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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 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 as a perpetrator  
15 of abuse as defined in section 346-222, by means of a  
16 search of the individual's name and birth date in the  
17 department's adult protective service file; and

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

21 (g) The department or its designee shall obtain criminal  
22 history record information through the Hawaii criminal justice



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

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

17 **§321-E Penalty.** Any person violating this part or any  
18 rule adopted pursuant to this part shall be fined not more than  
19 \$500.

20 **PART . SERVICES TO ADULTS**

21 **§321-F Purpose.** The purpose of this part is to establish  
22 the nature and type of services to elders, disabled, and aged



1 who are qualified to receive social services according to  
2 standards and conditions prescribed by the department of health.

3 **§321-G Definitions.** As used in this part:

4 "Day care center" includes a place designated for group  
5 care for four or more adults or a family home providing care for  
6 two or three adults.

7 "Day care center for elder disabled and aged persons" means  
8 a place maintained and operated by an individual, organization,  
9 or agency for the purpose of providing supportive and protective  
10 care to a disabled or aged person with or without charging a fee  
11 during the attendant working day.

12 "Department" means the department of health.

13 "Disabled and aged persons" means any person who lives with  
14 a spouse, relative, or friend but who requires temporary  
15 supervision and care during the absence of those persons from  
16 the home or residence.

17 "Elder" means any person as may otherwise be defined by the  
18 department, who desires and needs counseling, guidance, and  
19 assistance to modify or resolve the social, economic,  
20 educational, recreational, physical, or mental problem that  
21 impedes the person's personal functioning and well-being.



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

8 **§321-H Day care centers for disabled and aged persons.**

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

16 **§321-I Purchase of service.** The department may negotiate  
17 the purchase of day care services for elder disabled and aged  
18 recipients, including other social services from individuals or  
19 other organizations, institutions, or agencies. Other social  
20 services shall be necessary and essential to maximize the  
21 functioning and well-being of the recipient. Purchase of day  
22 care center services shall include services that enhance the



1 social functioning of each participant, promote and develop  
2 activities in daily living and personal independence by  
3 therapeutic arts and crafts, community excursions, hobby  
4 cultivation, group dynamics, and provisions for counseling to  
5 the participants and their families.

6 **§321-J Penalty.** Any individual, organization, or agency  
7 operating a day care center for disabled or aged persons without  
8 a license from the department shall be cited and fined an amount  
9 deemed to be appropriate by the court, but not to exceed a  
10 maximum of \$5,000.

11 **§321-K Criminal history record checks.** (a) For the  
12 purposes of this section:

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

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

19 "Department" means the department of health.

20 "Name inquiry" means a criminal history record check  
21 conducted using the name and other identifying information of  
22 the individual in lieu of a fingerprint check.



1 "Relevant crime" means:

2 (1) Any offense described in 42 United States Code section  
3 1320a-7 (section 1128(a) of the Social Security Act);

4 or

5 (2) A crime of such a serious nature or circumstance that  
6 the department finds its perpetrator to pose a risk to  
7 the health, safety, or well-being of a patient or  
8 resident. This shall include but not be limited to  
9 murder; manslaughter; assault; sex offenses; domestic  
10 violence; and the use, sale, manufacture, or  
11 distribution of dangerous drugs or controlled  
12 substances.

13 (b) The department shall adopt rules pursuant to chapter  
14 91 to establish standards regarding the reputable and  
15 responsible character of service providers who have direct  
16 contact with individuals receiving services under this part,  
17 including licensed adult day care center operators, employees,  
18 subcontracted service providers and their employees, and adult  
19 volunteers.

20 (c) Individuals identified under subsection (b) shall:

21 (1) Meet the standards regarding the reputable and  
22 responsible character of service providers;



- 1           (2) Be subject to criminal history record checks in
- 2                   accordance with section 846-2.7;
- 3           (3) Sign a waiver stating that the department shall not be
- 4                   liable to the individual; and
- 5           (4) Provide consent to the department or its designee to
- 6                   obtain criminal history record information for
- 7                   verification.

8 New employees and adult volunteers shall consent to be  
9 fingerprinted, shall supply the necessary information to enable  
10 the criminal history record check prior to the start of  
11 employment or volunteering, and shall sign a waiver stating that  
12 the department shall not be liable to the employee or volunteer.

13           (d) The department or its designee shall obtain criminal  
14 history record information through the Hawaii criminal justice  
15 data center on individuals identified in subsection (b) for the  
16 first two years that an individual identified in subsection (b)  
17 is required to have such checks, and shall conduct a criminal  
18 history record name inquiry into the state criminal history  
19 records annually or biennially thereafter.

20           (e) The department may take appropriate action if it finds  
21 that the criminal history of the individual identified under  
22 subsection (b) may pose a risk to the health, welfare, and



1 safety of service recipients. Such action may include denying a  
2 certificate of approval to operate an adult day care center.

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

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

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

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





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

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

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

17 (1) Beginning on July 1, 2008, for adult residential care  
18 homes classified as facility type I, licensed  
19 developmental disabilities domiciliary homes as  
20 defined under section 321-15.9, community care foster  
21 family homes as defined under section [~~346-331.7~~]  
22 321-A, and certified adult foster homes as defined



1 under section 321-11.2, the state supplemental payment  
2 shall not exceed \$651.90; and

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

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

10 The department shall handle abusive practices under this  
11 section in accordance with chapter 91.

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

19 (d) On July 1, 2006, and thereafter, as the department  
20 determines a need, the department shall authorize a payment, as  
21 allowed by federal law, for resident clients receiving  
22 supplemental security income in adult residential care home type



1 I and type II facilities, licensed developmental disabilities  
 2 domiciliary homes as defined under section 321-15.9, community  
 3 care foster family homes as defined under section [~~346-331,~~  
 4 321-A, and certified adult foster homes as defined under section  
 5 321-11.2, when state funds appropriated for the purpose of  
 6 providing payments under subsection (c) for a specific fiscal  
 7 year are not expended fully within a period that meets the  
 8 requirements of the department's maintenance of effort agreement  
 9 with the Social Security Administration.

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

12 The department shall determine the rate of payment to  
 13 ensure compliance with its maintenance of effort agreement with  
 14 the Social Security Administration."

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

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

18 "(b) The department shall adopt rules pursuant to chapter  
 19 91 establishing standards regarding the reputable and  
 20 responsible character of service providers who have direct  
 21 contact with individuals receiving services under this part,  
 22 including:



1       ~~[(1) Licensed adult day care center operators, employees,~~  
2       ~~new employees, subcontracted service providers and~~  
3       ~~their employees, and adult volunteers;~~

4       ~~+(2)]~~ (1) Purchase of service contracted and subcontracted  
5       service providers and their employees serving clients  
6       of the adult and community care services branch;

7       ~~+(3) Foster]~~ (2) The foster grandparent program, ~~[retired~~  
8       ~~and senior volunteer program,]~~ senior companion  
9       program, and respite companion program participants[;  
10       and

11       ~~+(4)]~~ (3) Contracted and subcontracted service providers  
12       and their employees and new employees who provide home  
13       and community-based services under section 1915(c) of  
14       the Social Security Act (42 U.S.C. §1396n(c)), or  
15       under any other applicable section or sections of the  
16       Social Security Act for the purposes of providing home  
17       and community-based services."

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

19       "(e) The department may take appropriate action if it  
20       finds that the criminal history of the individual identified  
21       under subsection ~~+(b) +]~~ may pose a risk to the health,



1 welfare, and safety of service recipients. [Such] An action may  
2 include[+]

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

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

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

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

11 (1) Adult residential care home type I and type II  
12 facilities;

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

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

17 (4) Certified adult foster homes as defined in section  
18 321-11.2;

19 (5) Domiciliary care as defined in section 346-1;

20 (6) A nursing facility as defined in section 346E-1; or

21 (7) A community-based residence as part of the residential  
22 alternatives community care program."



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

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

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

7 (2) The department of health on prospective employees,  
8 persons seeking to serve as providers, or  
9 subcontractors in positions that place them in direct  
10 contact with clients when providing non-witnessed  
11 direct mental health services as provided by section  
12 321-171.5;

13 (3) The department of health on all applicants for  
14 licensure for, operators for, prospective employees,  
15 and volunteers at one or more of the following:  
16 skilled nursing facility, intermediate care facility,  
17 adult residential care home, expanded adult  
18 residential care home, assisted living facility, home  
19 health agency, hospice, adult day health center,  
20 special treatment facility, therapeutic living  
21 program, intermediate care facility for individuals  
22 with intellectual disabilities, hospital, rural health



1 center and rehabilitation agency, and, in the case of  
2 any of the above facilities operating in a private  
3 residence, on any adult living in the facility other  
4 than the client as provided by section 321-15.2;

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

9 (5) The counties on employees and prospective employees  
10 who may be in positions that place them in close  
11 proximity to children in recreation or child care  
12 programs and services;

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

15 (7) The department of human services on operators and  
16 employees of child caring institutions, child placing  
17 organizations, and foster boarding homes as provided  
18 by section 346-17;

19 (8) The department of human services on prospective  
20 adoptive parents as established under section  
21 346-19.7;



- 1           (9) The department of human services on applicants to  
2           opérate child care facilities, prospective employees  
3           of the applicant, and new employees of the provider  
4           after registration or licensure as provided by section  
5           346-154;
- 6           (10) The department of human services on persons exempt  
7           pursuant to section 346-152 to be eligible to provide  
8           child care and receive child care subsidies as  
9           provided by section 346-152.5;
- 10          (11) The department of [~~human services~~] health on operators  
11          and employees of home and community-based case  
12          management agencies and operators and other adults,  
13          except for adults in care, residing in foster family  
14          homes as provided by section [~~346-335,~~] 321-D;
- 15          (12) The department of human services on staff members of  
16          the Hawaii youth correctional facility as provided by  
17          section 352-5.5;
- 18          (13) The department of human services on employees,  
19          prospective employees, and volunteers of contracted  
20          providers and subcontractors in positions that place  
21          them in close proximity to youth when providing





- 1 services on behalf of the office or the Hawaii youth  
2 correctional facility as provided by section 352D-4.3;
- 3 (14) The judiciary on employees and applicants at detention  
4 and shelter facilities as provided by section 571-34;
- 5 (15) The department of public safety on employees and  
6 prospective employees who are directly involved with  
7 the treatment and care of persons committed to a  
8 correctional facility or who possess police powers  
9 including the power of arrest as provided by section  
10 353C-5;
- 11 (16) The department of commerce and consumer affairs on  
12 applicants for private detective or private guard  
13 licensure as provided by section 463-9;
- 14 (17) Private schools and designated organizations on  
15 employees and prospective employees who may be in  
16 positions that necessitate close proximity to  
17 children; provided that private schools and designated  
18 organizations receive only indications of the states  
19 from which the national criminal history record  
20 information was provided pursuant to section 302C-1;
- 21 (18) The public library system on employees and prospective  
22 employees whose positions place them in close



1 proximity to children as provided by section

2 302A-601.5;

3 (19) The State or any of its branches, political  
4 subdivisions, or agencies on applicants and employees  
5 holding a position that has the same type of contact  
6 with children, vulnerable adults, or persons committed  
7 to a correctional facility as other public employees  
8 who hold positions that are authorized by law to  
9 require criminal history record checks as a condition  
10 of employment as provided by section 78-2.7;

11 (20) The department of [~~human services~~] health on licensed  
12 adult day care center operators, employees, new  
13 employees, subcontracted service providers and their  
14 employees, and adult volunteers as provided by section  
15 [~~346-97;~~] 321-K;

16 (21) The department of human services on purchase of  
17 service contracted and subcontracted service providers  
18 and their employees serving clients of the adult and  
19 community care services branch, as provided by section  
20 346-97;

21 (22) The department of human services on foster grandparent  
22 program, [~~retired and senior volunteer program,~~]



- 1 senior companion program, and respite companion  
2 program participants as provided by section 346-97;
- 3 (23) The department of human services on contracted and  
4 subcontracted service providers and their current and  
5 prospective employees that provide home and community-  
6 based services under Section 1915(c) of the Social  
7 Security Act, Title 42 United States Code Section  
8 1396n(c), or under any other applicable section or  
9 sections of the Social Security Act for the purposes  
10 of providing home and community-based services, as  
11 provided by section 346-97;
- 12 (24) The department of commerce and consumer affairs on  
13 proposed directors and executive officers of a bank,  
14 savings bank, savings and loan association, trust  
15 company, and depository financial services loan  
16 company as provided by section 412:3-201;
- 17 (25) The department of commerce and consumer affairs on  
18 proposed directors and executive officers of a  
19 nondepository financial services loan company as  
20 provided by section 412:3-301;
- 21 (26) The department of commerce and consumer affairs on the  
22 original chartering applicants and proposed executive



1 officers of a credit union as provided by section  
2 412:10-103;

3 (27) The department of commerce and consumer affairs on:

4 (A) Each principal of every non-corporate applicant  
5 for a money transmitter license; and

6 (B) The executive officers, key shareholders, and  
7 managers in charge of a money transmitter's  
8 activities of every corporate applicant for a  
9 money transmitter license,

10 as provided by section 489D-9;

11 (28) The department of commerce and consumer affairs on  
12 applicants for licensure and persons licensed under  
13 title 24;

14 (29) The Hawaii health systems corporation on:

15 (A) Employees;

16 (B) Applicants seeking employment;

17 (C) Current or prospective members of the corporation  
18 board or regional system board; or

19 (D) Current or prospective volunteers, providers, or  
20 contractors,

21 in any of the corporation's health facilities as

22 provided by section 323F-5.5;



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

2 (A) An applicant for a mortgage loan originator  
3 license; and

4 (B) Each control person, executive officer, director,  
5 general partner, and manager of an applicant for  
6 a mortgage loan originator company license,  
7 as provided by chapter 454F; and

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

11 SECTION 7. Chapter 346, part IV, subpart A, Hawaii Revised  
12 Statutes, is repealed.

13 SECTION 8. Chapter 346, part XIV, Hawaii Revised Statutes,  
14 is repealed.

15 SECTION 9. All employees who occupy civil service  
16 positions and whose functions are transferred to the department  
17 of health by this Act shall retain their civil service status  
18 (permanent or temporary). Employees shall be transferred  
19 without loss of salary, seniority, retention points, prior  
20 service credit, any vacation and sick leave credits previously  
21 earned, and other rights, benefits, and privileges, in  
22 accordance with state personnel laws and this Act, provided that



1 the employees possess the minimum qualifications and public  
2 employment requirements for the class, position, or both, to  
3 which transferred or appointed, as applicable, provided further  
4 that subsequent changes in status may be made pursuant to  
5 applicable civil service and compensation laws.

6 Any employee who prior to this Act is exempt from civil  
7 service and is transferred as a consequence of this Act may  
8 continue to retain the employee's exempt status, but shall not  
9 be appointed to a civil service position because of this Act.  
10 An exempt employee who is transferred by this Act shall not  
11 suffer any loss of prior service credit, any vacation and sick  
12 leave credits previously earned, or other employee benefits or  
13 privileges as a consequence of this Act, provided that the  
14 employees possess legal and public employment requirements for  
15 the position to which transferred or appointed, as applicable;  
16 provided that subsequent changes in status may be made pursuant  
17 to applicable employment and compensation laws. The director  
18 may prescribe the duties and qualifications of such employees  
19 and fix their salaries without regard to chapter 76, Hawaii  
20 Revised Statutes.

21 SECTION 10. All appropriations, records, equipment,  
22 machines, files, supplies, contracts, books, papers, documents,



1 maps, and other personal property heretofore made, used,  
2 acquired, or held by the department of human services relating  
3 to the functions transferred to the office of health care  
4 assurance in the department of health shall be transferred with  
5 the functions to which they relate.

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

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



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

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

21 SECTION 15. The department of health and the department of  
22 human services shall collaborate to implement the transfers and





1 transitions required under this Act with as little disruption as  
2 is possible to the ongoing duties, responsibilities, and public  
3 services each respective department currently provides.

4 SECTION 16. In codifying the new sections added by section  
5 2 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

8 SECTION 17. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 18. This Act shall take effect on July 1, 2050.



**Report Title:**

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

**Description:**

Consolidates the authority, duties, responsibilities, and jurisdiction of the DHS and DOH, as they relate to various health care services; transfers the programs of DHS relating to home and community-based case management, community care foster family homes, and adult day care to DOH on July 1, 2014. Effective July 1, 2050. (SB2126 HD1)

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

