

JAN 19 2012

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# 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 Bureau of  
4 the Census 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 Affordable Care Act in  
12 2010. The Affordable Care Act is intended to improve health  
13 care in America by, among other things, establishing a  
14 competitive health insurance market, ending discrimination  
15 against pre-existing health conditions, expanding medicaid  
16 coverage, enhancing the quality of health care, and reducing  
17 health care fraud and waste. The legislature finds that Hawaii  
18 should take similar actions to improve health care in the State.



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

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

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

22 (1) Home and community-based case management;



1 (2) Community care foster family homes; and

2 (3) Adult day care.

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

6 "PART . HOME AND COMMUNITY-BASED CASE MANAGEMENT

7 AGENCIES AND COMMUNITY CARE FOSTER FAMILY HOMES

8 §321-A Definitions. As used in this part:

9 "Assisted living facility" means an assisted living  
10 facility as defined in section 321-15.1.

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

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

18 "Community care foster family home" or "home" means a home  
19 that, for the purposes of this part:

20 (1) Is regulated by the department in accordance with  
21 rules that are equitable in relation to rules that  
22 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 that the:
- 13           (A) Home has been certified and in operation for not  
14           less than one year;
- 15           (B) Primary caregiver is a certified nurse aide, as  
16           defined in section 457A-1.5, who has completed a  
17           state-approved training program and other  
18           training as required by the department; and
- 19           (C) Substitute caregiver is a nurse aide, as defined  
20           in section 457A-1.5, who has completed a state-  
21           approved training program and other training as  
22           required by the department; and



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

3 "Department" means the department of health.

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

12 "Expanded adult residential care home" means any facility  
13 providing twenty-four-hour living accommodations, for a fee, to  
14 adults unrelated to the family, who require at least minimal  
15 assistance in the activities of daily living, personal care  
16 services, protection, and health care services, and who may need  
17 the professional health services provided in an intermediate or  
18 skilled nursing facility.

19 "Home and community-based case management agency" means any  
20 person, agency, or organization licensed by the department to  
21 provide, coordinate, and monitor comprehensive services to meet  
22 the needs of clients whom the agency serves in a community care



1 foster family home or any medicaid clients in an expanded adult  
2 residential care home, or an assisted living facility.

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

6 **§321-B Applicability.** Community care foster family homes  
7 shall be required to reserve at least one bed for medicaid  
8 patients.

9 **§321-C Home and community-based case management agency,**  
10 **authority over and evaluation of.** (a) Any person, agency, or  
11 organization engaged in providing, coordinating, or monitoring  
12 comprehensive services to clients in community care foster  
13 family homes, or medicaid clients in expanded adult residential  
14 care homes, and assisted living facilities, shall meet the  
15 standards of conditions, management, and competence set by the  
16 department and hold a license in good standing issued for this  
17 purpose by the department.

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

20 (1) Standards for the organization and administration of  
21 home and community-based case management agencies;



- 1           (2) Standards of conditions, management, and competence of
- 2                   home and community-based case management agencies;
- 3           (3) Procedures for obtaining and renewing a license from
- 4                   the department; and
- 5           (4) Minimum grievance procedures for clients of case
- 6                   management services.

7           (c) As a condition for obtaining a license, a person,

8 agency, or organization shall comply with rules adopted under

9 subsection (b)(1), (2), and (3), and satisfy the background

10 check requirements under section 321-E. The department may deny

11 a license if:

- 12           (1) An operator, employee, or new employee of the home and
- 13                   community-based case management agency has been
- 14                   convicted of a crime other than a minor traffic
- 15                   violation involving a fine of \$50 or less;
- 16           (2) The department finds that the criminal history record
- 17                   of an operator, employee, or new employee poses a risk
- 18                   to the health, safety, or well-being of adults
- 19                   receiving care in community care foster family homes,
- 20                   expanded adult residential care homes, or assisted
- 21                   living facilities;



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

4           (4) The holder of or an applicant for a home and  
5           community-based case management agency license, or one  
6           of its employees, has a certificate of approval to  
7           operate a community care foster family home, or a  
8           license from the department of health to operate an  
9           adult residential care home, expanded adult  
10          residential care home, or assisted living facility.

11          (d) Upon approval of any home and community-based case  
12 management agency, the department or its authorized agents shall  
13 issue a license, which shall continue in force for one year, or  
14 for two years if a home and community-based case management  
15 agency has been licensed for at least one year and is in good  
16 standing pursuant to standards adopted by the department, unless  
17 sooner revoked for cause. The department or its authorized  
18 agents shall renew the license only if, after an annual or  
19 biennial evaluation, the agency continues to meet the standards  
20 established by the department.





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

4 (1) Annually or biennially; or

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

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

11 (1) Upon suspension or revocation of a license, the home  
12 and community-based case management agency shall no  
13 longer be licensed and shall immediately notify the  
14 agency's clients and community care foster family  
15 homes, expanded adult residential care homes, and  
16 assisted living facilities in which the agency is  
17 providing services to clients;

18 (2) A home and community-based case management agency  
19 whose license has been suspended or revoked may appeal  
20 the suspension or revocation to the department through  
21 its established process, but the appeal shall not stay  
22 the suspension or revocation;



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

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

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

11          (h) The department shall adopt standard forms of contract  
12          that the home and community-based case management agency shall  
13          use with each of its clients, community care foster family  
14          homes, expanded adult residential care homes, and assisted  
15          living facilities.

16          (i) The department shall establish a review board  
17          consisting of three operators of community care foster family  
18          homes and three operators of expanded adult residential care  
19          homes. The review board shall monitor referrals and placements  
20          of clients by each home and community-based case management  
21          agency on a monthly basis. Each home and community-based case



1 management agency shall be required to provide monthly reports  
2 to the review board.

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

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

8 **§321-D Community care foster family home, authority over**  
9 **and evaluation of.** (a) Any person in any household who wants  
10 to take in, for a fee, any adult who is at the nursing facility  
11 level of care and who is unrelated to anyone in the household,  
12 for twenty-four-hour living accommodations, including personal  
13 care and homemaker services, may do so only after the household  
14 meets the required standards established for certification and  
15 obtains a certificate of approval from the department or its  
16 designee.

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

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

21 (2) Procedures for obtaining and renewing a certificate of  
22 approval from the department;



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



1 mandating that the substitute caregiver be a  
2 certified nurse aide; and

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

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

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

16 (2) The department or its designee finds that the criminal  
17 history record of an operator or other adult residing  
18 in the home, except for adults receiving care, poses a  
19 risk to the health, safety, or well-being of adults in  
20 care; or

21 (3) An operator or other adult residing in the community  
22 care foster family home, except for adults receiving



1 care, is a perpetrator of abuse as defined in section  
2 346-222.

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

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

17 (f) The department or its designee may suspend or revoke a  
18 certificate of approval if the department or its designee deems  
19 that a community care foster family home is unwilling or unable  
20 to comply with the rules adopted under subsection (b); provided  
21 that:



- 1 (1) The suspension or revocation shall be immediate when  
2 conditions exist that constitute an imminent danger to  
3 life, health, or safety of adults receiving care;
- 4 (2) A community care foster family home whose certificate  
5 of approval has been suspended or revoked shall  
6 immediately notify its clients and their case  
7 managers;
- 8 (3) A community care foster family home whose certificate  
9 of approval has been suspended or revoked may appeal  
10 to the department through its established process, but  
11 the appeal shall not stay the suspension or  
12 revocation;
- 13 (4) A suspended or revoked certificate of approval may be  
14 reinstated if the department or its designee deems  
15 that the home is willing and able to comply with the  
16 rules adopted under subsection (b); and
- 17 (5) A revoked certificate of approval shall be restored  
18 only after a new application for a certificate of  
19 approval is submitted to the department or its  
20 designee and approved.
- 21 (g) Any community care foster family home shall be subject  
22 to monitoring and evaluation by the department or its designee



1 for certification compliance and quality assurance on an annual  
2 or biennial basis.

3       **§321-E Background checks.** (a) The department shall  
4 develop standards to ensure the reputable and responsible  
5 character of operators, employees, volunteers, and other adults  
6 regularly present, except for adults in care, of the programs  
7 identified in this part.

8       (b) An applicant for the programs identified in this part  
9 shall:

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





1 other criminal history record information for  
2 verification.

3 (c) New employees of the programs identified in this part  
4 shall be fingerprinted within five working days of employment,  
5 for the purpose of complying with the criminal history record  
6 check requirement.

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

17 (e) The department or its designee shall make a name  
18 inquiry into the criminal history records and the adult  
19 protective service file for the first two years a home and  
20 community-based case management agency is licensed and annually  
21 or biennially thereafter depending on the licensure status of  
22 the home and community-based case management agency.



1 (f) An applicant for a certificate of approval as a  
2 community care foster family home and operators and other adults  
3 residing in a community care foster family home shall:

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

6 (2) Be subject to adult abuse perpetrator checks, if the  
7 individual has direct contact with a client. For the  
8 purposes of this section, "adult abuse perpetrator  
9 check" means a search to determine whether an  
10 individual is known to the department as a perpetrator  
11 of abuse as defined in section 346-222, by means of a  
12 search of the individual's name and birth date in the  
13 department's adult protective service file; and

14 (3) Provide consent to the department to conduct an adult  
15 abuse perpetrator check and to obtain other criminal  
16 history record information for verification.

17 (g) The department or its designee shall obtain criminal  
18 history record information through the Hawaii criminal justice  
19 data center on applicants for certificates of approval as  
20 community care foster family homes and operators and other  
21 adults residing in community care foster family homes, except  
22 for adults receiving care. The Hawaii criminal justice data



1 center may assess the applicants and operators and other adults  
2 a reasonable fee for each criminal history record check  
3 conducted. The information obtained shall be used exclusively  
4 for the stated purpose for which it was obtained and shall be  
5 subject to federal laws and regulations as may be now or  
6 hereafter adopted.

7 (h) The department or its designee shall make a name  
8 inquiry into the criminal history records and the adult  
9 protective service file for the first two years a community care  
10 foster family home is certified and annually or biennially  
11 thereafter depending on the certification status of the  
12 community care foster family home.

13 **§321-F Penalty.** Any person violating this part or any  
14 rule made pursuant to this part shall be fined not more than  
15 \$500."

16 SECTION 3. Section 346-10, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) The department and its agents shall keep records that  
19 may be necessary or proper in accordance with this chapter. All  
20 applications and records concerning any applicant or recipient  
21 shall be confidential. The use or disclosure of information  
22 concerning applicants and recipients shall be limited to:



- 1           (1) Persons duly authorized by the State or the United  
2           States in connection with their official duties, when  
3           the official duties are directly connected with the  
4           administration of any form of public assistance,  
5           medical assistance, food stamps, or social services;
- 6           (2) Purposes directly connected with any investigation,  
7           prosecution, or criminal or civil proceeding conducted  
8           in connection with the administration of any form of  
9           public assistance, food stamps, medical assistance, or  
10          social services, including disclosure by the  
11          department, of information and documents to police  
12          departments, prosecutors' offices, the attorney  
13          general's office, or any other state, county, or  
14          federal agency engaged in the detection,  
15          investigation, or prosecution of violations of  
16          applicable state, county, and federal laws or  
17          regulations regarding any aspect of theft, fraud,  
18          deception, or overpayment in connection with any  
19          aspect of public assistance, food stamps, medical  
20          assistance, or social services; provided that  
21          disclosure by recipient agencies and personnel shall  
22          be permitted under this section to the extent



1 reasonably necessary to carry out the functions for  
2 which the information was provided;

3 (3) Disclosure to the extent necessary to provide services  
4 for applicants and recipients, to determine  
5 eligibility, or to determine the amount of public  
6 assistance, including verification of information  
7 provided by the recipient of public assistance,  
8 medical assistance, or food stamps, or to determine  
9 the type, kind, frequency, and amount of social  
10 services, including health and mental health related  
11 services needed;

12 (4) Disclosure to banks, financial institutions, or any  
13 other payor of a public assistance warrant or check of  
14 any information indicating that a public assistance  
15 warrant or check honored by the bank, institution, or  
16 payor has been forged or otherwise wrongfully  
17 presented for payment;

18 (5) Federal agencies responsible for the administration of  
19 federally assisted programs, that provide assistance  
20 in cash or in kind for services directly to  
21 individuals on the basis of need; and certification of  
22 receipt of assistance to needy families with minor



1 dependents to an employer for purposes of claiming tax  
2 credit under Public Law 94-12, the Tax Reduction Act  
3 of 1975, shall be permitted;

4 (6) Employees acting within the scope and course of their  
5 employment of recognized social welfare organizations  
6 as may be approved by the department;

7 ~~[(7) Purposes directly connected with any investigation,~~  
8 ~~prosecution, or criminal proceeding conducted in~~  
9 ~~connection with the licensure or operation of an adult~~  
10 ~~day care center, including disclosure by the~~  
11 ~~department, of information and documents to police~~  
12 ~~departments, prosecutors' offices, the attorney~~  
13 ~~general's office, or any other state, county, or~~  
14 ~~federal agency engaged in the detection,~~  
15 ~~investigation, or prosecution of violations of~~  
16 ~~applicable state, county, and federal laws or~~  
17 ~~regulations;~~

18 ~~+(8)]~~ (7) Disclosure to the child support enforcement  
19 agency for obtaining or enforcing a child support  
20 order under chapter 576D;

21 ~~[(9)]~~ (8) Purposes directly connected to and necessary for  
22 the career planning, job training, education, job



1 placement, or employment of participants in the  
2 workfare program under part IX;

3 ~~[(10)]~~ (9) Disclosure of a recipient's residence and  
4 business address to law enforcement officers who  
5 request information if the information is needed for  
6 an official administrative, civil, or criminal law  
7 enforcement purpose to identify a recipient as a  
8 fugitive felon or parole violator, and in cases where  
9 the information is needed for an official purpose and  
10 where the department has informed the recipient of the  
11 circumstances in which the recipient's address may be  
12 released under section 92F-19(a)(1), (3), or (4); and

13 ~~[(11)]~~ (10) Disclosure of reports and records relating to  
14 child abuse or neglect to the extent allowed by rules  
15 adopted under section 350-1.4."

16 SECTION 4. Section 346-53, Hawaii Revised Statutes, is  
17 amended by amending subsection (c) to read as follows:

18 "(c) The director, pursuant to chapter 91, shall determine  
19 the rate of payment for domiciliary care, including care  
20 provided in licensed developmental disabilities domiciliary  
21 homes, community care foster family homes, and certified adult  
22 foster homes, to be provided to recipients who are eligible for



1 Federal Supplementary Security Income or public assistance, or  
2 both. The director shall provide for level of care payment as  
3 follows:

4 (1) Beginning on July 1, 2008, for adult residential care  
5 homes classified as facility type I, licensed  
6 developmental disabilities domiciliary homes as  
7 defined under section 321-15.9, community care foster  
8 family homes as defined under section [~~346-331.7~~] 321-  
9 A, and certified adult foster homes as defined under  
10 section 321-11.2, the state supplemental payment shall  
11 not exceed \$651.90; and

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

15 If the operator does not provide the quality of care  
16 consistent with the needs of the individual to the satisfaction  
17 of the department, the department may remove the recipient to  
18 another facility.

19 The department shall handle abusive practices under this  
20 section in accordance with chapter 91.

21 Nothing in this subsection shall allow the director to  
22 remove a recipient from an adult residential care home or other





1 similar institution if the recipient does not desire to be  
2 removed and the operator is agreeable to the recipient  
3 remaining, except where the recipient requires a higher level of  
4 care than provided or where the recipient no longer requires any  
5 domiciliary care."

6 SECTION 5. Section 346-97, Hawaii Revised Statutes, is  
7 amended as follows:

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

9 "(b) The department shall adopt rules pursuant to chapter  
10 91 establishing standards regarding the reputable and  
11 responsible character of service providers who have direct  
12 contact with individuals receiving services under this part,  
13 including[+]

14 ~~(1) Licensed adult day care center operators, employees,~~  
15 ~~new employees, subcontracted service providers and~~  
16 ~~their employees, and adult volunteers;~~

17 ~~(2) Purchase of service contracted and subcontracted~~  
18 ~~service providers and their employees serving clients~~  
19 ~~of the adult and community care services branch;~~

20 ~~(3) Foster] the foster grandparent program, retired and~~  
21 ~~senior volunteer program, senior companion program,~~  
22 ~~and respite companion program participants[- and~~



1       ~~(4) Contracted and subcontracted service providers and~~  
2       ~~their employees and new employees who provide home and~~  
3       ~~community based services under section 1915(e) of the~~  
4       ~~Social Security Act (42 U.S.C. §1396n(c)), or under~~  
5       ~~any other applicable section or sections of the Social~~  
6       ~~Security Act for the purposes of providing home and~~  
7       ~~community based services]."~~

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

9       "(e) The department may take appropriate action if it  
10      finds that the criminal history of the individual identified  
11      under subsection [†] (b) [†] may pose a risk to the health,  
12      welfare, and safety of service recipients. Such action may  
13      include [†-

14      ~~(1) Denying a certificate of approval to operate an adult~~  
15      ~~day care center; or~~

16      ~~(2) Refusing] refusing to use an individual as a service~~  
17      ~~provider."~~

18      SECTION 6. Section 346D-4.5, Hawaii Revised Statutes, is  
19      amended by amending subsection (a) to read as follows:

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



- 1 (1) Adult residential care home type I and type II
- 2 facilities;
- 3 (2) Licensed developmental disabilities domiciliary homes
- 4 as defined in section 321-15.9;
- 5 (3) Community care foster family homes as defined in
- 6 section [~~346-331;~~] 321-A;
- 7 (4) Certified adult foster homes as defined in section
- 8 321-11.2;
- 9 (5) Domiciliary care as defined in section 346-1;
- 10 (6) A nursing facility as defined in section 346E-1; or
- 11 (7) A community-based residence as part of the residential
- 12 alternatives community care program."

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

- 15 "(b) Criminal history record checks may be conducted by:
- 16 (1) The department of health on operators of adult foster
  - 17 homes or developmental disabilities domiciliary homes
  - 18 and their employees, as provided by section 333F-22;
  - 19 (2) The department of health on prospective employees,
  - 20 persons seeking to serve as providers, or
  - 21 subcontractors in positions that place them in direct
  - 22 contact with clients when providing non-witnessed



- 1 direct mental health services as provided by section  
2 321-171.5;
- 3 (3) The department of health on all applicants for  
4 licensure for, operators for, prospective employees,  
5 and volunteers at one or more of the following:  
6 skilled nursing facility, intermediate care facility,  
7 adult residential care home, expanded adult  
8 residential care home, assisted living facility, home  
9 health agency, hospice, adult day health center,  
10 special treatment facility, therapeutic living  
11 program, intermediate care facility for individuals  
12 with intellectual disabilities, hospital, rural health  
13 center and rehabilitation agency, and, in the case of  
14 any of the above facilities operating in a private  
15 residence, on any adult living in the facility other  
16 than the client as provided by section 321-15.2;
- 17 (4) The department of education on employees, prospective  
18 employees, and teacher trainees in any public school  
19 in positions that necessitate close proximity to  
20 children as provided by section 302A-601.5;
- 21 (5) The counties on employees and prospective employees  
22 who may be in positions that place them in close



- 1 proximity to children in recreation or child care  
2 programs and services;
- 3 (6) The county liquor commissions on applicants for liquor  
4 licenses as provided by section 281-53.5;
- 5 (7) The department of human services on operators and  
6 employees of child caring institutions, child placing  
7 organizations, and foster boarding homes as provided  
8 by section 346-17;
- 9 (8) The department of human services on prospective  
10 adoptive parents as established under section 346-  
11 19.7;
- 12 (9) The department of human services on applicants to  
13 operate child care facilities, prospective employees  
14 of the applicant, and new employees of the provider  
15 after registration or licensure as provided by section  
16 346-154;
- 17 (10) The department of human services on persons exempt  
18 pursuant to section 346-152 to be eligible to provide  
19 child care and receive child care subsidies as  
20 provided by section 346-152.5;
- 21 (11) The department of [~~human services~~] health on operators  
22 and employees of home and community-based case



1 management agencies and operators and other adults,  
2 except for adults in care, residing in foster family  
3 homes as provided by section [~~346-335.7~~] 321-E;

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

7 (13) The department of human services on employees,  
8 prospective employees, and volunteers of contracted  
9 providers and subcontractors in positions that place  
10 them in close proximity to youth when providing  
11 services on behalf of the office or the Hawaii youth  
12 correctional facility as provided by section 352D-4.3;

13 (14) The judiciary on employees and applicants at detention  
14 and shelter facilities as provided by section 571-34;

15 (15) The department of public safety on employees and  
16 prospective employees who are directly involved with  
17 the treatment and care of persons committed to a  
18 correctional facility or who possess police powers  
19 including the power of arrest as provided by section  
20 353C-5;



- 1       (16) The department of commerce and consumer affairs on  
2            applicants for private detective or private guard  
3            licensure as provided by section 463-9;
- 4       (17) Private schools and designated organizations on  
5            employees and prospective employees who may be in  
6            positions that necessitate close proximity to  
7            children; provided that private schools and designated  
8            organizations receive only indications of the states  
9            from which the national criminal history record  
10           information was provided pursuant to section 302C-1;
- 11       (18) The public library system on employees and prospective  
12            employees whose positions place them in close  
13            proximity to children as provided by section 302A-  
14            601.5;
- 15       (19) The State or any of its branches, political  
16            subdivisions, or agencies on applicants and employees  
17            holding a position that has the same type of contact  
18            with children, vulnerable adults, or persons committed  
19            to a correctional facility as other public employees  
20            who hold positions that are authorized by law to  
21            require criminal history record checks as a condition  
22            of employment as provided by section 78-2.7;



- 1           (20) The department of [~~human services~~] health on licensed  
2           adult day care center operators, employees, new  
3           employees, subcontracted service providers and their  
4           employees, and adult volunteers as provided by section  
5           [~~346-97,~~] 321-171.5;
- 6           (21) The department of [~~human services~~] health on purchase  
7           of service contracted and subcontracted service  
8           providers and their employees serving clients of the  
9           adult and community care services branch, as provided  
10          by section [~~346-97,~~] 321-171.5;
- 11          (22) The department of human services on foster grandparent  
12          program, retired and senior volunteer program, senior  
13          companion program, and respite companion program  
14          participants as provided by section 346-97;
- 15          (23) The department of [~~human services~~] health on  
16          contracted and subcontracted service providers and  
17          their current and prospective employees that provide  
18          home and community-based services under Section  
19          1915(c) of the Social Security Act, Title 42 United  
20          States Code Section 1396n(c), or under any other  
21          applicable section or sections of the Social Security  
22          Act for the purposes of providing home and community-





1 based services, as provided by section [~~346-97;~~] 321-  
2 171.5;

3 (24) The department of commerce and consumer affairs on  
4 proposed directors and executive officers of a bank,  
5 savings bank, savings and loan association, trust  
6 company, and depository financial services loan  
7 company as provided by section 412:3-201;

8 (25) The department of commerce and consumer affairs on  
9 proposed directors and executive officers of a  
10 nondepository financial services loan company as  
11 provided by section 412:3-301;

12 (26) The department of commerce and consumer affairs on the  
13 original chartering applicants and proposed executive  
14 officers of a credit union as provided by section  
15 412:10-103;

16 (27) The department of commerce and consumer affairs on:  
17 (A) Each principal of every non-corporate applicant  
18 for a money transmitter license; and  
19 (B) The executive officers, key shareholders, and  
20 managers in charge of a money transmitter's  
21 activities of every corporate applicant for a  
22 money transmitter license,



- 1 as provided by section 489D-9;
- 2 (28) The department of commerce and consumer affairs on
- 3 applicants for licensure and persons licensed under
- 4 title 24;
- 5 (29) The Hawaii health systems corporation on:
- 6 (A) Employees;
- 7 (B) Applicants seeking employment;
- 8 (C) Current or prospective members of the corporation
- 9 board or regional system board; or
- 10 (D) Current or prospective volunteers, providers, or
- 11 contractors,
- 12 in any of the corporation's health facilities as
- 13 provided by section 323F-5.5;
- 14 (30) The department of commerce and consumer affairs on:
- 15 (A) An applicant for a mortgage loan originator
- 16 license; and
- 17 (B) Each control person, executive officer, director,
- 18 general partner, and manager of an applicant for
- 19 a mortgage loan originator company license,
- 20 as provided by chapter 454F; and



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

4           SECTION 8. Chapter 346, part XIV, Hawaii Revised Statutes,  
5 is repealed.

6           SECTION 9. All officers and employees whose functions are  
7 transferred by this Act shall be transferred with their  
8 functions and shall continue to perform their regular duties  
9 upon their transfer, subject to the state personnel laws and  
10 this Act.

11           No officer or employee of the State having tenure shall  
12 suffer any loss of salary, seniority, prior service credit,  
13 vacation, sick leave, or other employee benefit or privilege as  
14 a consequence of this Act, and such officer or employee may be  
15 transferred or appointed to a civil service position without the  
16 necessity of examination; provided that the officer or employee  
17 possesses the minimum qualifications for the position to which  
18 transferred or appointed; and provided that subsequent changes  
19 in status may be made pursuant to applicable civil service and  
20 compensation laws.

21           An officer or employee of the State who does not have  
22 tenure and who may be transferred or appointed to a civil



1 service position as a consequence of this Act shall become a  
2 civil service employee without the loss of salary, seniority,  
3 prior service credit, vacation, sick leave, or other employee  
4 benefits or privileges and without the necessity of examination;  
5 provided that such officer or employee possesses the minimum  
6 qualifications for the position to which transferred or  
7 appointed.

8         If an office or position held by an officer or employee  
9 having tenure is abolished, the officer or employee shall not  
10 thereby be separated from public employment, but shall remain in  
11 the employment of the State with the same pay and classification  
12 and shall be transferred to some other office or position for  
13 which the officer or employee is eligible under the personnel  
14 laws of the State as determined by the head of the department or  
15 the governor.

16         SECTION 10. All appropriations, records, equipment,  
17 machines, files, supplies, contracts, books, papers, documents,  
18 maps, and other personal property heretofore made, used,  
19 acquired, or held by the department of human services relating  
20 to the functions transferred to the office of health care  
21 assurance in the department of health shall be transferred with  
22 the functions to which they relate.



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

5 SECTION 12. All rules, policies, procedures, guidelines,  
6 and other material adopted or developed by the department of  
7 human services to implement provisions of the Hawaii Revised  
8 Statutes and which are reenacted or made applicable to the  
9 office of health care assurance in the department of health by  
10 this Act shall remain in full force and effect until amended or  
11 repealed by the director of health pursuant to chapter 91,  
12 Hawaii Revised Statutes. In the interim, every reference to the  
13 department of human services or the director of human services  
14 in those rules, policies, procedures, guidelines, and other  
15 material is amended to refer to the department of health, office  
16 of health care assurance, or the director of health, as  
17 appropriate.

18 SECTION 13. All deeds, leases, contracts, loans,  
19 agreements, permits, or other documents executed or entered into  
20 by or on behalf of the department of human services pursuant to  
21 the provisions of the Hawaii Revised Statutes that are reenacted  
22 or made applicable to the office of health care assurance in the



1 department of health by this Act, shall remain in full force and  
2 effect. From July 1, 2014, every reference to the department of  
3 human services or the director of human services therein shall  
4 be construed as a reference to the department of health or the  
5 director of health, as appropriate.

6 SECTION 14. If any part of this Act is found to be in  
7 conflict with federal requirements that are a prescribed  
8 condition for the allocation of federal funds to the State, the  
9 conflicting part of this Act is inoperative solely to the extent  
10 of the conflict and with respect to the agencies directly  
11 affected, and this finding does not affect the operation of the  
12 remainder of this Act in its application to the agencies  
13 concerned. The rules in effect as a result of this Act shall  
14 meet federal requirements that are a necessary condition to the  
15 receipt of federal funds by the State.

16 SECTION 15. The department of health and the department of  
17 human services shall collaborate to implement the transfers and  
18 transitions required under this Act with as little disruption as  
19 is possible to the ongoing duties, responsibilities, and public  
20 services each respective department currently provides.

21 SECTION 16. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



# S.B. NO. 2126

1 SECTION 17. This Act shall take effect on July 1, 2014;  
2 provided that section 15 shall take effect upon approval.  
3

INTRODUCED BY: Shianne Chun Oalland

Josh Brown

Joe Chang

Donna S. DeB...

Will Ezer

Carol Fukushima

Andrew Stan

Mike Gebba

[Signature]



# S.B. NO. 2126

**Report Title:**

Health Care Services; Consolidation; Department of Human Services; Department of Health

**Description:**

Consolidates the authority, duties, responsibilities, and jurisdiction of the department of human services and the department of health, as they relate to various health care services; transfers the programs of the department of human services relating to home and community-based case management, community care foster family homes, and adult day care to the department of health on July 1, 2014.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

