volunteers shall consent to be

12 fingerprinted, shall supply the necessary information to enable

13 the criminal history record check prior to the start of

14 employment or volunteering, and shall sign a waiver stating that

15 the department shall not be liable to the employee or volunteer.

16 (d) The department or its designee shall obtain criminal

17 history record information through the Hawaii criminal justice

18 data center on individuals identified in subsection (b) for the

19 first two years that an individual identified in subsection (b)

20 is required to have such checks, and shall conduct a criminal

21 history record name inquiry into the state criminal history

22 records annually or biennially thereafter.



1 (e) The department may take appropriate action if it finds
2 that the criminal history of the individual identified under
3 subsection (b) may pose a risk to the health, welfare, and
4 safety of service recipients. Such action may include denying a
5 certificate of approval to operate an adult day care center.

6 (f) Notwithstanding any other law to the contrary, for
7 purposes of this section, the department shall be exempt from
8 section 831-3.1 and shall not be required to conduct
9 investigations, notifications, or hearings under this section in
10 accordance with chapter 91.

11 (g) The employer or the employee or the individual who is
12 being screened may bear the costs of processing fingerprints and
13 the state criminal history record check.

14 (h) The department, in obtaining and relying upon the
15 results of the state criminal history record check, shall be
16 presumed to be acting in good faith and shall be immune from
17 civil liability for taking or recommending action based upon the
18 criminal history record information. The presumption of good
19 faith may be rebutted upon a showing by the person or entity
20 acknowledging a lack of good faith by a preponderance of the
21 evidence that the department relied upon information or opinion
22 that it knew was false or misleading.



1 (i) Nothing in this section shall affect the rights,
2 obligations, remedies, liabilities, or standards of proof under
3 chapters 368 and 378.

4 (j) The criminal history record information obtained under
5 this section shall be used exclusively by the department for the
6 purpose of establishing the reputable and responsible character
7 of the individuals identified in subsection (b) to ensure that
8 the health, welfare, and safety of service recipients will not
9 be at risk."

10 SECTION 3. Section 346-53, Hawaii Revised Statutes, is
11 amended by amending subsections (c) and (d) to read as follows:

12 "(c) The director, pursuant to chapter 91, shall determine
13 the rate of payment for domiciliary care, including care
14 provided in licensed developmental disabilities domiciliary
15 homes, community care foster family homes, and certified adult
16 foster homes, to be provided to recipients who are eligible for
17 Federal Supplementary Security Income or public assistance, or
18 both. The director shall provide for level of care payment as
19 follows:

20 (1) Beginning on July 1, 2008, for adult residential care
21 homes classified as facility type I, licensed
22 developmental disabilities domiciliary homes as



1 defined under section 321-15.9, community care foster
2 family homes as defined under section [~~346-331,~~
3 321-A, and certified adult foster homes as defined
4 under section 321-11.2, the state supplemental payment
5 shall not exceed \$651.90; and

6 (2) Beginning on July 1, 2008, for adult residential care
7 homes classified as facility type II, the state
8 supplemental payment shall not exceed \$759.90.

9 If the operator does not provide the quality of care
10 consistent with the needs of the individual to the satisfaction
11 of the department, the department may remove the recipient to
12 another facility.

13 The department shall handle abusive practices under this
14 section in accordance with chapter 91.

15 Nothing in this subsection shall allow the director to
16 remove a recipient from an adult residential care home or other
17 similar institution if the recipient does not desire to be
18 removed and the operator is agreeable to the recipient
19 remaining, except where the recipient requires a higher level of
20 care than provided or where the recipient no longer requires any
21 domiciliary care.



1 (d) On July 1, 2006, and thereafter, as the department
2 determines a need, the department shall authorize a payment, as
3 allowed by federal law, for resident clients receiving
4 supplemental security income in adult residential care home type
5 I and type II facilities, licensed developmental disabilities
6 domiciliary homes as defined under section 321-15.9, community
7 care foster family homes as defined under section [~~346-331,~~
8 321-A, and certified adult foster homes as defined under section
9 321-11.2, when state funds appropriated for the purpose of
10 providing payments under subsection (c) for a specific fiscal
11 year are not expended fully within a period that meets the
12 requirements of the department's maintenance of effort agreement
13 with the Social Security Administration.

14 The payment shall be made with that portion of state funds
15 identified in this subsection that has not been expended.

16 The department shall determine the rate of payment to
17 ensure compliance with its maintenance of effort agreement with
18 the Social Security Administration."

19 SECTION 4. Section 346-97, Hawaii Revised Statutes, is
20 amended as follows:



1 1. By amending subsection (b) to read:

2 "(b) The department shall adopt rules pursuant to chapter
3 91 establishing standards regarding the reputable and
4 responsible character of service providers who have direct
5 contact with individuals receiving services under this part,
6 including:

7 [~~1~~] ~~Licensed adult day care center operators, employees,~~
8 ~~new employees, subcontracted service providers and~~
9 ~~their employees, and adult volunteers,~~

10 ~~(2)~~ (1) Purchase of service contracted and subcontracted
11 service providers and their employees serving clients
12 of the adult and community care services branch;

13 [~~3~~] ~~Foster~~ (2) The foster grandparent program, [~~retired~~
14 ~~and senior volunteer program,~~] senior companion
15 program, and respite companion program participants;
16 and

17 [~~4~~] (3) Contracted and subcontracted service providers
18 and their employees and new employees who provide home
19 and community-based services under section 1915(c) of
20 the Social Security Act (42 U.S.C. §1396n(c)), or
21 under any other applicable section or sections of the



1 Social Security Act for the purposes of providing home
2 and community-based services."

3 2. By amending subsection (e) to read:

4 "(e) The department may take appropriate action if it
5 finds that the criminal history of the individual identified
6 under subsection [†](b)[†] may pose a risk to the health,
7 welfare, and safety of service recipients. [~~Such~~] An action may
8 include[+]

9 ~~(1) Denying a certificate of approval to operate an adult~~
10 ~~day care center, or~~

11 ~~(2) Refusing~~ refusing to use an individual as a service
12 provider."

13 SECTION 5. Section 346D-4.5, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) There may be established a monthly needs allowance
16 for individuals living in:

17 (1) Adult residential care home type I and type II
18 facilities;

19 (2) Licensed developmental disabilities domiciliary homes
20 as defined in section 321-15.9;

21 (3) Community care foster family homes as defined in
22 section [~~346-331~~] 321-A;



- 1 (4) Certified adult foster homes as defined in section
- 2 321-11.2;
- 3 (5) Domiciliary care as defined in section 346-1;
- 4 (6) A nursing facility as defined in section 346E-1; or
- 5 (7) A community-based residence as part of the residential
- 6 alternatives community care program."

7 SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is
 8 amended by amending subsection (b) to read as follows:

9 "(b) Criminal history record checks may be conducted by:

10 (1) The department of health on operators of adult foster
 11 homes or developmental disabilities domiciliary homes
 12 and their employees, as provided by section 333F-22;

13 (2) The department of health on prospective employees,
 14 persons seeking to serve as providers, or
 15 subcontractors in positions that place them in direct
 16 contact with clients when providing non-witnessed
 17 direct mental health services as provided by section
 18 321-171.5;

19 (3) The department of health on all applicants for
 20 licensure for, operators for, prospective employees,
 21 and volunteers at one or more of the following:

22 skilled nursing facility, intermediate care facility,



1 adult residential care home, expanded adult
2 residential care home, assisted living facility, home
3 health agency, hospice, adult day health center,
4 special treatment facility, therapeutic living
5 program, intermediate care facility for individuals
6 with intellectual disabilities, hospital, rural health
7 center and rehabilitation agency, and, in the case of
8 any of the above facilities operating in a private
9 residence, on any adult living in the facility other
10 than the client as provided by section 321-15.2;

11 (4) The department of education on employees, prospective
12 employees, and teacher trainees in any public school
13 in positions that necessitate close proximity to
14 children as provided by section 302A-601.5;

15 (5) The counties on employees and prospective employees
16 who may be in positions that place them in close
17 proximity to children in recreation or child care
18 programs and services;

19 (6) The county liquor commissions on applicants for liquor
20 licenses as provided by section 281-53.5;

21 (7) The department of human services on operators and
22 employees of child caring institutions, child placing



1 organizations, and foster boarding homes as provided
2 by section 346-17;

3 (8) The department of human services on prospective
4 adoptive parents as established under section
5 346-19.7;

6 (9) The department of human services on applicants to
7 operate child care facilities, prospective employees
8 of the applicant, and new employees of the provider
9 after registration or licensure as provided by section
10 346-154;

11 (10) The department of human services on persons exempt
12 pursuant to section 346-152 to be eligible to provide
13 child care and receive child care subsidies as
14 provided by section 346-152.5;

15 (11) The department of [~~human services~~] health on operators
16 and employees of home and community-based case
17 management agencies and operators and other adults,
18 except for adults in care, residing in foster family
19 homes as provided by section [~~346-335,~~] 321-D;

20 (12) The department of human services on staff members of
21 the Hawaii youth correctional facility as provided by
22 section 352-5.5;



- 1 (13) The department of human services on employees,
2 prospective employees, and volunteers of contracted
3 providers and subcontractors in positions that place
4 them in close proximity to youth when providing
5 services on behalf of the office or the Hawaii youth
6 correctional facility as provided by section 352D-4.3;
- 7 (14) The judiciary on employees and applicants at detention
8 and shelter facilities as provided by section 571-34;
- 9 (15) The department of public safety on employees and
10 prospective employees who are directly involved with
11 the treatment and care of persons committed to a
12 correctional facility or who possess police powers
13 including the power of arrest as provided by section
14 353C-5;
- 15 (16) The department of commerce and consumer affairs on
16 applicants for private detective or private guard
17 licensure as provided by section 463-9;
- 18 (17) Private schools and designated organizations on
19 employees and prospective employees who may be in
20 positions that necessitate close proximity to
21 children; provided that private schools and designated
22 organizations receive only indications of the states



- 1 from which the national criminal history record
2 information was provided pursuant to section 302C-1;
- 3 (18) The public library system on employees and prospective
4 employees whose positions place them in close
5 proximity to children as provided by section
6 302A-601.5;
- 7 (19) The State or any of its branches, political
8 subdivisions, or agencies on applicants and employees
9 holding a position that has the same type of contact
10 with children, vulnerable adults, or persons committed
11 to a correctional facility as other public employees
12 who hold positions that are authorized by law to
13 require criminal history record checks as a condition
14 of employment as provided by section 78-2.7;
- 15 (20) The department of [~~human services~~] health on licensed
16 adult day care center operators, employees, new
17 employees, subcontracted service providers and their
18 employees, and adult volunteers as provided by section
19 [~~346-97,~~] 321-K;
- 20 (21) The department of human services on purchase of
21 service contracted and subcontracted service providers
22 and their employees serving clients of the adult and



- 1 community care services branch, as provided by section
2 346-97;
- 3 (22) The department of human services on foster grandparent
4 program, [~~retired and senior volunteer program,~~
5 senior companion program, and respite companion
6 program participants as provided by section 346-97;
- 7 (23) The department of human services on contracted and
8 subcontracted service providers and their current and
9 prospective employees that provide home and community-
10 based services under Section 1915(c) of the Social
11 Security Act, Title 42 United States Code Section
12 1396n(c), or under any other applicable section or
13 sections of the Social Security Act for the purposes
14 of providing home and community-based services, as
15 provided by section 346-97;
- 16 (24) The department of commerce and consumer affairs on
17 proposed directors and executive officers of a bank,
18 savings bank, savings and loan association, trust
19 company, and depository financial services loan
20 company as provided by section 412:3-201;
- 21 (25) The department of commerce and consumer affairs on
22 proposed directors and executive officers of a



- 1 nondepository financial services loan company as
2 provided by section 412:3-301;
- 3 (26) The department of commerce and consumer affairs on the
4 original chartering applicants and proposed executive
5 officers of a credit union as provided by section
6 412:10-103;
- 7 (27) The department of commerce and consumer affairs on:
8 (A) Each principal of every non-corporate applicant
9 for a money transmitter license; and
10 (B) The executive officers, key shareholders, and
11 managers in charge of a money transmitter's
12 activities of every corporate applicant for a
13 money transmitter license,
14 as provided by section 489D-9;
- 15 (28) The department of commerce and consumer affairs on
16 applicants for licensure and persons licensed under
17 title 24;
- 18 (29) The Hawaii health systems corporation on:
19 (A) Employees;
20 (B) Applicants seeking employment;
21 (C) Current or prospective members of the corporation
22 board or regional system board; or



1 (D) Current or prospective volunteers, providers, or
2 contractors,
3 in any of the corporation's health facilities as
4 provided by section 323F-5.5;

5 (30) The department of commerce and consumer affairs on:

6 (A) An applicant for a mortgage loan originator
7 license; and

8 (B) Each control person, executive officer, director,
9 general partner, and manager of an applicant for
10 a mortgage loan originator company license,
11 as provided by chapter 454F; and

12 (31) Any other organization, entity, or the State, its
13 branches, political subdivisions, or agencies as may
14 be authorized by state law."

15 SECTION 7. Chapter 346, part IV, subpart A, Hawaii Revised
16 Statutes, is repealed.

17 SECTION 8. Chapter 346, part XIV, Hawaii Revised Statutes,
18 is repealed.

19 SECTION 9. All employees who occupy civil service
20 positions and whose functions are transferred to the department
21 of health by this Act shall retain their civil service status
22 (permanent or temporary). Employees shall be transferred



1 without loss of salary, seniority, retention points, prior
2 service credit, any vacation and sick leave credits previously
3 earned, and other rights, benefits, and privileges, in
4 accordance with state personnel laws and this Act; provided that
5 the employees possess the minimum qualifications and public
6 employment requirements for the class, position, or both, to
7 which transferred or appointed, as applicable; provided further
8 that subsequent changes in status may be made pursuant to
9 applicable civil service and compensation laws.

10 Any employee who prior to this Act is exempt from civil
11 service and is transferred as a consequence of this Act may
12 continue to retain the employee's exempt status, but shall not
13 be appointed to a civil service position because of this Act.
14 An exempt employee who is transferred by this Act shall not
15 suffer any loss of prior service credit, any vacation and sick
16 leave credits previously earned, or other employee benefits or
17 privileges as a consequence of this Act; provided that the
18 employees possess legal and public employment requirements for
19 the position to which transferred or appointed, as applicable;
20 provided that subsequent changes in status may be made pursuant
21 to applicable employment and compensation laws. The director
22 may prescribe the duties and qualifications of such employees



1 and fix their salaries without regard to chapter 76, Hawaii
2 Revised Statutes.

3 SECTION 10. All appropriations, records, equipment,
4 machines, files, supplies, contracts, books, papers, documents,
5 maps, and other personal property heretofore made, used,
6 acquired, or held by the department of human services relating
7 to the functions transferred to the office of health care
8 assurance in the department of health shall be transferred with
9 the functions to which they relate.

10 SECTION 11. All unencumbered moneys deposited in any
11 revolving or special fund controlled by the department of human
12 services relating to the functions transferred to the department
13 of health shall lapse to the credit of the general fund.

14 SECTION 12. All rules, policies, procedures, guidelines,
15 and other material adopted or developed by the department of
16 human services to implement provisions of the Hawaii Revised
17 Statutes and that are reenacted or made applicable to the office
18 of health care assurance in the department of health by this Act
19 shall remain in full force and effect until amended or repealed
20 by the director of health pursuant to chapter 91, Hawaii Revised
21 Statutes. In the interim, every reference to the department of
22 human services or the director of human services in those rules,



1 policies, procedures, guidelines, and other material is amended
2 to refer to the department of health, office of health care
3 assurance, or the director of health, as appropriate.

4 SECTION 13. All deeds, leases, contracts, loans,
5 agreements, permits, or other documents executed or entered into
6 by or on behalf of the department of human services pursuant to
7 the provisions of the Hawaii Revised Statutes that are reenacted
8 or made applicable to the office of health care assurance in the
9 department of health by this Act, shall remain in full force and
10 effect. From July 1, 2014, every reference to the department of
11 human services or the director of human services therein shall
12 be construed as a reference to the department of health or the
13 director of health, as appropriate.

14 SECTION 14. If any part of this Act is found to be in
15 conflict with federal requirements that are a prescribed
16 condition for the allocation of federal funds to the State, the
17 conflicting part of this Act is inoperative solely to the extent
18 of the conflict and with respect to the agencies directly
19 affected, and this finding does not affect the operation of the
20 remainder of this Act in its application to the agencies
21 concerned. The rules in effect as a result of this Act shall



1 meet federal requirements that are a necessary condition to the
2 receipt of federal funds by the State.

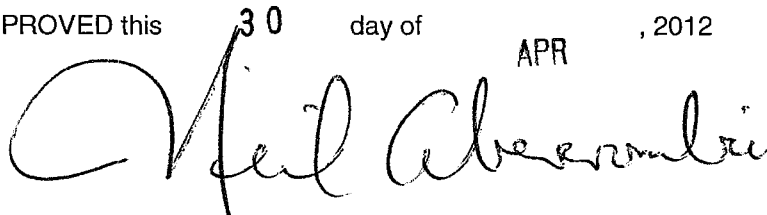
3 SECTION 15. The department of health and the department of
4 human services shall collaborate to implement the transfers and
5 transitions required under this Act with as little disruption as
6 is possible to the ongoing duties, responsibilities, and public
7 services each respective department currently provides.

8 SECTION 16. In codifying the new sections added by section
9 2 of this Act, the revisor of statutes shall substitute
10 appropriate section numbers for the letters used in designating
11 the new sections in this Act.

12 SECTION 17. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 18. This Act shall take effect on July 1, 2014.

APPROVED this 30 day of APR, 2012


GOVERNOR OF THE STATE OF HAWAII