
A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 PART I

2 SECTION 1. The legislature finds that there are currently
3 more than 238,000 Hawaii residents aged sixty and over. This
4 population constitutes 18.7 per cent of Hawaii's total
5 population. By 2030, people aged sixty and older are projected
6 to increase to more than 27.4 per cent. Hawaii's total
7 population is expected to grow by twenty-one per cent between
8 2000 and 2030. However, the number of adults sixty years and
9 older will increase by 93.8 per cent and those eighty-five years
10 and older will increase by 174.7 per cent during the same
11 period. The legislature further finds that there is a "silver
12 tsunami" coming, with even more individuals entering their
13 senior years and retirement.

14 The recession of 2007 removed the possibility of a
15 comfortable retirement for many of the State's elderly, and once
16 seniors are no longer able to work or are employable, there is
17 no safety net to keep retired Hawaii residents out of



1 homelessness. In the next ten years, the "silver tsunami" will
2 substantially affect the entire State and the healthcare system.
3 Because of the "silver tsunami," the legislature finds that
4 essential policies must be enacted to best address the care and
5 interest relating to Hawaii's elderly and disabled.

6 The purpose of this Act is to create and establish various
7 policies to adequately address the various issues concerning the
8 elderly and disabled and the community healthcare industry while
9 ensuring consumer protection for Hawaii's elderly and disabled.

10 PART II

11 SECTION 2. Section 321-15.6, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) All adult residential care homes shall be licensed to
14 ensure the health, safety, and welfare of the individuals placed
15 therein. The department shall conduct unannounced visits, other
16 than the inspection for relicensing, to every licensed adult
17 residential care home and expanded adult residential care home
18 and any other community care home or day care center licensed or
19 certified and under the purview of the department on an annual
20 basis and at such intervals as determined by the department to
21 ensure the health, safety, and welfare of each resident.



1 Unannounced visits may be conducted during or outside regular
2 business hours. All inspections relating to follow-up visits,
3 visits to confirm correction of deficiencies, or visits to
4 investigate complaints or suspicion of abuse or neglect shall be
5 conducted unannounced during or outside regular business hours.
6 Annual inspections for relicensing may be conducted during
7 regular business hours or at intervals determined by the
8 department. Annual inspections for relicensing shall be
9 conducted with notice, unless otherwise determined by the
10 department."

11 PART III

12 SECTION 3. Section 321-15.62, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) All expanded adult residential care homes and any
15 community-based care home or day care center providing
16 healthcare to the elderly or disabled who are unrelated to the
17 caregiver family shall be licensed to ensure the health, safety,
18 and welfare of the individuals placed therein."

19 SECTION 4. Section 321-15.7, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§321-15.7 Penalty. Any person who intentionally operates
2 an adult residential care home, community-based foster family
3 home, adult foster home, adult day care center, or hospice home
4 without a license shall be guilty of a misdemeanor."

5 PART IV

6 SECTION 5. Section 321-1.8, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~§~~321-1.8 ~~§~~ Inspections; public notice. (a)
9 Beginning with inspections occurring on January 1, 2015, the
10 department of health shall post on its website electronic copies
11 of reports for all inspections it performs of the following
12 state-licensed care facilities:

- 13 (1) Adult day health centers;
14 (2) Adult day care centers;
15 (3) Community care foster family homes;
16 (4) Developmental disabilities domiciliary homes as
17 defined in section 321-15.9;
18 (5) Developmentally disabled adult foster homes;
19 (6) Long-term care facilities as defined in section
20 349-21(f); and



1 (7) Special treatment facilities as defined in section
2 334-1.

3 (b) Each inspection report shall be posted on the
4 department of health's website within five working days of the
5 conclusion of each inspection and shall include the following
6 information:

7 (1) The date of the inspection;

8 (2) A description of violations of relevant state laws or
9 rules, if applicable;

10 (3) Plans of correction and the status of corrective
11 actions in response to any violations, if applicable;

12 (4) A list and description of all corrective actions taken
13 by the facility, if applicable, to be submitted by the
14 facility and added to the report at a later time, as
15 determined by the department; and

16 (5) Other information regarding the quality and conditions
17 of the facility the department of health deems
18 appropriate.

19 (c) Each inspection report posted on the department of
20 health's website that reports a violation committed by a state-
21 licensed care facility as described in subsection (a) shall be



1 removed from the website after three years from the date the
2 report was posted.

3 (d) Beginning , in addition to the inspection
4 information required by subsection (a), the department of health
5 may maintain a forum on its website where all state-licensed
6 care facilities specified in subsection (a) may post vacancy
7 information to facilitate the placement of individuals therein."

8 SECTION 6. (a) No later than , the department of
9 health may convene a working group to discuss and provide
10 feedback on the implementation and maintenance of a forum on its
11 website where state-licensed care facilities may post vacancy
12 information to facilitate the placement and referrals of
13 individuals in the facilities within state-licensed care
14 facilities, as specified in section 321-1.8(d), Hawaii Revised
15 Statutes.

16 (b) The department of health shall submit a report to the
17 legislature no later than twenty days before the convening of
18 the regular session of 2017 of its findings and recommendations
19 relative to the implementation and maintenance of a forum on its
20 website, as specified in subsection (a). The report shall also



1 include feedback on the posting of vacancy information on the
2 website.

3 SECTION 7. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so much
5 thereof as may be necessary for fiscal year 2016-2017 for the
6 implementation and maintenance of a forum on the department of
7 health's website as required by this part.

8 The sum appropriated shall be expended by the department of
9 health for the purposes of this part.

10 PART V

11 SECTION 8. Chapter 321, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§321- License, relicense, certification, and
15 recertification fees. (a) The department shall charge and
16 collect fees for the licensure, relicensure, certification, and
17 recertification of the following facilities:

- 18 (1) Not more than \$ per year for adult residential
19 care homes;
- 20 (2) Not more than \$ per year for expanded adult
21 residential care homes;



- 1 (3) Not more than \$ _____ per year for developmental
- 2 disabilities domiciliary homes;
- 3 (4) Not more than \$ _____ per year for community care
- 4 foster family homes;
- 5 (5) Not more than \$ _____ per year for adult day care
- 6 centers;
- 7 (6) Not more than \$ _____ per year for adult foster
- 8 homes for developmentally disabled individuals;
- 9 (7) Not more than \$ _____ per year for other homes
- 10 specified in section 346-53; and
- 11 (8) Not more than \$ _____ per year for case managers
- 12 having purview of facilities specified in paragraphs
- 13 (1) to (7).

14 (b) The fees shall be deposited into the general fund to
 15 support the licensing, relicensing, certification, and
 16 recertification of facilities under this section.

17 (c) The department shall adopt rules pursuant to chapter
 18 91 as necessary to carry out the purposes of this section."

19 SECTION 9. The department of health shall submit a report
 20 to the legislature no later than twenty days prior to the
 21 convening of the regular session of 2017 on the following:



- 1 (1) The nexus and use of the fees collected pursuant to
- 2 this part;
- 3 (2) A brief description of any operational problems or
- 4 legal impediments that are anticipated to affect
- 5 collection of the fees or have affected collection of
- 6 the fees; and
- 7 (3) With respect to community care facilities, a cost
- 8 analysis on the savings to the State in relation to
- 9 providing health care services to the elderly and
- 10 disabled persons.

11 PART VI

12 SECTION 10. The legislature finds that there is an ever-

13 increasing need for community care foster family homes to

14 support the health and long-term care needs of an aging

15 population and families. Community care foster family homes

16 provide an essential function in the State by providing twenty-

17 four-hour living accommodations, which include housing,

18 supervision, personal care, and assistance with daily living

19 activities for their residents. These homes provide individuals

20 who are at a nursing facility level of care with living



1 accommodations in a family-like setting, an alternative to
2 living in an institutional setting.

3 Community care foster family homes are licensed to provide
4 accommodations and services to not more than two adults at any
5 one time, at least one of whom shall be a medicaid recipient,
6 and who are at the nursing facility level of care. The
7 department of health working together with the department of
8 human services may certify a community care foster family home
9 for a third adult who is at the nursing level of care and a
10 medicaid recipient, provided that certain requirements are met.

11 The legislature further finds that not only do medicaid
12 clients have limited options for long-term care, but so do
13 individuals who do not rely on medicaid for long-term care.
14 Besides providing accommodations to medicaid recipients,
15 community care foster family homes also provide accommodations
16 to private-pay individuals. There is also a recognized need to
17 accommodate private-pay individuals who share a long-term
18 relationship. As the cost of medical care continues to rise, it
19 is becoming apparent that even those who do not rely on medicaid
20 for their long-term care cannot afford the cost of private care,
21 leaving this population, also, with limited options.



1 The purpose of this part is to recognize the varied needs
2 of the State's aging population by giving the department of
3 health the flexibility to permit two private-pay individuals to
4 be cared for in the same community care foster family home,
5 provided they meet certain qualifying conditions.

6 SECTION 11. Section 321-481, Hawaii Revised Statutes, is
7 amended by amending the definition of "community care foster
8 family home" or "home" to read as follows:

9 "Community care foster family home" or "home" means a home
10 that:

- 11 (1) Is regulated by the department in accordance with
12 rules that are equitable in relation to rules that
13 govern expanded adult residential care homes;
- 14 (2) Is issued a certificate of approval by the department
15 or its designee to provide, for a fee, twenty-four-
16 hour living accommodations, including personal care
17 and homemaker services, for not more than two adults
18 at any one time, at least one of whom shall be a
19 medicaid recipient, who are at the nursing facility
20 level of care, who are unrelated to the foster family,
21 and who are receiving the services of a licensed home



1 and community-based case management agency; provided
2 that [~~the~~]:

3 (A) The department of health, working together with
4 the department of human services, may jointly in
5 their discretion allow two private-pay
6 individuals to be cared for in the same community
7 care foster family home if all of the following
8 are met:

9 (i) The community care foster family home is
10 certified for three beds;

11 (ii) Operators of three-bed community care foster
12 family homes immediately notify the
13 department or its designee of any vacancy in
14 writing; and

15 (iii) The two private-pay clients are in a
16 relationship with each other as a married or
17 civil union couple;

18 (B) The department, in its discretion, may certify a
19 home for a third adult who is at the nursing
20 level of care and a medicaid recipient; provided
21 further that the:



- 1 ~~[(A)]~~ (i) Home has been certified and in operation for
2 not less than one year;
- 3 ~~[(B)]~~ (ii) Primary caregiver is a certified nurse aide,
4 as defined in section 457A-1.5, who has
5 completed a state-approved training program
6 and other training as required by the
7 department; and
- 8 ~~[(C)]~~ (iii) Substitute caregiver is a nurse aide, as
9 defined in section 457A-1.5, who has
10 completed a state-approved training program
11 and other training as required by the
12 department; and
- 13 (3) Does not include expanded adult residential care homes
14 or assisted living facilities."

15 SECTION 12. The department of health and the department of
16 human services shall jointly submit a report of their findings
17 and recommendations to the legislature, no later than twenty
18 days prior to the convening of the regular session of 2017, on
19 the authorization to allow two private-pay individuals to be
20 cared for in the same community care foster family home as



1 provided under this part, including its impact on the
2 availability of space for medicaid clients.

3 SECTION 13. It is the intent of this part not to
4 jeopardize the receipt of any federal aid. If this part is
5 found to be in conflict with federal requirements that are a
6 prescribed condition for the allocation of federal funds to the
7 State, this part shall be deemed void.

8 PART VII

9 SECTION 14. Chapter 321, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§321- Compensation for caregivers. (a) The department
13 shall ensure caregivers are fairly compensated as follows:

14 (1) Not more than \$ _____ per year for caregivers
15 working in adult residential care homes;

16 (2) Not more than \$ _____ per year for caregivers
17 working in expanded adult residential care homes;

18 (3) Not more than \$ _____ per year for caregivers
19 working in developmental disabilities domiciliary
20 homes;



- 1 (4) Not more than \$ _____ per year for caregivers
- 2 working in community care foster family homes;
- 3 (5) Not more than \$ _____ per year for caregivers
- 4 working in adult day care centers;
- 5 (6) Not more than \$ _____ per year for caregivers
- 6 working in adult foster homes for developmentally
- 7 disabled individuals;
- 8 (7) Not more than \$ _____ per year for caregivers
- 9 working in other homes specified in section 346-53;
- 10 and
- 11 (8) Not more than \$ _____ per year for case managers
- 12 having purview of facilities specified in paragraphs
- 13 (1) to (7)."

PART VIII

15 SECTION 15. Chapter 321, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§321- Community health care facilities; case managers;
19 late payment interest. The department shall reimburse community
20 health care facilities and case managers with purview over those
21 facilities for the interest on late payments that are overdue by



1 at least thirty days. The interest shall be calculated as a
2 percentage of the late payment as follows:

3 (1) _____ per cent for adult residential care homes;

4 (2) _____ per cent for expanded adult residential care
5 homes;

6 (3) _____ per cent for developmental disabilities
7 domiciliary homes;

8 (4) _____ per cent for community care foster family homes;

9 (5) _____ per cent for adult day care centers;

10 (6) _____ per cent for adult foster homes for
11 developmentally disabled individuals;

12 (7) _____ per cent for other homes specified in section
13 346-53; and

14 (8) _____ per cent for case managers having purview of
15 facilities specified in paragraphs (1) to (7)."

16 SECTION 16. The department of health shall submit a report
17 to the legislature with respect to community health care
18 facilities no later than twenty days before the convening of the
19 regular session of 2017 on:

20 (1) The actions taken to ensure timely payments to
21 community health care facilities and case managers;



- 1 (2) Any operational problems or legal impediments that are
2 anticipated to affect or have affected the
3 department's ability to make timely payments to
4 community health care facilities and case managers;
5 and
6 (3) A cost analysis on the savings to the State in
7 relation to providing health care services to the
8 elderly and disabled persons.

9 PART IX

10 SECTION 17. Section 321-15.62, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) The director of health shall adopt rules regarding
13 expanded adult residential care homes in accordance with chapter
14 91 that shall implement a social model of health care designed
15 to:

- 16 (1) Protect the health, safety, civil rights, and rights
17 of choice of residents in a nursing facility or in
18 home- or community-based care;
19 (2) Provide for the licensing of expanded adult
20 residential care homes for persons who are certified
21 by the department of human services, a physician,



1 advanced practice registered nurse, or registered
2 nurse case manager as requiring skilled nursing
3 facility level or intermediate care facility level of
4 care who have no financial relationship with the home
5 care operator or facility staff; provided that the
6 rules shall allow group living in the following two
7 categories of expanded adult residential care homes as
8 licensed by the department of health:

9 (A) A type I home shall consist of five or fewer
10 residents with no more than [~~two~~] three nursing
11 facility level residents; provided that more
12 nursing facility level residents may be allowed
13 at the discretion of the department; and provided
14 further that up to six residents may be allowed
15 at the discretion of the department to live in a
16 type I home; provided that the primary caregiver
17 or home operator is a certified nurse aide who
18 has completed a state-approved training program
19 and other training as required by the department;
20 and



- 1 (B) A type II home shall consist of six or more
2 residents, with no more than twenty per cent of
3 the home's licensed capacity as nursing facility
4 level residents; provided that more nursing
5 facility level residents may be allowed at the
6 discretion of the department;
- 7 provided further that the department shall exercise
8 its discretion for a resident presently residing in a
9 type I or type II home, to allow the resident to
10 remain as an additional nursing facility level
11 resident based upon the best interests of the
12 resident. The best interests of the resident shall be
13 determined by the department after consultation with
14 the resident, the resident's family, primary
15 physician, case manager, primary caregiver, and home
16 operator;
- 17 (3) Comply with applicable federal laws and regulations of
18 title XVI of the Social Security Act, as amended; and
- 19 (4) Provide penalties for the failure to comply with any
20 rule."



1
2
3
4
5
6

PART X

SECTION 18. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 19. This Act shall take effect upon its approval; provide that section 7 shall take effect on July 1, 2016.

INTRODUCED BY:

<u>Brend Kolyerki</u>	<u>John M. ...</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>Cindy Evans</u>
<u>[Signature]</u>	<u>Calvin K. Day</u>
<u>[Signature]</u>	<u>Richard Long</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>Linda Ichimura</u>
<u>[Signature]</u>	<u>Gary Taylor</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>Mark Hill</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>Nicole E. Bowen</u>
	<u>Fabrizio Poucha</u>



H.B. NO. 2005

Report Title:

Caregivers Omnibus Bill

Description:

Amends provisions relating to the care of the elderly and disabled in state-licensed care facilities.

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

HB HMS 2016-1222

