

**CHAPTER 321**  
**DEPARTMENT OF HEALTH**

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Adolescent school-based substance abuse treatment programs. L 2006, c 268.

Announced and unannounced visits and unannounced inspections by the department of health on state-licensed or state-certified care facilities; reports to 2017-2019 legislature. L 2016, c 184, §8.

Certain positions in the adult mental health division of the department of health are exempt from the civil service requirements of chapter 76, for three calendar years commencing on July 1, 2016, unless extended by legislative act. L 2016, c 79, §3.

Concussion educational program under department of education. L 2012, c 197; L 2016, c 262.

Continuum of dental care; community-based dental health clinics. L 2006, c 199.

Department of health to conduct study on distribution of revenues derived from birth, marriage, divorce, and death certificates fees; study to be submitted to legislature and governor no later than November 1, 2016. L 2016, c 43, §§10, 11.

Department of health to request funding for the permanent position that facilitates the licensing of home care agencies as part of its annual budget request, beginning with fiscal year 2015-2016. L 2014, c 125, §4.

Distribution of cigarette tax revenues study; findings and recommendations to legislature and governor by November 1, 2016. L 2016, c 86.

Environmental response revolving fund; reports on fund expenditures, encumbrances, and revenues to 2016-2017 legislature. L 2015, c 185, §9.

Equitable referral system for discharge of medicaid patients from hospitals, nursing homes, and long-term care facilities. L 2012, c 211.

Legislative oversight working group; improvement of the medical marijuana dispensary system (ceases to exist June 30, 2018); reports to 2017-2018 legislature. L 2016, c 230, §23.

Long-term care public education and awareness campaign; report to 2017 legislature. L 2014, c 151, §7.

Maui regional system facilities; transfer of health care services to a nonprofit management entity; governor to inform the president of the senate and the speaker of the house of representatives of transfer completion dates. L 2015, c 103, §4.

Medical marijuana dispensary system; personnel and contracts, exemption from chapter 76 (July 1, 2015, to June 30, 2017). L 2015, c 241, §14.

Permanent or temporary exempt positions authorized; exemptions expire three years after July 1, 2016, unless extended by legislative act. L 2016, c 79, §2.

Repayment plan and schedule for deposits into medical marijuana registry and regulation special fund (not later than July 1, 2017). L 2015, c 241, §12.

State innovation waiver task force; health care reform plan; reports to 2015-2017 legislature (repealed June 30, 2017). L 2014, c 158; L 2015, c 184.

Working group on age-appropriate development for children from birth to age five years who are deaf, hard of hearing, or deaf-blind; reports to 2017-2018 legislature (ceases to exist June 30, 2018). L 2016, c 177, §3.

Working group on documentation for state civil identification card; reports to 2016-2017 legislature (dissolved on June 30, 2017). L 2015, c 243.

### **Cross References**

Coordination and development of caregiver support services, see §349-15.

Drug demand reduction assessments; special fund, see §706-650.

Hawaii health authority, see chapter 322H.

Hawaii health corps, see chapter 309H.

Health and dental insurance data; mandatory reporting for certain insurers, see §323D-18.5.

Health care-associated infection reporting, see §325-2.5.

Home and community-based case management agencies and community care foster family homes, see §§346-331 to 336.

Hospital sustainability program, see chapter 346G.

Kahuku medical center; designation as a rural hospital, see §346-53.8.

Long-term care financing, see chapter 346C.

Medicaid contracts; nonprofit and for-profit reporting requirements, see §103F-107.

Medical marijuana; economic and other data; collection, see §201-13.9.

Medical marijuana testing and research programs, see §304A-1865.

Nursing facility sustainability program, see chapter 346F.

Regulatory licensing of certain health related professions or occupations, see title 25.

Safe place for newborns, see chapter 587D.

Sale of sterile syringes for the prevention of disease, see §325-21.

Sex offender treatment program, see chapter 353E.

State health insurance program, see chapter 431N.

## "PART I. GENERAL AND ADMINISTRATIVE PROVISIONS

### **§321-1 General powers and duties of the department.** (a)

The department of health shall have general charge, oversight, and care of the health and lives of the people of the State, and shall pursue as a goal, the achievement of health equity. The department shall consider social determinants of health in the assessment of state needs for health.

(b) The department may conduct epidemiologic investigations of diseases and injuries that threaten or are deemed by the department to threaten the public health and safety.

(c) The department shall have authority in matters of quarantine and other health matters and may declare and enforce quarantine when none exists and modify or release quarantine when it is established.

(d) When it is determined that there is imminent danger of epidemic or serious outbreak of communicable disease, the department may refuse, modify, or limit attendance at any school in the State.

(e) When in the judgment of the director, there is deemed to be a potential health hazard, the department may take precautionary measures to protect the public through the imposition of an embargo, the detention of products regulated by the department, the removal of products regulated by the department from the market, the declaration of quarantine, or by sequestering items suspected to be contaminated by toxic or infectious substances; provided that the director shall find evidence of a health hazard within seven days of the action taken or rescind the action. The director shall make public the findings.

(f) All county health authorities, sheriffs, police officers, and all other officers and employees of the State, and every county thereof, shall enforce the rules of the department. All such powers in health matters as have been or may be conferred upon any county shall be concurrent with those of the department.

(g) The department may establish charges and collect fees for any of its services; provided that the department shall not refuse to provide services to any person due to the person's inability to pay the fee for the service. The department, through the director, shall make an annual report to the

governor, showing in detail all its expenditures and transactions, and such other information regarding the public health as the department may deem of special interest.

(h) The department, during the prevalence of any severe pestilence or epidemic, shall publish a weekly report of the public health.

(i) The department shall establish and administer programs, and adopt rules as deemed necessary, for the prevention of domestic and sexual violence and the protection and treatment of victims of domestic and sexual violence.

(j) As used in this section:

"Health equity" means assuring equal opportunity for all people in the State to attain their full health potential.

"Social determinants of health" means the complex, integrated, and overlapping social structures and economic systems that contribute to health inequities. These social structures and economic systems include the social environment, physical environment, health services, and structural and societal factors. [L 1937, c 122, pt of §2; RL 1945, §2007; RL 1955, §46-8; am L Sp 1959 2d, c 1, §19; HRS §321-1; am L 1984, c 173, §1; am L 1985, c 271, §4; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 1991, c 158, §1; am L 1996, c 167, §2; am L 1999, c 192, §3; am L 2002, c 169, §3; am L 2014, c 157, §2]

### **Cross References**

Annual reports, see §93-12.

General functions and authority, see §26-13.

### **Case Notes**

Health laws should be liberally construed to accomplish their purpose to protect community. 21 H. 56, 60; 21 H. 206, 208; 22 H. 327, 333.

" **[§321-1.1 Development of environmental goals and objectives.]** The department of health, with input from the regulated community and general public, shall develop environmental goals and objectives, to be used in the implementation of its programs which shall ensure that the following natural resources are protected: air quality; land; coastal waters; inland waters; and groundwater. It shall also be the goal of the department to organize its environmental protection programs to improve the coordination of environmental planning and oversight; improve the enforcement of environmental laws, rules, and policies; and improve the ability to identify, prevent, and respond to significant releases of pollutants into

the environment. The department of health shall ensure that the environmental goals and objectives will remain current by reviewing them every two years, with input from the regulated community and the general public. The department shall report its findings and conclusions following each such review, to the legislature no later than twenty days prior to the convening of the legislative session immediately following the completion of the review. [L 1996, c 290, §4]

" **§321-1.3 Domestic violence and sexual assault special fund.** (a) There is established within the state treasury a special fund to be known as the domestic violence and sexual assault special fund to be administered and expended by the department of health.

(b) The moneys in the special fund shall be reserved for use by the department of health for programs and grants or purchases of service consistent with chapter 42D that support or provide domestic violence and sexual assault intervention or prevention as authorized by law. Moneys in the special fund shall be used for new or existing programs and shall not supplant any other moneys previously allocated to these programs.

(c) Fees remitted pursuant to section 338-14.5, income tax remittances allocated under section 235-102.5, interest and investment earnings attributable to the moneys in the special fund, and grants, donations, and contributions from private or public sources for the purposes of the fund, shall be deposited into the special fund.

(d) The department of health shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session providing the following:

- (1) An accounting of the receipts of, and expenditures from, the special fund; and
- (2) Recommendations on how to improve services for victims of domestic violence and sexual assault. [L 1997, c 216, §§1, 13; am L 1999, c 194, §1; am L 2004, c 228, §2; am L 2005, c 142, §2]

" **§321-1.4 Office of health care assurance special fund; deposits; expenditures.** [*Section effective until December 31, 2016. For section effective January 1, 2017, see below.*] (a) There is established within the department of health, to be administered by the department of health, the office of health care assurance special fund into which shall be deposited moneys collected under section 321-11.5(b) and all administrative penalties imposed and collected by the office of health care assurance pursuant to section 321-20.

(b) Moneys in the special fund shall be expended by the department of health:

- (1) To assist in offsetting operating costs and educational program expenses of the department of health's office of health care assurance; and
- (2) For the purpose of enhancing the capacity of office of health care assurance programs to:
  - (A) Improve public health outreach efforts, program and community development, and consultations to industries regulated; and
  - (B) Educate the public, the staff of the department of health, [and] other departments within the State, as well as staff and providers of all health care facilities and agencies regulated.

Not more than \$300,000 of the special fund may be used during any fiscal year for the activities carried out by the office of health care assurance.

(c) Any amount in the special fund in excess of \$356,000 on June 30 of each year shall be deposited into the general fund.

(d) The department of health shall submit a report to the legislature concerning the status of the special fund, including the amount of moneys deposited into and expended from the special fund, and the sources of receipts and uses of expenditures, no later than twenty days prior to the convening of each regular session. [L 1999, c 120, §1; am L 2002, c 188, §1; am L 2007, c 90, §1]

**§321-1.4 Office of health care assurance special fund; deposits; expenditures.** *[Section effective January 1, 2017. For section effective until December 31, 2016, see above.]* (a) There is established within the department of health, to be administered by the department of health, the office of health care assurance special fund into which shall be deposited moneys collected under section 321-11.5(b), license fees for the administration of the durable medical equipment supplier license program collected pursuant to section 321-544, and all administrative penalties imposed and collected by the office of health care assurance pursuant to section 321-20.

(b) Moneys in the special fund shall be expended by the department of health:

- (1) To assist in offsetting operating costs and educational program expenses of the department of health's office of health care assurance; and
- (2) For the purpose of enhancing the capacity of office of health care assurance programs to:



- (A) Improve public health outreach efforts, program and community development, and consultations to industries regulated;
- (B) Educate the public, the staff of the department of health, and other departments within the State, as well as staff and providers of all health care facilities and agencies regulated; and
- (C) Administer and support the durable medical equipment supplier license program established pursuant to part XLIII.

Not more than \$327,000 of the special fund may be used during any fiscal year for the activities carried out by the office of health care assurance.

(c) Any amount in the special fund in excess of \$387,500 on June 30 of each year shall be deposited into the general fund.

(d) The department of health shall submit a report to the legislature concerning the status of the special fund, including the amount of moneys deposited into and expended from the special fund, and the sources of receipts and uses of expenditures, no later than twenty days prior to the convening of each regular session. [L 1999, c 120, §1; am L 2002, c 188, §1; am L 2007, c 90, §1; am L 2016, c 137, §3]

" **[§321-1.5] Primary health care incentive program; establishment.** There is established within the department of health a primary health care incentive program. The program shall:

- (1) Utilize existing personnel and resources to focus on primary health care;
- (2) Study the adequacy, accessibility, and availability of primary health care with regard to medically underserved persons in the State of Hawaii;
- (3) Convene and provide staff support for a volunteer primary health care roundtable composed of knowledgeable health care professionals, consumers, and other interested persons whose advisory purpose shall be to:
  - (A) Investigate and analyze the extent, location, and characteristics of medically underserved areas, and the numbers, location, and characteristics of medically underserved persons in Hawaii, with particular attention given to shortages of health care professionals available to provide care to these areas and persons;

- (B) Assess the feasibility of family practice clerkships, preceptor programs, residency programs, and placement programs for medical school students and graduates as a means of increasing the number of family practitioners available to serve medically underserved areas and populations;
  - (C) Investigate and make recommendations regarding incentives, such as tuition exemptions, to increase the pool of primary health care practitioners, including family practitioners, other physicians in related specialties, nurse practitioners, nurse midwives, and physician assistants, that are available to serve medically underserved areas and populations;
  - (D) Develop a strategy for meeting the health needs of medically underserved areas and populations based upon the findings that result from its investigations; and
  - (E) Maintain an ongoing forum for the discussion of data collection regarding primary health care gaps, incentives to promote primary health care, and the development of cooperative interdisciplinary efforts among primary health care professionals;
- (4) Develop a strategy to provide appropriate and adequate access to primary health care in underserved areas;
  - (5) Promote and develop community and consumer involvement in maintaining, rebuilding, and diversifying primary health care services in medically underserved areas;
  - (6) Produce and distribute minutes of volunteer primary health care roundtable's discussions, and submit annual reports to the legislature on recommended incentives and strategies, as well as a plan for implementation, with the first report to be submitted to the legislature no later than twenty days prior to the convening of the 1993 regular session; and
  - (7) Facilitate communication and coordination among providers, health care educators, communities, cultural groups, and consumers of primary health care.
- [L 1992, c 41, §2]

#### **Note**

Family practice ambulatory health center. L 1993, c 347, §4.

#### **Cross References**

Family practice residency program, see §304A-1801.

" **[§321-1.6] Additional duties of the director.** Any health center previously designated as a Federally Qualified Health Center (FQHC), FQHC look alike, or Rural Health Clinic (RHC) shall have comparable designation as a Hawaii Qualified Health Center and shall also be known as Essential Community Providers. The director of health, with the concurrence of the director of human services, shall have the authority to designate other Hawaii health centers not yet federally designated but deserving of support to meet short term public health needs based on the department of health's criteria, as Hawaii Qualified Health Centers. [L 1994, c 238, §2]

### **Cross References**

Federally qualified health centers and rural health clinics-- supplemental medicaid payment process, see §§346-53.61 to 346-53.65.

Federally qualified health centers; rural health clinics; reimbursement, see §346-53.6.

" **[§321-1.65] Community health centers special fund.** (a) There is established within the state treasury a special fund to be known as the community health centers special fund to be administered and expended by the department of health.

(b) The moneys in the special fund shall be used by the department of health for the operations of federally qualified health centers.

(c) Moneys collected pursuant to section 245-15 shall be deposited into the special fund. [L 2006, c 316, §3]

" **[§321-1.7] Public health nursing services program.** (a) There is established within the department of health a public health nursing services program. At the discretion of the director of health, the program may provide services, including but not limited to the following:

- (1) Mobilizing the department's nursing resources and responding to catastrophic and traumatic emergency events, including natural disasters and biologic outbreaks or exposures;
- (2) Responding to communicable disease, epidemic, and other public health disease outbreaks;
- (3) Providing care coordination services to the most vulnerable populations of special needs infants, toddlers, and children with complex medical

- conditions, including medically fragile children, as well as the elderly and other populations who have difficulty accessing the health care system;
- (4) Collaborating with the department of education and the Hawaii chapter of the American Academy of Pediatrics in providing school health services to address the medical and health conditions of public school students that affect their learning;
  - (5) Developing collaborative partnerships with individuals, families, communities, and providers to improve the health of families and communities through the assessment of community health needs, the setting of priorities, and policy development;
  - (6) Collecting and evaluating data to determine family and community health needs for nursing and health service delivery changes to enhance the quality of life for families; and
  - (7) Providing other health care related services as determined appropriate based on community health needs.

(b) Provision of services by the public health nursing services program shall be limited by and subject to the availability of funds. [L 2004, c 173, §2]

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

- (1) Adult day health centers;
- (2) Adult day care centers;
- (3) Community care foster family homes;
- (4) Developmental disabilities domiciliary homes as defined in section 321-15.9;
- (5) Developmentally disabled adult foster homes;
- (6) Long-term care facilities as defined in section 349-21(f); and
- (7) Special treatment facilities as defined in section 334-1.

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

- (1) The date of the inspection;
- (2) A description of violations of relevant state laws or rules, if applicable;
- (3) Plans of correction and the status of corrective actions in response to any violations, if applicable;

- (4) A list and description of all corrective actions taken by the facility, if applicable, to be submitted by the facility and added to the report at a later time, as determined by the department; and
- (5) Other information regarding the quality and conditions of the facility the department of health deems appropriate.

(c) Each report posted on the department of health's website that reports a violation committed by a state-licensed care facility as described in subsection (a) shall be removed from the website after three years from the date the report was posted. [L 2013, c 213, §2]

" **[§321-1.9] Inspections; visits; state-licensed or state-certified care facilities.** *[Section effective July 1, 2019.]*

(a) The department of health shall conduct unannounced visits and inspections, including inspections for relicensing or recertification, for the following state-licensed or state-certified care facilities on an annual basis and at such intervals as determined by the department to ensure the health, safety, and welfare of each resident:

- (1) Adult day health centers;
- (2) Adult day care centers;
- (3) Community care foster family homes;
- (4) Developmental disabilities domiciliary homes;
- (5) Adult foster homes;
- (6) Long-term care facilities, including but not limited to:
  - (A) Adult residential care homes;
  - (B) Expanded adult residential care homes;
  - (C) Assisted living facilities;
  - (D) Intermediate care facilities;
  - (E) Nursing facilities; and
  - (F) Skilled nursing facilities; and
- (7) Special treatment facilities.

(b) Unannounced visits may be conducted during or outside regular business hours. All inspections relating to follow-up visits, visits to confirm correction of deficiencies, or visits to investigate complaints or suspicion of abuse or neglect shall be conducted unannounced during or outside regular business hours. Annual inspections for relicensing or recertification may be conducted during regular business hours or at intervals determined by the department. Annual inspections for relicensing or recertification shall be conducted without notice.

(c) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. [L 2016, c 184, §2]

#### **Note**

Announced and unannounced visits and unannounced inspections by the department of health on state-licensed or state-certified care facilities; reports to 2017-2019 legislature. L 2016, c 184, §8.

" **§321-2 General office.** The department of health shall maintain its general office in Honolulu and such other offices throughout the State as it, in its discretion, may deem to be necessary for the proper performance of its functions. [L 1937, c 122, pt of §2; am L 1941, c 16, §1; RL 1945, §2003; RL 1955, §46-3; am L Sp 1959 2d, c 1, §19; HRS §321-2]

" **§321-2.5 Volunteer medical assistance personnel.**

(a) This section shall apply to all volunteer medical assistance personnel, including:

- (1) Physicians;
- (2) Psychologists;
- (3) Nurses;
- (4) Emergency medical technicians;
- (5) Social workers;
- (6) Mobile intensive care technicians;
- (7) Physician assistants; and
- (8) Pharmacists,

licensed or certified in this State, or employed by a health care facility, while providing volunteer medical assistance services.

(b) Any volunteer medical assistance personnel who is injured in the performance of volunteer medical assistance services, shall be entitled to the benefits in section 386-171.

(c) Except in cases of wilful or criminal misconduct, gross negligence, or reckless misconduct, any volunteer medical assistance personnel providing volunteer medical assistance services shall not be liable for the death of or injury to persons, or for damage to property, as a result of any act or omission in the course of rendering volunteer medical assistance services. No act or omission shall be imputed to the owner of any vehicle by reason of ownership thereof; provided that nothing in this section shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle that may be insured under section 41D-8 to the extent of the insurance.

(d) Nothing in this section shall be construed to affect any civil action brought by the State or a county against any volunteer medical assistance personnel of the State or a county.

(e) In any suit against the State or a county for civil damages based upon the negligent act or omission of volunteer medical assistance personnel, proof of the negligent act or omission shall be sufficient to establish the responsibility of the State or a county therefor under the doctrine of respondeat superior, notwithstanding the immunity granted to the volunteer medical assistance personnel with respect to any act or omission included under subsection (c).

(f) For the purposes of this section:

"Volunteer medical assistance services" means the rendering of professional medical services that are provided on behalf of and authorized by the State or a county, including participation during periods of volunteer medical assistance services and volunteer medical assistance services training; provided that services provided pursuant to section 321-23.3 shall not be considered to be volunteer medical assistance services. Volunteer medical assistance services shall include providing professional medical services in support of vaccination campaigns or outreach clinics. [L 2010, c 134, §1; am L 2012, c 265, §1]

" **§321-3 REPEALED.** L 1996, c 211, §1.

" **§321-4 Agents and inspectors.** There shall be appointed by the director of health a suitable number of agents and inspectors in such localities as may be necessary, who shall carry into effect all laws and regulations for the public health, and such ordinances relating to public health as the director may direct. [PC 1869, c 59, §3; am L 1925, c 34, §2; RL 1935, §902; am L 1937, c 122, §3; am L 1943, c 43, §1(6); RL 1945, §2010; am L 1945, c 209, §1; RL 1955, §46-10; am L Sp 1959 2d, c 1, §19; HRS §321-4]

" **[§321-4.3] Epidemiologists.** The department of health may establish up to ten permanent or temporary exempt positions known as epidemiologists for the purpose of investigating diseases and injuries which threaten the public health and safety. The positions shall be appointed by the director without regard to chapter 76. [L 2008, c 78, §1]

" **[§321-4.5] Inspection of food establishments.** Inspections of food establishments may be performed only by a registered sanitarian or a food and drug inspector. [L 1997, c 334, pt of §1]

" **[§321-4.6] Advisory council on food protection practices; created.** (a) There is created within the department for administrative purposes only, an advisory council on food protection practices, whose members shall be appointed by the director of health, consisting of one representative from at least the following:

- (1) An organization representing the restaurant industry;
- (2) An organization representing the hotel industry;
- (3) An organization representing the food manufacturing industry;
- (4) An organization representing the food service industry;
- (5) A registered sanitarian from the department of health;
- (6) The University of Hawaii, food technology department;
- (7) The community college food service program;
- (8) A corporate chain restaurant doing business in Hawaii; and
- (9) A member of the general public.

(b) Each member shall serve for a term of three years; provided that the director shall initially appoint three members to serve for one year, three members to serve for two years, and three members to serve for three years. No member shall serve for more than two consecutive three-year terms.

(c) Vacancies occurring before the expiration of a member's term shall be filled by election of the council. Individuals elected to fill a vacancy shall serve only for the remainder of the unexpired term.

(d) The council shall appoint from its members a chairperson, vice chairperson, secretary, treasurer, and any other officers that the council may deem necessary or desirable to carry out its functions.

(e) Members shall serve without compensation, but may be reimbursed for the necessary expenses, including travel expenses, incurred in the performance of their duties.

(f) The council shall:

- (1) Advise the department on sanitation issues and food protection practices;
- (2) Review and advise the department, in consultation with the department of the attorney general, regarding the adoption of rules relating to sanitation and food protection practices; and
- (3) Advise the department on the incorporation of salient provisions of the most recent version of the United States Food and Drug Administration's Model Food Code into the department's food sanitation rules. [L 1997, c 334, pt of §1]



" **[§321-4.7] Producers of hand-pounded poi; exemption.** A producer of hand-pounded poi shall not be required to process poi in a certified food-processing establishment or be required to obtain a permit from the department of health, if the producer:

- (1) Sells hand-pounded poi directly to consumers;
- (2) Prepares hand-pounded poi adjacent to permanent or temporary hand-washing facilities; and
- (3) Complies with rules adopted by the department to protect the health and safety of the public.

The department shall adopt rules pursuant to chapter 91 to effectuate this section no later than December 31, 2011. [L 2011, c 107, §1]

" **§321-5 Contract for exchange of Hawaii personnel.** The department of health may contract with any state, or the health department of any state having the power to so contract, for the exchange of Hawaii personnel for personnel of the health department of any such state. Any such exchange shall be made under rules and regulations prescribed by the department, in no case shall be for a period exceeding one year, and in all cases shall be subject to the following provisions:

- (1) That each person exchanged by the health department of any state shall possess qualifications equal to the qualifications of the person exchanged for him from Hawaii;
- (2) That the person exchanged from Hawaii shall have served for not less than three years prior to beginning of the exchange period in the Hawaii personnel;
- (3) That in the selection of Hawaii personnel for exchange, preference shall be given to persons born in the State;
- (4) That each person exchanged by the health department of any state shall hold in the health department of such state a position the same as or equivalent to the position held by the person exchanged for him from Hawaii;
- (5) That the person exchanged from Hawaii shall be paid his regular salary out of the funds appropriated therefor, but nothing in addition thereto;
- (6) That the State shall not pay any traveling or other expenses of the Hawaii personnel or of the personnel of the health department of any state coming to Hawaii under any contract of exchange. This prohibition shall be construed to include all travel,

- transportation, board, lodging, or other expenses incidental to or arising out of any exchange;
- (7) That the State shall not pay any compensation to the person coming to Hawaii under any contract of exchange; provided that in any case where the person so exchanged from Hawaii becomes incapacitated, or, for any reason, leaves the exchange position permanently, the department may pay the visiting exchange person an amount not to exceed the salary rating of the person so exchanged from Hawaii, such an arrangement to continue until the end of the period of exchange or until such time as some adjustment satisfactory to the department is made;
  - (8) That any provision of law to the contrary notwithstanding, the state requirements in respect to civil service, citizenship, or residence shall not apply to any person coming to Hawaii under any such contract of exchange;
  - (9) That the appropriate collective bargaining agreement, executive order, executive directive, or rule regarding traveling expenses for state officials shall not apply to Hawaii personnel exchanged under this section.

The department may make such rules and regulations as it may deem necessary concerning the powers, rights, functions, conduct, duties, and liabilities of, exercised by or imposed upon any person coming to Hawaii under any contract of exchange.

As used in this section, unless the text clearly otherwise indicates, "Hawaii personnel" means public health nurses, sanitary officers, and medical officers; "state" means any state or territory of the United States, or county or municipality of any such state or territory; and "health department" means the board of health, department of health, president of the board of health, or other public authority authorized by law to administer or administering the public health laws of any state. [L 1941, c 83, pt of §1; am L 1943, c 43, §1(7); RL 1945, §§2013, 2014; RL 1955, §46-20; am L Sp 1959 2d, c 1, §19; HRS §321-5; am L 2002, c 148, §35]

" **§321-6 REPEALED.** L 1972, c 29, §1.

" **[§321-6.5] Clinical laboratory test results.** (a) Clinical laboratory test results may be provided to authorized persons for any purpose permitted under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and federal regulations promulgated thereunder.

(b) For purposes of this section, "authorized persons" shall include:

- (1) The provider ordering the test, or the provider's designee; and
- (2) Any covered entity as defined under 45 Code of Federal Regulations section 160.103 promulgated under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191. [L 2010, c 72, §1]

" **§321-7 Disbursement of moneys.** For the purpose of carrying into effect the laws relating to the public health, the department of health may apportion and disburse all sums of money that are appropriated by the legislature for the preservation of the public health. The department shall observe the strictest economy in the expenditure of all public moneys placed under its control. The department shall also consider the alternative of leasing equipment versus equipment purchases. Such lease options may include, but not be limited to, contracts for maintenance, option to buy, and periodic updating of equipment. [PC 1869, c 59, §30; am L 1876, c 11, §4; RL 1925, §910; RL 1935, §901; RL 1945, §2009; RL 1955, §46-9; am L Sp 1959 2d, c 1, §19; HRS §321-7; am L 1979, c 33, §2]

" **§321-8 REPEALED.** L 1988, c 139, §2.

" **§321-9 Seal, rules and regulations.** The department of health may adopt a seal and may adopt such rules and regulations as it may consider expedient for the conduct of its business. The department may amend or revise such rules and regulations from time to time. [RL 1935, pt of §904; am L 1937, c 122, §4; am L 1941, c 18, §1; RL 1945, §2011; RL 1955, §46-11; am L Sp 1959 2d, c 1, §19; HRS §321-9]

" **§321-10 Rules, adoption, effect.** All rules and regulations made by the department of health shall be made in conformity with chapter 91. They shall have the force and effect of law. [PC 1869, c 59, §7; RL 1925, §913; RL 1935, §905; am L 1939, c 136, §1; RL 1945, §2012; am L 1945, c 116, §1(a); RL 1955, §46-12; am L Sp 1959 2d, c 1, §19; am L 1965, c 96, §28; HRS §321-10]

" **[§321-10.5] Agricultural processing facilities; permits; priority.** (a) Any agency subject to this chapter or title 19 that issues permits shall establish and implement a procedure for the priority processing of permit applications and renewals, at no additional cost to the applicant, for agricultural processing facilities that process crops or livestock from an

agribusiness; provided that the majority of the lands held, owned, or used by the agribusiness shall be land designated as important agricultural lands pursuant to part III of chapter 205, excluding lands held, owned, or used by the agribusiness in a conservation district.

Any priority permit processing procedure established pursuant to this section shall not provide or imply that any permit application filed under the priority processing procedure shall be automatically approved.

(b) As used in this section, "agribusiness" means a business primarily engaged in the care and production of livestock, livestock products, poultry, poultry products, apiary, horticultural or floricultural products, the planting, cultivating, and harvesting of crops or trees, or the farming or ranching of any plant or animal species in a controlled salt, brackish, or fresh water environment. [L 2008, c 233, §12]

" **§321-11 Subjects of health rules, generally.** [*Repeal and reenactment on June 30, 2014. L Sp 2009, c 21, §8.*] The department of health pursuant to chapter 91 may adopt rules that it deems necessary for the public health and safety respecting:

- (1) Nuisances, foul or noxious odors, gases, vapors, waters in which mosquitoes breed or may breed, sources of filth, and causes of sickness or disease, within the respective districts of the State, and on board any vessel;
- (2) Adulteration and misbranding of food or drugs;
- (3) Location, air space, ventilation, sanitation, drainage, sewage disposal, and other health conditions of buildings, courts, construction projects, excavations, pools, watercourses, areas, and alleys;
- (4) Privy vaults and cesspools;
- (5) Fish and fishing;
- (6) Interments and dead bodies;
- (7) Disinterments of dead human bodies, including the exposing, disturbing, or removing of these bodies from their place of burial, or the opening, removing, or disturbing after due interment of any receptacle, coffin, or container holding human remains or a dead human body or a part thereof and the issuance and terms of permits for the aforesaid disinterments of dead human bodies;
- (8) Cemeteries and burying grounds;
- (9) Laundries, and the laundering, sanitation, and sterilization of articles including linen and uniforms used by or in the following businesses and professions: barber shops, manicure shops, beauty

parlors, electrology shops, restaurants, soda fountains, hotels, rooming and boarding houses, bakeries, butcher shops, public bathhouses, midwives, masseurs, and others in similar calling, public or private hospitals, and canneries and bottling works where foods or beverages are canned or bottled for public consumption or sale; provided that nothing in this chapter shall be construed as authorizing the prohibiting of laundering, sanitation, and sterilization by those conducting any of these businesses or professions where the laundering or sterilization is done in an efficient and sanitary manner;

- (10) Hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster homes, assisted living facilities, special treatment facilities and programs, home health agencies, home care agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, and therapeutic living programs, but excluding youth shelter facilities unless clinical treatment of mental, emotional, or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility, as defined in section 346-16 under "child [caring] institution". For the purpose of this paragraph, "adult foster home" has the same meaning as provided in section 321-11.2;
- (11) Hotels, rooming houses, lodging houses, apartment houses, tenements, and residences for persons with developmental disabilities including those built under federal funding;
- (12) Laboratories;
- (13) Any place or building where noisome or noxious trades or manufacturing is carried on, or intended to be carried on;
- (14) Milk;
- (15) Poisons and hazardous substances, the latter term including any substance or mixture of substances that:
  - (A) Is corrosive;
  - (B) Is an irritant;
  - (C) Is a strong sensitizer;
  - (D) Is inflammable; or
  - (E) Generates pressure through decomposition, heat, or other means,

if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

- (16) Pig and duck ranches;
- (17) Places of business, industry, employment, and commerce, and the processes, materials, tools, machinery, and methods of work done therein; and places of public gathering, recreation, or entertainment;
- (18) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manufactured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;
- (19) Foods, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale, consumption, or use of any food, drug, or cosmetic;
- (20) [Device] as defined in section 328-1;
- (21) Sources of ionizing radiation;
- (22) Medical examination, vaccination, revaccination, and immunization of school children. No child shall be subjected to medical examination, vaccination, revaccination, or immunization, whose parent or guardian objects in writing thereto on grounds that the requirements are not in accordance with the religious tenets of an established church of which the parent or guardian is a member or adherent, but no objection shall be recognized when, in the opinion of the department, there is danger of an epidemic from any communicable disease;
- (23) Disinsectization of aircraft entering or within the State as may be necessary to prevent the introduction, transmission, or spread of disease or the introduction or spread of any insect or other vector of significance to health;
- (24) Fumigation, including the process by which substances emit or liberate gases, fumes, or vapors that may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the department, may be lethal, poisonous, noxious, or dangerous to human life;
- (25) Ambulances and ambulance equipment;

- (26) Development, review, approval, or disapproval of management plans submitted pursuant to the Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519; and
- (27) Development, review, approval, or disapproval of an accreditation program for specially trained persons pursuant to the Residential Lead-Based Paint Hazard Reduction Act of 1992, Public Law 102-550.

The department of health may require any certificates, permits, or licenses that it may deem necessary to adequately regulate the conditions or businesses referred to in this section. [PC 1869, c 59, §§4 to 6; am L 1905, c 42, §1; am L 1911, c 132, §2; am L 1913, c 63, §1; am L 1919, c 235, §1; RL 1925, §912; am L 1933, c 73, §1; RL 1935, pt of §§904 and 1130; am L 1937, c 122, §4 and c 197, §1; am L 1941, c 18, §1; RL 1945, §2015; am L 1945, c 116, §1(b); am L 1949, c 71, §1; am L 1951, c 18, §3, c 64, §1, and c 181, §1; am L 1953, c 32, §1; RL 1955, §46-13; am L 1957, c 153, §1; am L Sp 1959 2d, c 1, §19; am L 1963, c 150, §1; HRS §321-11; am L 1969, c 134, §1; am L 1973, c 5, §1; am L 1978, c 7, §1; am L 1980, c 239, §3; am L 1981, c 84, §1; am L 1985, c 272, §4; am L 1986, c 37, §1, c 178, §2, and c 328, §1; am L 1987, c 334, §1; am L 1988, c 194, §2; am L 1989, c 223, §1; am L 1990, c 285, §5; am L 1992, c 15, §1; am L 1995, c 87, §2; am L 1997, c 219, §1 and c 220, §2; am L Sp 2009, c 21, §3]

#### **Note**

Repeal and reenactment of section on June 30, 2019. L Sp 2009, c 21, §8; L 2014, c 125, §2.

#### **Cross References**

Dental health facilities; health care facilities; use of latex gloves, see §321-11.9.

#### **Case Notes**

May require suitable locations for laundries. 19 H. 628.

Regulation beyond limits of power conferred by legislature, void. 21 H. 56. See also 20 H. 411.

" **[§321-11.1] Medically accurate sexuality health education.**  
(a) Sexuality health education programs funded by the State shall provide medically accurate and factual information that is age appropriate and includes education on abstinence, contraception, and methods of disease prevention to prevent

unintended pregnancy and sexually transmitted disease, including human immunodeficiency virus.

(b) For the purposes of this section:

"Age appropriate" means suitable to a particular age or age group based on developing cognitive, emotional, and behavioral capacity typical for that age or age group.

"Factual information" means medical, psychiatric, psychological, empirical, or statistical information that is verified or supported by research conducted by recognized medical, psychiatric, psychological, and public health professionals or organizations.

"Medically accurate" means verified or supported by research conducted in compliance with accepted scientific methods and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

"Sexuality health education" means education in any medium regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases. [L Sp 2009, c 27, §2]

" **§321-11.2 Adult foster homes.** (a) The department of health is authorized to certify adult foster homes for individuals with developmental or intellectual disabilities requiring care beyond the individual's eighteenth birthday. "Adult foster home" means a private family home providing care on a twenty-four hour basis to adults with developmental or intellectual disabilities. To be certified, an adult foster home shall house not more than two adults with developmental or intellectual disabilities who are unrelated to the certified caregiver at the same time. The director of health may waive the two-adult limit for certification of that home as an adult foster home; provided that the total number of adults with developmental or intellectual disabilities in the home shall not exceed three adults with developmental or intellectual disabilities who are related or unrelated to the certified caregiver.

For the purposes of this subsection:

"Certified caregiver" means an individual who is twenty-one years of age or older, resides in an adult foster home, and has been issued by the department a valid certificate of approval to provide care, training, and supervision on a twenty-four hour basis to adults with developmental or intellectual disabilities.



"Related" means connected by legal guardianship, trusteeship, blood, marriage, or a legal relationship between the certified caregiver and the adult with developmental or intellectual disabilities.

(b) To accommodate residents of a foster boarding home for children with developmental or intellectual disabilities who reach the age of eighteen years, where the home is certified as a foster boarding home for children under section 346-17, the director of health may waive the two-adult limit for certification of that home as an adult foster home; provided that:

- (1) The total number of foster children with developmental or intellectual disabilities and adults with developmental or intellectual disabilities in such a dually certified home shall not exceed three; and
- (2) No new adults may be admitted into the home while there are any foster children residing in the home.

This subsection shall not affect the validity of the certification of any adult foster home that is certified as a foster boarding home under section 346-17 and in existence as of July 2, 2014.

(c) An existing adult foster home shall not be given dual certification if the certification as an adult foster home precedes dual certification, unless the certification as a foster boarding home under section 346-17 is for a specific child, as provided in the department of human services' administrative rules.

(d) The rules of the department of human services adopted under authority of section 346-17, which prescribe the standards of conditions and competence of operation of child foster boarding homes shall apply to adult foster homes. Notwithstanding chapter 91, to the contrary, the rules shall be considered adopted by the department of health on July 1, 1986, for the purpose of regulating adult foster care homes and shall be valid until the department of health adopts rules pursuant to chapter 91. The department of health shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(e) Rate of payment for adult foster homes is to be determined on the same basis as domiciliary care homes as provided under section 346-53. [L 1986, c 328, §§2, 3, and 7; am L 1987, c 334, §§2, 3, and 5; am L 1988, c 141, §24; am L 1992, c 15, §2; am L 2013, c 212, §3; am L 2014, c 203, §1]

#### **Note**

"Foster boarding home" in §346-17 referred to in subsections (b) to (d) changed to "resource family home" by L 2016, c 133, §3.

### Revision Note

In subsection (b), "July 2, 2014" substituted for "the effective date of Act [203], Session Laws of Hawaii 2014". The approval date for Act 203 was July 2, 2014.

### Cross References

Criminal history record checks, see §333F-22.

" **§321-11.3 REPEALED.** L 1987, c 12, §1.

" **[§321-11.4] Fees for electronic applications and payments.**

(a) Any departmental program that collects fees for the issuance of permits, licenses, certificates, or similar approvals, under chapters 340E, 340F, 342D, 342H, 342J, 342L, and that is required to deposit those fees to the credit of the general fund, may first deduct any electronic and credit card processing fees or charges that are made pursuant to agreements between the department and electronic services and credit card services providers from the total amount received by the department from the applicant for each payment made electronically.

(b) For purposes of this section, the term "credit card" includes credit cards, charge cards, and debit cards.

(c) A person making an electronic payment to the department remains liable for the underlying obligation except to the extent that the department realizes final payment of the underlying obligation in cash or the equivalent. If the credit card issuer, bank, or other guarantor of payment in the transaction does not pay the department, then the underlying obligation survives, and the department retains all remedies for enforcement that would have applied if the transaction had not occurred. No contract may modify the provisions of this subsection. This subsection, however, does not make the underlying obligor liable for any electronic or credit card fees paid to an electronic services provider or credit card issuer or party other than the department. [L 2008, c 83, §2]

" **§321-11.5 Establishment of fees.** (a) The department of health, by rules adopted pursuant to chapter 91, may establish reasonable fees for the issuance or renewal of licenses, permits, variances, and various certificates required by law or

by the department's rules. The fees may include the cost of related examinations, inspections, investigations, and reviews.

(b) *[Repeal and reenactment on June 30, 2014. L Sp 2009, c 21, §8.]* All fees paid and collected pursuant to this section and rules adopted in accordance with chapter 91 from facilities seeking licensure or certification by the department of health, including hospitals, nursing homes, home health agencies, home care agencies, intermediate care facilities for individuals with intellectual disabilities, freestanding outpatient surgical facilities, adult day health care centers, rural health centers, laboratories, adult residential care homes, expanded adult residential care homes, developmental disability domiciliary homes, assisted living facilities, therapeutic living programs, and special treatment facilities, shall be deposited into the office of health care assurance special fund created under section 321-1.4. Any other entities required by law to be licensed by the department of health shall also be subject to reasonable fees established by the department of health by rules adopted in accordance with chapter 91.

(c) Other than the fees collected under subsection (b), all other fees collected under this section and section 321-15 shall be deposited into the sanitation and environmental health special fund established under section 321-27. [L 1982, c 80, §4; am L 1994, c 169, §§3, 9; am L 1996, c 164, §1; am L 1998, c 311, §§13, 16; am L 1999, c 120, §3; am L 2007, c 90, §2; am L Sp 2009, c 21, §4; am L 2010, c 176, §2; am L 2011, c 220, §11]

#### **Note**

Repeal and reenactment of subsection (b) on June 30, 2019. L Sp 2009, c 21, §8; L 2014, c 125, §2.

The 2011 amendment is exempt from the repeal and reenactment condition of L Sp 2009, c 21. L 2011, c 220, §20.

" **[§321-11.51] Sanitation permits; transfer.** Sanitation permits that have not expired as of July 2, 1997, shall be transferable upon the sale of a food establishment; provided that such transfers are subject to the new owner agreeing to abide by the compliance schedule of the department of health. [L 1997, c 334, pt of §1]

#### **Revision Note**

"July 2, 1997," substituted for "the effective date of this Act".

" **[§321-11.6] Genetically modified organisms.** Any applicant to any federal agency for any permit for or approval of any bioproduct, field testing of genetically modified organisms, or environmental impact assessment of genetically modified organisms shall submit one copy of that application to the department, at the same time that the application is submitted to the federal agency. [L 1988, c 160, §2]

" **§321-11.7 REPEALED.** L 2013, c 212, §7(3).

" **[§321-11.8] Care homes; liability insurance; coverage.**  
(a) All operators of adult foster homes under section 321-11.2, adult residential care homes, assisted living facilities, community care foster family homes as defined in section 321-481, developmental disabilities domiciliary homes as defined in section 321-15.9, and expanded adult residential care homes as defined in section 321-15.1, shall obtain and maintain the following in coverage amounts deemed sufficient and appropriate by the department of health:  
    (1) Liability insurance with respect to their operation of the homes or facilities; and  
    (2) Automobile liability insurance, including adequate bodily injury liability coverage for vehicles used to transport residents of the homes or facilities.  
(b) Proof of liability insurance for both the home or facility and for vehicles used to transport home or facility residents as required by subsection (a) shall be verified by the department of health, or its designee, on an annual basis.  
(c) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. [L 2013, c 212, §1]

" **[§321-11.9] Dental health facilities; health care facilities; use of latex gloves.** *[Section effective January 1, 2017.]* All personnel working in dental health facilities or health care facilities, including all facilities listed in section 321-11(10), shall be prohibited from using latex gloves for patient care where the patient is unconscious or otherwise physically unable to communicate. Where the patient is conscious and physically able to communicate, latex gloves may be used if the patient affirmatively states that the patient is not allergic to latex. [L 2016, c 180, §2]

#### **Cross References**

Emergency medical services; use of latex gloves prohibited, see §321-236.

" **§321-12 Barbers, hairdressers, cosmeticians, cosmetologists, and beauticians.** The department of health may prescribe rules and regulations which it deems necessary for the public health and safety relative to barbers, hairdressers, cosmeticians, cosmetologists, and beauticians, and the carrying on of their occupations. [L 1907, c 70, §1; RL 1925, §1020; RL 1935, §920; am L 1943, c 43, §5(a); RL 1945, §2016; am L 1945, c 140, §1; am L 1949, c 19, §2; RL 1955, §46-14; am L Sp 1959 2d, c 1, §19; HRS §321-12]

#### **Cross References**

Barbers, licensing, see chapter 438.

Beauty operators, licensing, see chapter 439.

" **[§321-12.2] Tanning facilities; minors; penalties.** (a) It shall be unlawful for any tanning facility owner, lessee, or operator to allow any person under the age of eighteen to use any tanning equipment.

(b) A tanning facility owner, lessee, or operator shall post in a conspicuous place in each tanning facility that the individual owns, leases, or operates in this State, a notice developed by the director of health addressing the following:

- (1) That it is unlawful for a tanning facility owner, lessee, or operator to allow a person under the age of eighteen to use any tanning equipment;
- (2) That any tanning facility owner, lessee, or operator violating this section shall be subject to a fine;
- (3) That any individual may report a violation of this section to the individual's local law enforcement agency; and
- (4) The health risks associated with tanning.

(c) The director of health may impose on a person who violates this section:

- (1) For a first violation, a fine not to exceed \$250; and
- (2) For each subsequent violation, a fine not to exceed \$500.

(d) This section shall not apply to any physician duly licensed to practice medicine who uses, in the practice of medicine, medical diagnostic and therapeutic equipment that emits ultraviolet radiation or to any person who owns tanning equipment exclusively for personal, noncommercial use.

(e) The director of health may adopt rules in accordance with chapter 91 to implement this section.

(f) As used in this section:

"Operator" means a person designated by the tanning facility owner or tanning equipment lessee to operate or assist and instruct in the operation and use of the tanning facility or tanning equipment.

"Tanning equipment" means any device that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers used for tanning of the skin, including but not limited to sunlamps, tanning booths, or tanning beds.

"Tanning facility" means any location, place, area, structure, or business that provides persons access to any tanning equipment, including tanning salons, health clubs, gyms, apartments, condominiums, and hotels, regardless of whether a fee is charged for access to the tanning equipment. [L 2014, c 205, §2]

" **[§321-12.5] Certified forensic examination fees.** (a) The department of health, by rules adopted pursuant to chapter 91, shall establish fees for application and certification as certified forensic examiners, to be paid by the applicant at the onset of the application process. The fees shall cover the costs of training, examination, certification, and monitoring.

(b) All moneys collected as fees pursuant to subsection (a) shall be deposited into the mental health and substance abuse special fund established by section 334-15.

(c) All funds deposited in the mental health and substance abuse special fund pursuant to subsection (b) shall be used exclusively to support the activities relating to the application, training, certification, and monitoring of the certified forensic examination program. [L 1995, c 214, §1]

" **§321-13 Regulation of certain other occupations.** (a) The department of health, with the approval of the governor, may adopt rules as it deems necessary for the public health or safety respecting:

- (1) The occupations or practices of clinical laboratory directors, medical technologists (clinical laboratory scientists), clinical laboratory specialists, cytotechnologists, medical laboratory technicians (clinical laboratory technicians), tattoo artists, and environmental health professionals;
- (2) The health, education, training, experience, habits, qualifications, or character of persons to whom certificates of registration or permits for these occupations or practices may be issued;
- (3) The health, habits, character, practices, standards, or conduct of persons holding these certificates or permits; and

- (4) The grounds or causes for revoking or suspending these certificates or permits.

The rules shall have the force and effect of law.

(b) It shall be unlawful for any person to engage in or to attempt to engage in or to follow any of the occupations or practices referred to in this section, unless the person first obtains and holds a valid unrevoked certificate of registration or permit under such rules or regulations as the department shall prescribe.

(c) The department may revoke or suspend any certificate of registration or permit issued under this section or issued prior to April 23, 1941, upon proof to its satisfaction of a violation of any rule or regulation of the department on the part of any person holding a certificate or permit; provided that no such certificate or permit shall be revoked or suspended except upon due notice to the person holding the same and the person shall be given an opportunity to be heard and present evidence in the person's own defense. [L 1941, c 87, §§1, 2, 3; RL 1945, §2017; am L 1945, c 116, §1(c); am L 1947, c 192, §22; am L 1949, c 19, §1; am L 1955, c 117, §1; RL 1955, §46-15; am L 1959, c 25, §1; am L Sp 1959 2d, c 1, §19; HRS §321-13; am L 1969, c 160, §1; am L 1973, c 80, §2(1); am L 1974, c 214, §1; am L 1982, c 80, §1; am L 1985, c 11, §1 and c 276, §4; gen ch 1985; am L 1986, c 139, §9; am L 1988, c 194, §3; am L 1990, c 225, §4 and c 285, §6; am L 1997, c 219, §2; am L 1999, c 210, §1 and c 211, §3]

#### Cross References

Nursing home administrators act, see chapter 457B.

" **[§321-13.5 Certified nurse aides; investigations of abuse and neglect.]** The department shall adopt rules pursuant to chapter 91 relating to:

- (1) The investigation of:
  - (A) Abuse or neglect by a certified nurse aide working in a health care setting licensed or certified by the department; and
  - (B) Misappropriation of an individual's property by a certified nurse aide working in a health care setting licensed or certified by the department; and
- (2) Action taken against a certified nurse aide as a result of an investigation pursuant to paragraph (1).  
[L 2007, c 226, §2]

" **§321-14 License to practice certain occupations.** It shall be unlawful for any person to practice any of the occupations specified in section 321-13(a)(1) without a license so to do; any person wishing to obtain a license to engage in any of the specified occupations shall make application to the department of health, in accordance with such rules as shall be prescribed by the department under section 321-13, and any such application shall be accompanied by an examination fee for such license. [L 1957, c 316, pt of §1; am L 1959, c 25, §2; am L Sp 1959 2d, c 1, §19; Supp, §46-15.1; HRS §321-14; am L 1969, c 160, §2; am L 1973, c 80, §2(2) and c 97, §1; am L 1974, c 214, §2; am L 1982, c 80, §2]

### **Cross References**

Regulatory licensing of certain health related professions or occupations, see title 25.

" **§321-14.5 Hospitals; licensing.** (a) All hospitals shall be licensed by the department to ensure the health, safety, and welfare of the individuals placed therein.

(b) The director shall adopt rules in accordance with chapter 91 that shall provide for the licensing of hospitals.

(c) The rules may provide that accreditation by the joint commission on accreditation of healthcare organizations demonstrates a hospital's compliance with all licensing inspections required by the State. The rules may exempt a hospital from a licensing inspection on a continuing basis throughout the term of the accreditation under the following conditions:

(1) The hospital provides a certified copy of the hospital's official joint commission on accreditation of healthcare organizations accreditation report to the department;

(2) The hospital continuously holds full accreditation by the joint commission on accreditation of healthcare organizations; and

(3) The hospital holds a current and valid state license.

(d) The rules shall provide that the department may conduct inspections and investigations of exempt hospitals to investigate complaints, follow up on adverse accreditation findings, or conduct periodic validation surveys.

(e) Information contained in reports of survey and official accreditation letters made by the joint commission on accreditation of healthcare organizations used in determining compliance with licensing requirements shall be public information.



(f) All other records maintained by the department shall be governed by chapter 92F. [L 2002, c 118, §1; am L 2012, c 273, §1]

" **[§321-14.8] Home care agencies; licensing.** [Section repealed on June 30, 2014. L Sp 2009, c 21, §8.] (a) Beginning July 1, 2010, each home care agency shall be licensed by the department of health to ensure the health, safety, and welfare of clients.

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

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

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

(c) A service provider agency under contract for services with the city and county of Honolulu elderly affairs division shall be exempt from the licensing requirement of this section.

(d) For purposes of this section:

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

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

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

(2) Homemaker assistance, including housekeeping, shopping, and meal planning and preparation; and

(3) Respite care and assistance and support provided to the family. [L Sp 2009, c 21, §2]

#### **Note**

Section repealed June 30, 2019. L Sp 2009, c 21, §8; L 2014, c 125, §2.

Department of health to request funding for the permanent position that facilitates the licensing of home care agencies as part of its annual budget request, beginning with fiscal year 2015-2016. L 2014, c 125, §4.

" **§321-15 Biennial registration; fees, failure to register; denial, suspension, or revocation of a license.** (a) Every person holding a license to practice any occupation specified in section 321-13(a)(1) shall reregister with the department of health every other year in accordance with the rules of the

department, before February 1 except where superseded by federal law, and shall pay a reregistration fee. The failure, neglect, or refusal of any person holding a license to reregister or pay the reregistration fee, after thirty days of delinquency, shall constitute a forfeiture of the person's license; provided that the license shall be restored upon written application therefor together with a payment of all delinquent fees and an additional late reregistration fee that may be established by the director of health. All fees collected pursuant to this section shall be deposited into the sanitation and environmental health special fund established under section 321-27.

(b) The department shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the department has received certification from the child support enforcement agency pursuant to the terms of section 576D-13 that the licensee or applicant is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, the department shall grant, renew, restore, or reinstate a license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or family court.

(c) The department shall not renew or reinstate, or shall deny or suspend any license or application, if the department has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education, or has failed to comply with a repayment plan.

The department in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or

(3) Deny the request for reinstatement of the license, and unless otherwise provided by law, shall grant, renew, or reinstate the license only upon receipt of an authorization from the administering entity. [L 1957, c 316, pt of §1; am L 1959, c 25, §2; am L Sp 1959 2d, c 1, §19; Supp, §46-15.2; HRS §321-15; am L 1969, c 160, §3; am L 1973, c 80, §2(3); am L 1974, c 214, §3; am L 1982, c 80, §3; gen ch 1985; am L 1994, c 169, §§4, 9; am L 1996, c 164, §1; am L 1997, c 293, §15; am L 1998, c 311, §§14, 16; am L 1999, c 273, §3; am L 2002, c 226, §5; am L 2003, c 133, §6; am L 2010, c 176, §3]

" **§321-15.1 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Adult residential care home" means any facility providing twenty-four-hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, personal care services, protection, and health care services, but who do not need the professional health services provided in an intermediate, skilled nursing, or acute care facility.

"Asbestos abatement project designer" means a person who is accredited to determine how the asbestos abatement work should be conducted.

"Asbestos inspector" means a person who is accredited to identify asbestos-containing building material and to assess its physical condition.

"Asbestos management planner" means a person who is accredited to use the data gathered by asbestos inspectors to assess the current or potential hazard posed by the asbestos-containing building material, to determine the appropriate response actions, and to develop a schedule for implementing these response actions.

"Assisted living facility" means a combination of housing, health care services, and personalized supportive services designed to respond to individual needs, to promote choice, responsibility, independence, privacy, dignity, and individuality.

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

"Hospice home" means any facility operated by a licensed hospice service agency providing twenty-four-hour living accommodations to no more than five unrelated persons who are admitted for hospice service. [L 1985, c 272, §2; am L 1988, c 194, §4 and c 334, §1; am L 1995, c 87, §3; am L 1998, c 132, §3; am L 1999, c 77, §6]

#### **Cross References**

Asbestos and lead pollution control, see chapter 342P.

" **§321-15.2 Background checks.** (a) For the purposes of this section:

"Adults" means individuals aged eighteen years or older.

"Applicant" means a person or entity seeking licensure or certification to operate a healthcare facility. If the applicant is an entity, the term "applicant" shall also include its principals, directors, partners, managers, agents, and representatives to the extent that any of these individuals will have access to or contact with clients, their finances, assets, personal property, medical records, or individually identifiable information.

"Background check" means a review of records stored in state or national record repositories for history of abuse, neglect, threatened harm, or other maltreatment against children or adults, and for any criminal history, including:

- (1) Adult abuse perpetrator records by means of a search of the individual's name and birth date in the state adult protective services central registry of reported cases established in section 346-224;
- (2) Child abuse and neglect records by means of:
  - (A) An initial name inquiry in the state child welfare record files;
  - (B) A subsequent child abuse confirmation history check for new hires and rehires; and
  - (C) An annual name inquiry into state child welfare record files;
- (3) Criminal history records in accordance with section 846-2.7;
- (4) Sex offender registry records;
- (5) Certified nurse aide registry for information or findings pursuant to section 457A-3; and
- (6) Adult abuse perpetrator records, child abuse and neglect records, criminal history records, sex offender registry records, and certified nurse aide registry records of another state where a prospective employee or adult volunteer previously resided.

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

"Criminal history record name inquiry" means a record check by name for any federal or state conviction for any relevant crime as defined in this section.

"Department" means the department of health.

"Direct patient access employee" means any individual, including a volunteer, who has access to a patient or resident of a healthcare facility, or any provider through employment or through an agreement or contract with such a facility or provider. Such individuals include but are not limited to: physicians, nurses, nursing assistants, home health aides,

therapists, activities personnel, and support staff (i.e., housekeeping, dietary, etc.) who have direct access to patients or patient belongings.

"Disqualifying information" means a conviction for a relevant crime or a finding of patient or resident abuse.

"Healthcare facility" [*Repeal and reenactment on June 30, 2019. L Sp 2009, c 21, §8; L 2014, c 125, §2.*] means a facility, setting, or agency licensed or certified by the department of health that provides mental health or health care services or living accommodations to individuals, such as a skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, home care agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for individuals with intellectual disabilities, hospital, rural health center, community care foster family home, home and community-based case management agency, adult day care center, developmental disabilities domiciliary home, adult foster home for individuals with developmental disabilities, community mental health center, and rehabilitation agency.

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

"Operator" means an individual or entity that is licensed or is seeking licensure to operate a healthcare facility and is responsible for the management and overall operations of that healthcare facility.

"Relevant crime" means:

- (1) Any offense described in 42 United States Code §1320a-7 (section 1128(a) of the Social Security Act); or
- (2) A crime of such a serious nature or circumstance that the department finds its perpetrator to pose a risk to the health, safety, or well-being of a patient or resident. This includes but is not limited to murder, manslaughter, assault, sex offenses, domestic violence, theft or forgery, arson, kidnapping, or possession, use, sale, manufacture, or distribution of dangerous drugs or controlled substances.

(b) The department shall adopt rules pursuant to chapter 91 to ensure the reputable and responsible character of all prospective applicants, operators, direct patient access employees, and adult volunteers of a healthcare facility, and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients. These rules, among other things, shall specify how the

department or its designee may conduct background checks in accordance with this section.

(c) All applicants and prospective operators shall:

- (1) Be subject to background checks; and
- (2) Provide consent to the department or its designee to conduct background checks.

(d) All prospective direct patient access employees and adult volunteers of healthcare facilities and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients shall:

- (1) Be subject to background checks in accordance with this section; and
- (2) Provide consent to the department or its designee to conduct background checks.

(e) The department or its designee shall obtain background check information in accordance with this section from an applicant or operator, on the applicant or operator, and on any prospective employees of the applicant or operator including any new employee retained after the applicant is issued a license or certificate under this part, which shall include an annual name inquiry into state criminal history record files.

(f) The department may revoke or suspend a current license or certificate, impose penalties or fines, or deny an application for a license or certificate under rules adopted pursuant to chapter 91 if the applicant, operator, employee, or adult volunteer at the healthcare facility or, in the case of any healthcare facility operated in a private residence, any adult living in the home other than the client:

- (1) Refuses to authorize the department or its designee to conduct a background check, refuses to authorize the department or its designee to obtain background check record information for verification, or refuses consent to be fingerprinted;
- (2) Refuses or fails to submit to the department or its designee information required to perform a background check;
- (3) Has any disqualifying information; or
- (4) Has any background check information that the department finds may pose a risk to the health, safety, or welfare of the residents or patients of the healthcare facility.

(g) The fee charged by the Federal Bureau of Investigation and the Hawaii criminal justice data center to perform criminal history record checks may be passed on to all applicants, operators, direct patient access employees, and adult volunteers at the healthcare facility and, in the case of a facility

operated in a private residence, all adults living in the home other than the clients.

(h) The department or its designee, in obtaining and relying upon the background check information, is presumed to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the background check information. The presumption of good faith may be rebutted upon a showing of proof by a preponderance of the evidence that the department or its designee relied upon information or opinion that it knew was false or misleading or that such reliance was not reasonable.

(i) Any applicant or operator who receives information from the department or its designee relating to a background check of a direct patient access employee or adult volunteer or, in the case of a healthcare facility operated in a private residence, an adult living in the home other than the clients, is presumed to be acting in good faith and shall be immune from civil liability for reasonably taking or recommending action based upon the department's recommendation or direction. Nothing in this section shall affect rights, obligations, remedies, liabilities, or standards of proof under chapters 368 and 378.

Background check record information shall be used exclusively by the department or its designee for the sole purpose of determining whether an applicant, operator, direct patient access employee, or adult volunteer at a healthcare facility, or, in the case of a facility operated in a private residence, any adult living in the home other than the clients is suitable for working or living in close proximity to residents of a healthcare facility such that the health, safety, and welfare of the residents would not be at risk. [L 2006, c 220, §2; am L Sp 2009, c 21, §5; am L 2011, c 220, §11; am L 2012, c 285, §2; am L 2015, c 190, §1]

#### **Note**

The 2011 amendment is exempt from the repeal and reenactment condition of L Sp 2009, c 21. L 2011, c 220, §20.

The 2015 amendment to the definition of "healthcare facility" is exempt from the repeal and reenactment condition of L Sp 2009, c 21, §8, as amended by L 2014, c 125, §2. L 2015, c 190, §12.

L 2006, c 220, §6 provides:

"SECTION 6. There shall be established a working committee of five members with representatives from the department of health, department of human services, provider organizations and community, as appointed by the directors of the department of

health and department of human services to meet minimally on a quarterly basis to review and evaluate the process undertaken by the departments in effecting criminal history record checks and provide recommendations to the directors of the departments as relevant. Members shall serve a term of two years which may be extended at the discretion of the directors of the departments and will report to departmental administrators as designated by the directors."

" **[§321-15.3 Criminal history disclosure of prospective care home resident.]** Notwithstanding any other law to the contrary, the department of health shall disclose to the operator of an adult residential care home, to the extent that the division or office of the department that is referring the individual to the care home possesses, the information in existing records at the time of, and as part of, the application for admission, the criminal history of a prospective resident applying for entry to the care home when the prospective resident had previously been:

- (1) Convicted of an offense involving violence to a person; or
- (2) Admitted to the state hospital under the jurisdiction of the department of health as a result of an acquittal under chapter 704 for an offense involving violence to a person. [L 2002, c 166, §2]

" **§321-15.5 REPEALED.** L 1978, c 107, §4.

" **§321-15.6 Adult residential care homes; licensing.** (a) *[Subsection effective until June 30, 2019. For subsection effective July 1, 2019, see below.]* All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein. The department shall conduct unannounced visits, other than the inspection for relicensing, to every licensed adult residential care home and expanded adult residential care home on an annual basis and at such intervals as determined by the department to ensure the health, safety, and welfare of each resident. Unannounced visits may be conducted during or outside regular business hours. All inspections relating to follow-up visits, visits to confirm correction of deficiencies, or visits to investigate complaints or suspicion of abuse or neglect shall be conducted unannounced during or outside regular business hours. Annual inspections for relicensing may be conducted during regular business hours or at intervals determined by the department. Annual inspections for relicensing shall be conducted with notice, unless otherwise determined by the department.



(a) *[Subsection effective July 1, 2019. For subsection effective until June 30, 2019, see above.]* All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein. The department shall conduct visits and inspections pursuant to section 321-1.9.

(b) The director shall adopt rules regarding adult residential care homes in accordance with chapter 91 that shall be designed to:

- (1) Protect the health, safety, and civil rights of persons residing in facilities regulated;
- (2) Provide for the licensing of adult residential care homes; provided that the rules shall allow group living in two categories of adult residential care homes as licensed by the department of health:
  - (A) Type I allowing five or fewer residents; provided that up to six residents may be allowed at the discretion of the department to live in a type I home; provided further that the primary caregiver or home operator is a certified nurse aide who has completed a state-approved training program and other training as required by the department; and
  - (B) Type II allowing six or more residents, including but not limited to the mentally ill, elders, persons with disabilities, the developmentally disabled, or totally disabled persons who are not related to the home operator or facility staff;
- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.

For the purposes of this subsection:

"Developmentally disabled" means a person with developmental disabilities as defined under section 333F-1.

"Elder" has the same meaning as defined under section 356D-1.

"Mentally ill" means a mentally ill person as defined under section 334-1.

"Persons with disabilities" means persons having a disability under section 515-2.

"Totally disabled person" has the same meaning as a person totally disabled as defined under section 235-1.

(c) The department may provide for the training of and consultations with operators and staff of any facility licensed under this section, in conjunction with any licensing thereof, and shall adopt rules to ensure that adult residential care home

operators shall have the needed skills to provide proper care and supervision in a home environment as required under department rules.

(d) The department shall establish a standard admission policy and procedure which shall require the provision of information that includes the appropriate medical and personal history of the patient as well as the level of care needed by the patient prior to the patient's referral and admission to any adult residential care home facility. The department shall develop appropriate forms and patient summaries for this purpose.

(e) The department shall maintain an inventory of all facilities licensed under this section and shall maintain a current inventory of vacancies therein to facilitate the placement of individuals in such facilities.

(f) The department shall develop and adopt a social model of health care to ensure the health, safety, and welfare of individuals placed in adult residential care homes. The social model of care shall provide for aging in place and be designed to protect the health, safety, civil rights, and rights of choice of the persons to reside in a nursing facility or in home- or community-based care.

(g) Any fines collected by the department of health for violations of this section shall be deposited into the office of health care assurance special fund. [L 1978, c 107, pt of §3; am L 1979, c 9, §1 and c 105, §33; am L 1982, c 54, §2; am L 1985, c 272, §5; am L 1986, c 177, §2; am L 1987, c 283, §21; am L 1988, c 334, §2; am L 1990, c 67, §5; am L 1993, c 227, §1; am L 1997, c 341, §2 and c 350, §15; am L 1998, c 132, §4; am L 2002, c 166, §3 and c 188, §2; am L 2003, c 202, §1; am L 2006, c 270, §2; am L 2007, c 90, §3 and c 249, §20; am L 2016, c 184, §3]

### **Cross References**

Coordination and development of caregiver support services, see §349-15.

Dependent elder abuse; suits by the State; civil penalties, see §28-94.

Long-term care, see chapter 346D.

" **[§321-15.61] Adult residential care homes expanded admissions.** (a) Adult residential care homes may admit an individual who has been living immediately prior to admission in the individual's own home, a hospital, or other care setting, and who has been either:

- (1) Admitted to a medicaid waiver program and determined by the department of human services to require nursing

facility level care to manage the individual's physical, mental, and social functions; or

- (2) A private-paying individual certified by a physician or advanced practice registered nurse as needing a nursing facility level of care.

(b) The department of health shall adopt rules in accordance with chapter 91 to expand admissions to adult residential care homes by level of care and to define and standardize these levels of care. The rules and standards shall provide for appropriate and adequate requirements for knowledge and training of adult residential care home operators and their employees. [L 1998, c 132, pt of §1]

" **§321-15.62 Expanded adult residential care homes; licensing.** (a) *[Subsection effective until June 30, 2019. For subsection effective July 1, 2019, see below.]* All expanded adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein.

(a) *[Subsection effective July 1, 2019. For subsection effective until June 30, 2019, see above.]* All expanded adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein. The department shall conduct visits and inspections pursuant to section 321-1.9.

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

- (1) Protect the health, safety, civil rights, and rights of choice of residents in a nursing facility or in home- or community-based care;
- (2) Provide for the licensing of expanded adult residential care homes for persons who are certified by the department of human services, a physician, advanced practice registered nurse, or registered nurse case manager as requiring skilled nursing facility level or intermediate care facility level of care who have no financial relationship with the home care operator or facility staff; provided that the rules shall allow group living in the following two categories of expanded adult residential care homes as licensed by the department of health:
  - (A) A type I home shall consist of five or fewer residents with no more than two nursing facility level residents; provided that more nursing facility level residents may be allowed at the

discretion of the department; and provided further that up to six residents may be allowed at the discretion of the department to live in a type I home; provided that the primary caregiver or home operator is a certified nurse aide who has completed a state-approved training program and other training as required by the department; and

- (B) A type II home shall consist of six or more residents, with no more than twenty per cent of the home's licensed capacity as nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department;

provided further that the department shall exercise its discretion for a resident presently residing in a type I or type II home, to allow the resident to remain as an additional nursing facility level resident based upon the best interests of the resident. The best interests of the resident shall be determined by the department after consultation with the resident, the resident's family, primary physician, case manager, primary caregiver, and home operator;

- (3) Comply with applicable federal laws and regulations of title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.

(c) The department may provide for the training of and consultations with operators and staff of any facility licensed under this section, in conjunction with any licensing thereof, and shall adopt rules to ensure that expanded adult residential care home operators shall have the needed skills to provide proper care and supervision in a home environment as required under department rules.

(d) The department shall establish a standard admission policy and procedure which shall require the provision of information that includes the appropriate medical and personal history of the patient as well as the level of care needed by the patient prior to the patient's referral and admission to any expanded adult residential care home facility. The department shall develop appropriate forms and patient summaries for this purpose.

(e) The department shall maintain an inventory of all facilities licensed under this section and shall maintain a current inventory of vacancies therein to facilitate the placement of individuals in such facilities. [L 1998, c 132, pt

of §1; am L 2002, c 166, §4; am L 2006, c 270, §3; am L 2010, c 120, §1; am L 2010, c 120, §§1, 4; ree L 2014, c 9, §11; am L 2016, c 184, §4]

" **[§321-15.63] Hospice services.** (a) The department of health may license hospice service agencies. If the department licenses hospice service agencies, the director shall adopt rules in accordance with chapter 91 regarding hospice service agencies that shall:

- (1) Protect the health, safety, welfare, and civil rights of persons residing in their place of residence; and
- (2) Provide penalties for the failure to comply with any rule.

Licensing shall be required annually for the first two years of licensure. Thereafter, licensing shall be required biennially; provided that if the department of health receives a complaint regarding the hospice service agency from the time of the last licensure, the licensing shall be required annually until such time as the department is satisfied that licensing may proceed biennially.

(b) For the purpose of this section:

"Hospice service" means a program of palliative and supportive care for terminally ill persons and their families or caregivers.

"Hospice service agency" means an agency or organization, or a subdivision of that agency or organization, which is engaged in providing hospice services at the place of residence of its clients. [L 1999, c 77, §3]

" **§321-15.7 Penalty.** Any person who intentionally operates an adult residential care home or hospice home without a license shall be guilty of a misdemeanor. [L 1978, c 107, pt of §3; am L 1985, c 272, §6; am L 1989, c 223, §2; am L 1999, c 77, §7]

" **§321-15.8 REPEALED.** L 1988, c 205, §1.

" **§321-15.9 Developmental disabilities residential services.**

(a) The department of health is authorized to license developmental disabilities domiciliary homes for individuals with developmental or intellectual disabilities who are unable to live independently and who require supervision or care, but do not require care by licensed nurses in a domiciliary setting; provided that nothing in this section shall exclude the department of human services from licensing, certifying, regulating, or entering into contracts for child foster homes or providers that serve persons with developmental disabilities or intellectual disabilities.

(b) For the purposes of this section:

"Developmental disabilities" shall be as defined under section 333E-2.

"Developmental disabilities apartment complex" means an apartment building composed of five or more separate apartment units in which every apartment unit, except for one apartment unit occupied by the operator or staff for the complex, is dedicated to providing residences for individuals with developmental disabilities or intellectual disabilities who do not require twenty-four hour supervision or care.

"Developmental disabilities domiciliary home" means a residence for not more than five persons with developmental disabilities or intellectual disabilities that require twenty-four hour supervision or care, but do not require care by licensed nurses in a domiciliary setting.

"Intellectual disability" shall be as defined under section 333F-1.

(c) The director shall adopt rules regarding developmental disabilities domiciliary homes in accordance with chapter 91 that shall be designed to:

- (1) Establish criteria for licensure of homes, including inspections, registration, fees, qualifications of operators and staff, and other factors necessary to ensure safe and appropriate operation of each home;
- (2) Protect the health, safety, and civil rights of persons residing in the homes;
- (3) Provide for plans of care that include community integration and support of persons residing in the licensed homes;
- (4) Provide for the licensure of homes of up to five persons with developmental disabilities or intellectual disabilities, and who are not related to the home operator or facility staff;
- (5) Establish penalties for the failure to comply with any rule; and
- (6) Establish criteria for training of operators and staff of any developmental disabilities domiciliary home licensed under this section.

(d) Rules adopted under this section shall be enforced by the director.

(e) No single apartment in a developmental disabilities apartment complex funded under this section shall be occupied by more than two residents with developmental disabilities or intellectual disabilities.

(f) The director shall establish criteria for contracts for developmental disabilities apartment complexes and where

necessary to provide for additional funding for developmental disabilities domiciliary homes.

(g) The department shall maintain a registry of all developmental disabilities domiciliary homes licensed under this section and a current inventory of vacancies.

(h) The department of health may enter into contracts for additional payments for residential services to the providers of developmental disabilities domiciliary homes and payments to operators of developmental disabilities apartment complexes for residential services on terms determined by the department of health. [L 1990, c 180, §1; am L 2005, c 168, §2; L 2011, c 220, §§12, 13]

### **Cross References**

Inspections of state-licensed care facilities; public notice, see §321-1.8.

" **§§321-16, 16.1 REPEALED.** L 1972, c 100, §2.

" **[§321-16.5] Special treatment facilities.** (a) All special treatment facilities shall be licensed to ensure the health, safety, and welfare of the individuals placed therein.

(b) The director shall adopt rules, in accordance with chapter 91, regarding special treatment facilities that shall be designed to:

- (1) Provide a therapeutic residential program for care, diagnosis, treatment, or rehabilitation for socially or emotionally distressed persons, mentally ill persons, persons suffering from substance abuse, and developmentally disabled persons. Special treatment facilities shall include a short-term crisis residential program or a long-term residential treatment program;
- (2) Comply with applicable federal laws and regulations; and
- (3) Provide penalties for the failure to comply with any rule.

(c) For the purposes of this section:

"Long-term residential" means a residential treatment program for persons whose duration of stay is thirty days or longer.

"Short-term crisis residential" means a residential treatment program for persons who are in crisis and whose duration of stay is less than thirty days.

"Socially or emotionally distressed person" means an individual who is experiencing psychiatric symptomatology that

may be acute or chronic in nature, which requires therapeutic or rehabilitative services. [L 2005, c 139, pt of §2]

" **[§321-16.6] Therapeutic living programs.** (a) All therapeutic living programs shall be licensed to ensure the health, safety, and welfare of the individuals placed therein.

(b) The director shall adopt rules regarding therapeutic living programs in accordance with chapter 91 that shall be designed to:

- (1) Comply with applicable federal laws and regulations; and
- (2) Provide penalties for the failure to comply with any rule.

(c) For the purposes of this section, "therapeutic living program" means a supervised living arrangement that provides mental health, substance abuse services, or supportive services for individuals or families who do not need the structure of a special treatment facility and are transitioning to independent living. The program aids residents in meeting basic needs and provides supportive services through a required service plan. [L 2005, c 139, pt of §2]

" **§321-17 Vessels to carry diseased persons; penalty.** Vessels, regardless of tonnage, and other common carriers, shall be permitted or required to carry persons having Hansen's disease or other contagious diseases under such restrictions and provisions as may be prescribed by the department of health. Apartments on steamers or on other common carriers occupied by cases of Hansen's disease or other diseases shall be disinfected in a manner prescribed or approved by the department.

The master or owner of any such vessel knowingly violating this section shall be fined not more than \$200. [L 1893-4, c 30, §§1, 2; am L 1903, c 8, §2; am L 1909, c 132, §1; RL 1925, §§1208, 1209; am L 1929, c 149, pt of §1; am L 1931, c 139, §5; am L 1933, c 118, §1; am L 1933-4, c 30, §1; RL 1935, §903; RL 1945, §2019; RL 1955, §46-17; am L Sp 1959 2d, c 1, §19; HRS §321-17; am L 1969, c 152, §1; am L 1981, c 185, §1; am L 1983, c 124, §16]

" **§321-18 Penalty.** Except when another penalty is provided, every person who violates any rule of the department, after the same has been adopted, as provided in section 321-10, shall be guilty of a misdemeanor. [PC 1869, c 59, §8; RL 1925, §914; RL 1935, §906; am L 1943, c 18, §1; RL 1945, §2020; am L 1947, c 82, §1; RL 1955, §46-18; am L 1965, c 96, §29; HRS §321-18; am L 1983, c 100, §3]



" **[§321-19] Delegation to counties.** Any provision to the contrary notwithstanding, the department of health may, in adopting rules and regulations under sections 321-9, 321-10, and 321-11, delegate functions for inspection and enforcement of such rules, including the function of issuance of permits, certificates, or licenses, to the various counties. Such delegation of authority shall be in accordance with standards duly adopted by the department. [L 1978, c 26, §2]

" **[§321-20] Remedies.** Notwithstanding other penalties, the director may enforce this chapter in either administrative or judicial proceedings:

- (1) Administrative. If the director determines that any person is violating any provision of this chapter, any rule adopted thereunder, or any variance or exemption or waiver issued pursuant thereto, the director may have that person served with a notice of violation and an order. The notice shall specify the alleged violation. The order may require that the alleged violator do any or all of the following: cease and desist from the violation, pay an administrative penalty not to exceed \$1,000 for each day of violation, correct the violation at the alleged violator's own expense, or appear before the director at a time and place specified in the order and answer the charges complained of. The order shall become final twenty days after service unless within those twenty days the alleged violator requests in writing a hearing before the director. Upon such request the director shall specify a time and place for the alleged violator to appear. When the director issues an order for immediate action to protect the public health from an imminent and substantial danger, the department shall provide an opportunity for a hearing within twenty-four hours after service of the order. After a hearing pursuant to this subsection, the director may affirm, modify, or rescind the order as appropriate. The director may institute a civil action in any court of appropriate jurisdiction for the enforcement of any order issued pursuant to this subsection.

Factors to be considered in imposing the administrative penalty include the nature and history of the violation and any prior violation and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty

and the burden of proof to the contrary is on the violator. In any judicial proceeding to enforce the administrative penalty imposed pursuant to this chapter, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing had expired without such a request, the administrative penalty imposed, and that the penalty imposed remains unsatisfied.

This section does not supersede specific administrative penalties provided elsewhere.

- (2) Judicial. The director may institute a civil action in any court of appropriate jurisdiction for injunctive relief to prevent violation of any order issued or rule adopted pursuant to this chapter, in addition to any other remedy or penalty provided for under this chapter. [L 1985, c 84, §1]

" **[§321-21] Infectious wastes; management and disposal.** The department of health shall adopt rules pursuant to chapter 91 for the management and disposal of infectious wastes generated by hospitals, clinics, other health care facilities, doctors' offices, dentists' offices, research laboratories, veterinary clinics, and other generators of infectious wastes. The rules shall include a definition of infectious wastes that clearly and objectively defines infectious wastes and specifies acceptable containers and other factors related to the identification, segregation, containment, and transportation of infectious wastes. Effective July 1, 1991, all generators of infectious wastes shall show proof that infectious wastes are being managed and disposed of according to departmental rules upon request of the department. [L 1989, c 258, §2]

" **[§321-22] Long term care service development fund established.** There is established in the treasury of the State a special fund to be known as the long term care service development fund, which shall be administered by the executive office on aging to provide grants to promote the establishment, reorganization, or expansion of businesses and nonprofit corporations offering community-based long term care services on a fee-for-service basis and to provide funding for training and business plan development, including, but not limited to, workshops assisting providers on the development of their business plans, assistance with applications for grants, business management training, and other types of training. [L 1989, c 380, §2]

#### **Cross References**

Coordination and development of caregiver support services, see §349-15.

Long-term care, see chapter 346D.

Long-term care financing, see chapter 346C.

" **§321-22.5 Trauma system special fund.** (a) There is established within the state treasury a special fund to be known as the trauma system special fund to be administered and expended by the department of health. The fund shall consist of:

- (1) Surcharges collected pursuant to sections 291-15, 291C-2, and 291E-7;
- (2) Cigarette tax revenues designated under section 245-15;
- (3) Federal funds granted by Congress or executive order for the purpose of this chapter; provided that the acceptance and use of federal funds shall not commit state funds for services and shall not place an obligation upon the legislature to continue the purpose for which the federal funds are made available;
- (4) Funds appropriated by the legislature for this purpose, including grants-in-aid;
- (5) Grants, donations, and contributions from private or public sources for the purposes of the trauma system special fund; and
- (6) Interest on and other income from the fund, which shall be separately accounted for.

The unexpended and unencumbered moneys in the fund in excess of \$7,400,000 on June 30 of each fiscal year shall be transferred by the director of finance into and become a realization of the general fund on that date. Expenditures from the trauma system special fund shall be exempt from chapters 103D and 103F.

(b) The moneys in the trauma system special fund shall be used by the department to support the continuing development and operation of a comprehensive state trauma system. The trauma system special fund shall be used to subsidize the documented costs for the comprehensive state trauma system, including but not limited to the following:

- (1) Costs of under-compensated and uncompensated trauma care incurred by hospitals providing care to trauma patients;
- (2) Costs incurred by hospitals providing care to trauma patients to maintain on-call physicians for trauma care; and

- (3) Costs to staff and operate the State's injury prevention program.

The money in the trauma system special fund shall not be used to supplant funding for trauma services authorized prior to July 1, 2006, and shall not be used for ambulance or medical air transport services.

(c) Disbursements from the fund shall be made in accordance with a methodology established by the department of health to calculate costs incurred by a hospital providing care to trauma patients that are eligible to receive reimbursement under subsection (d). The methodology shall take into account:

- (1) Physician on-call coverage that is demonstrated to be essential for trauma services within the hospital;
- (2) Equipment that is demonstrated to be essential for trauma services within the hospital;
- (3) The creation of overflow or surge capacity to allow a trauma center to respond to mass casualties resulting from an act of terrorism or natural disaster; and
- (4) All other hospital services and resources that are demonstrated to be essential for trauma services within the hospital.

The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section.

(d) To receive reimbursement, a hospital providing care to trauma patients shall apply to the trauma system special fund on a form and in a manner approved by the department; provided that recipients of reimbursements from the trauma system special fund shall be subject to the following conditions:

- (1) The recipient of a reimbursement shall:
  - (A) Comply with applicable federal, state, and county laws;
  - (B) Comply with any other requirements the director may prescribe;
  - (C) Allow the director, the legislative bodies, and the state auditor access to records, reports, files, and other related documents, to the extent permissible under applicable state and federal law, so that the program, management, and fiscal practices of the recipient may be monitored and evaluated to ensure the proper and effective expenditure of public funds;
  - (D) Provide care to all injured patients regardless of their ability to pay; and
  - (E) Participate in data collection and peer review activities for the purpose of system evaluation and improvement of patient care; and

(2) Every reimbursement shall be monitored according to rules established by the director under chapter 91 to ensure compliance with this section.

(e) Necessary administrative expenses to carry out this section shall not exceed five per cent of the total amount collected in any given year.

(f) The department shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session that outlines the receipts of and expenditures from the trauma system special fund.

(g) For the purposes of this section:

"Comprehensive state trauma system" means a coordinated integrated system providing a spectrum of medical care throughout the State designed to reduce death and disability by appropriate and timely diagnosis and specialized treatment of injuries, which includes hospitals with successive levels of advanced capabilities for trauma care in accordance with nationally accepted standards established by the American College of Surgeons Committee on Trauma.

"Hospital providing care to trauma patients" means a hospital with emergency services that receives and treats injured patients.

"Trauma care" means specialized medical care intended to reduce death and disability from injuries.

"Trauma center" means a facility verified by the American College of Surgeons or designated by the department applying American College of Surgeons recommendations as guidelines as being a level I, level II, level III, or level IV trauma center. Level I represents the highest level attainable by a verified trauma center, and level IV represents the lowest level attainable by a verified trauma center. [L 2006, c 305, §2; am L 2008, c 231, §20; am L 2012, c 276, §1; am L 2015, c 238, §3]

#### Note

Establishing positions, convening ad hoc committees, and annual report to legislature on fund. L 2006, c 305, §§5 to 7.

" **[§321-23] Catastrophic and traumatic emergency response program established.** (a) The director shall establish within the department a catastrophic and traumatic emergency response program to:

(1) Provide for the delivery of prompt psychological services in the event of a catastrophic event or traumatic emergency;

- (2) Provide for critical incident stress debriefing for ambulance, fire, police, and other emergency service personnel;
- (3) Provide for immediate delivery of psychological services to the residents and visitors;
- (4) Coordinate the use of other public and private resources of post-disaster psychological services for the immediate and long-term delivery of psychological assistance to trauma victims; and
- (5) Advise state government and emergency service personnel on psychological issues and trauma victim behavior in the planning of and responses to catastrophic events and traumatic emergencies.

(b) The director shall compile a list of qualified mental health professionals who are willing to serve on a catastrophic and traumatic emergency response team, giving priority to individuals with experience in dealing with catastrophic or traumatic emergency events. The director shall appoint at least one team of professionals from the list, making a reasonable effort to appoint at least one member from each island, except Niihau. If a qualified representative cannot be appointed from each island, the director, at a minimum, shall appoint one member from each county. Each team appointed shall serve for a period of four years, with one member who has specialized training in trauma care to be designated as the team leader; provided that the director shall have the flexibility of appointing additional special teams for shorter or longer periods of time as the need arises. Members of a catastrophic and traumatic emergency response team shall receive continuing professional education and training on the provision of psychological assistance to be ready to provide services whenever a catastrophic event or traumatic emergency occurs. The team members shall be compensated for each day of service provided under this section, including participation in training required by the director, in accordance with a fee schedule to be established by the director pursuant to chapter 91.

(c) For purposes of this section, "catastrophic event or traumatic emergency" means any tragic occurrence that has resulted in:

- (1) The loss of lives, infliction of injury, harm or suffering among humans, including hostage situations; or
- (2) Extensive destruction of property.

The term includes, but shall not be limited to, disasters for which relief is provided under chapter 127.

(d) The team shall be activated by the director whenever the director finds that psychological assistance is appropriate following a catastrophic event or traumatic emergency.

(e) The director shall adopt rules under chapter 91 to implement the emergency response trauma program, which shall include the qualifications of and appointment process for catastrophic and traumatic emergency response team members. [L 1990, c 239, §3]

#### Note

L 2014, c 111, §28 purports to amend this section.

" **§321-23.3 Volunteer emergency medical disaster response personnel.** (a) All volunteer emergency medical disaster response personnel including:

- (1) Physicians;
- (2) Psychologists;
- (3) Nurses;
- (4) Emergency medical technicians;
- (5) Social workers;
- (6) Mobile intensive care technicians;
- (7) Physician assistants; and
- (8) Pharmacists,

licensed in the State, or employed by a health care facility, while engaged in the emergency response to a mass casualty event or disaster condition, including participation during periods of mass casualty and disaster management training, shall be deemed state employees or county employees, as the case may be, and shall have the powers, duties, rights, and privileges of such in the performance of their duties as prescribed by or under the authority of the governor or a county.

(b) For the purposes of this section, any physician or physician assistant licensed in the State having privileges and credentials at public or private health care facilities licensed in the State, shall be deemed as having credentials with the same medical staff privileges at other hospitals for the purpose of rendering professional medical care under a mass casualty or disaster condition.

(c) In the case of injury or death arising out of and in the performance of duty pursuant to this section, including duty performed during periods of training, all volunteer emergency medical disaster response personnel and their dependents shall be entitled to all of the benefits provided in chapter 386, including medical services and supplies. In the case of injury or death, no public official shall be excluded from coverage of chapter 386. Benefits shall be based on average weekly wages

set forth in section 386-51, or based on earnings from the usual employment of the person, or based on earnings at the rate of \$20 a week, whichever is most favorable to the claimant. Nothing in this section shall adversely affect the right of any person to receive any benefits or compensation under any act of Congress.

(d) Except in cases of wilful misconduct, the State, any county, or any volunteer emergency medical disaster response personnel engaged in the emergency response to a mass casualty event or disaster condition pursuant to this section (including volunteers whose services are accepted by any authorized person), shall not be liable for the death of or injury to persons, or for damage to property, as a result of any act or omission in the course of rendering professional medical care under a mass casualty event or disaster condition. No act or omission shall be imputed to the owner of any vehicle by reason of ownership thereof; provided that nothing in this section shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle that may be insured under section 41D-8 to the extent of the insurance. Unless specifically provided, insurance effected under section 41D-8 shall not include coverage of such risk during a disaster emergency period.

(e) A physician assistant licensed in this State or licensed or authorized to practice in any other United States jurisdiction, or who is credentialed as a physician assistant by a federal employer who is responding to a need for medical care created by a public emergency or a state or local disaster, may provide medical care that the physician assistant is authorized to provide without physician supervision, pursuant to chapter 453, or with appropriate physician supervision that is available; provided that:

- (1) Any physician who supervises a physician assistant providing medical care in response to a public emergency or state or local disaster shall not be required to meet the requirements set forth in chapter 453 for a supervising physician; and
- (2) No physician who supervises a physician assistant voluntarily and gratuitously providing emergency care pursuant to this subsection shall be liable for civil damages for any personal injuries which result from acts or omissions by the physician assistant providing emergency care.

(f) For the purposes of this section:

"Disaster condition" means a sudden catastrophic event that overwhelms natural order and causes loss of property or life and exceeds or disrupts the capabilities of available medical



resources to receive and provide medical care within a community.

"Mass casualty event" means a number of casualties generated more or less simultaneously, that exceeds the ability to provide usual medical care including but not limited to an airplane crash, collapsed building, bombing, or hurricane. [L 1998, c 105, §1; am L 2009, c 151, §11; am L 2012, c 265, §2]

" **§321-23.6 Rapid identification documents.** (a) The department shall adopt rules for emergency medical services that shall include:

- (1) Uniform methods of rapidly identifying an adult person who has certified, or for whom has been certified, in a written "comfort care only" document that the person or, consistent with chapter 327E, the person's guardian, agent, or surrogate directs emergency medical services personnel, first responder personnel, and health care providers not to administer chest compressions, rescue breathing, electric shocks, or medication, or all of these, given to restart the heart if the person's breathing or heart stops, and directs that the person is to receive care for comfort only, including oxygen, airway suctioning, splinting of fractures, pain medicine, and other measures required for comfort;
- (2) The written document containing the certification shall be signed by the patient or, consistent with chapter 327E, the person's guardian, agent, or surrogate and by any two other adult persons who personally know the patient; and
- (3) The original document containing the certification and all three signatures shall be maintained by the patient, the patient's:
  - (A) Physician;
  - (B) Attorney;
  - (C) Guardian;
  - (D) Surrogate; or
  - (E) Any other person who may lawfully act on the patient's behalf.

Two copies of the document shall be given to the patient, or the patient's guardian, agent, or surrogate.

- (b) The rules shall provide for the following:
  - (1) The patient, or the patient's guardian, agent, or surrogate, may verbally revoke the "comfort care only" document at any time, including during the emergency situation;

- (2) An anonymous tracking system shall be developed to assess the success or failure of the procedures and to ensure that abuse is not occurring; and
- (3) If an emergency medical services person, first responder, or any other health care provider believes in good faith that the provider's safety, the safety of the family or immediate bystanders, or the provider's own conscience requires the patient be resuscitated despite the presence of a "comfort care only" document, then that provider may attempt to resuscitate that patient, and neither the provider, the ambulance service, nor any other person or entity shall be liable for attempting to resuscitate the patient against the patient's will. [L 1994, c 173, §1; am L 2006, c 46, §1]

" **§§321-24 to 26 REPEALED.** L 1990, c 288, §6.

" **[\$321-26.5] Environmentally-sensitive cleaning and maintenance products for use in public schools; approved list of products.** (a) The department of health shall maintain a list of products that have been approved by the Green Seal program for public school facilities to use as a first preference guideline when purchasing and using environmentally-sensitive cleaning and maintenance products; provided that the department may add or remove any product from the list as deemed necessary by the director.

(b) The department shall review and evaluate existing research regarding environmentally-sensitive cleaning and maintenance products, including any research and guidance issued by the United States Environmental Protection Agency. [L Sp 2009, c 13, §2]

#### **Cross References**

Environmentally-sensitive cleaning and maintenance products for use in public schools, see §302A-1509.

" **§321-27 Sanitation and environmental health special fund.**

(a) There is established within the department of health the sanitation and environmental health special fund into which shall be deposited all moneys collected from fees for permits, licenses, inspections, various certificates, variances, investigations, and reviews, pursuant to sections 321-11.5(c) and 321-15.

(b) Moneys in the fund shall be expended by the department to partially fund the operating costs of program activities and

functions authorized pursuant to section 321-11 to enhance the capacity of sanitation and environmental health programs to:

- (1) Improve public outreach efforts and consultations to regulated businesses and industries;
- (2) Educate the public, staff, and regulated businesses and industries;
- (3) Plan for future growth and expansion to meet emerging needs;
- (4) Provide training opportunities to ensure the maintenance of professional competence among sanitation and environmental health staff and administrators; and
- (5) Conduct program activities and functions of the sanitation branch, including permit issuance, inspections, and enforcement and the hiring of additional inspectors;

provided that for environmental health programs, not more than \$140,000 of the fund may be used during any fiscal year for fund administration, including the hiring of not more than two full-time equivalent personnel, and the purchase of office and electronic equipment.

(c) Any amount in the fund in excess of \$1,500,000 on June 30 of each year shall be deposited into the general fund.

(d) The department of health shall submit a report to the legislature concerning the status of the sanitation and environmental health special fund, including:

- (1) The amount of moneys taken in by and expended from the fund; and
- (2) The sources of receipts and uses of expenditures, not less than twenty days prior to the convening of each regular session. [L 1994, c 169, §§2, 9; am L 1996, c 164, §1; am L 1998, c 311, §§15, 16; am L 1999, c 120, §4; am L 2010, c 176, §4]

" **[§321-27.5] Audit of sanitation branch.** The department shall perform annual audits of the sanitation branch to be completed by November 30 of each year, and shall include an audit of:

- (1) Fees collected;
- (2) The number and results of sanitation inspections;
- (3) The number of training seminars held; and
- (4) The cost of training personnel in the sanitation branch. [L 1997, c 334, pt of §1]

" **§321-28 Traumatic brain injury advisory board.** There is established within the department of health the traumatic brain injury advisory board. The advisory board, in consultation with

the neurotrauma advisory board, shall advise the department in the development and implementation of a comprehensive plan to address the needs of persons affected by disorders and disabilities that involve the brain. Further, the advisory board, in consultation with the neurotrauma advisory board, shall advise the department of the feasibility of establishing agreements with private sector agencies to develop services for persons with brain injuries.

The advisory board shall consist of at least nine members who shall be appointed by the director of health in accordance with section 26-35. The director of health shall designate a member to be the chairperson of the advisory board. The director of health or a designee shall serve as an ex officio nonvoting member of the advisory board. The members shall serve for a term of four years; provided that upon the initial appointment of the members, two shall be appointed for a term of one year, two for a term of two years, two for a term of three years, and three for a term of four years. In establishing the advisory board, the director of health shall appoint at least:

- (1) Two members representing private sector businesses that provide services for brain injured persons;
- (2) Two survivors of traumatic brain injury; and
- (3) One member representing trauma centers that provide services for brain injured persons.

The members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, that are necessary for the performance of their duties. [L 1997, c 333, §2; am L 2002, c 160, §12]

#### **Note**

Concussion educational program under department of education. L 2012, c 197; L 2016, c 262.

#### **Cross References**

Neurotrauma advisory board, see §321H-3.

" **§321-29 Epidemiologic investigations.** (a) The department may conduct investigations to determine the nature and extent of diseases and injuries deemed by the department to threaten the public health and safety.

(b) Every person, health care provider, and medical facility shall provide the patient's name, the name of a minor patient's parent or guardian, address, telephone number, age, sex, race or ethnicity, clinical signs and symptoms, laboratory test results, diagnostic interview data, treatment provided, and

the disposition of the patient when requested by an authorized representative of the director for the purpose of conducting such an investigation. The authorized representative may view only the limited portion of the patient's medical record that is directly relevant in time and scope to the subject of the investigation.

(c) Every person, company, organization, association, health care provider, medical facility, or any other possible source of information shall provide names, addresses, telephone numbers, and locating information regarding an individual or group of individuals suspected of having been exposed to a disease or disease-causing substance that is the subject of an epidemiologic investigation when requested by an authorized representative of the director.

For the purposes of this subsection, "locating information" includes information contained in appointment, reservation, registration, invitation, attendance, billing, payment lists, or any other record that may help the department identify, locate, or contact individuals or groups suspected of having been exposed to a disease under investigation.

(d) When, in the written opinion of the director of health reasonable cause exists for the investigation of a disease or series of injuries that threatens public health or safety and that the collection of plant, animal, food, or environmental samples or specimens for immediate testing is necessary, an authorized representative of the department, during regular working hours or at other reasonable times may demand entry onto any premises, public or private, for the purpose of conducting an administrative investigation; provided that:

- (1) (A) Entry shall only occur with the consent of the owner, owner's agent, or person in lawful control of the property to investigate and collect relevant samples; or
- (B) If consent is not obtained, entry shall only occur after issuance of an administrative investigation warrant pursuant to subsection (e), specifying the area to be searched and the types of samples and specimens sought;
- (2) The investigation shall be limited to only those samples, specimens, and investigative actions that are necessary to confirm or deny the cause that prompted the investigation;
- (3) An authorized representative of the director shall be liable only for damage caused by acts beyond the scope of the representative's authority, or by the representative's gross negligence or intentional misconduct; and

- (4) The director's authorized representative shall leave an inventory describing any samples or specimens obtained, and the department shall make split samples available to the person whose premises are subject to the investigation.

For the purposes of this subsection, "administrative investigation" means any investigation, independent of a criminal investigation, that is conducted for the purpose of determining the existence of disease or series of injuries deemed by the department to threaten the public health or safety. An administrative investigation may involve the examination of real or personal property, records, equipment, buildings, products, by-products, wastes, processes, activities, environmental conditions (i.e., air, soil, and water quality), or other property or activities.

(e) If consent to entry is denied under subsection (d), the department representative may apply to the district court in the circuit in which the property is located for an administrative investigation warrant to enter the premises to effectuate the purposes of this section. The district court may issue an administrative investigation warrant directing a police officer of the county in the circuit to assist the department representative in gaining entry onto the premises during regular working hours or at other reasonable times. The warrant may command the police officer to take sufficient aid, and being accompanied by a representative of the department, to go to the premises described in the warrant and search for, seize, secure, or collect, under the specific direction of the representative, or allow the representative to search for, seize, secure, or collect, plant, animal, food, or environmental samples or specimens deemed necessary to conduct the investigation successfully. A district court may issue an administrative investigation warrant if sufficient facts are presented to the court that would establish probable cause for the need for the search. Probable cause for the need for the search shall be established by affidavit demonstrating:

- (1) The opinion of the director of health that there is reasonable cause for the investigation of the particular premises at issue;
- (2) That the investigation is necessary for the protection of public health and safety under this section; and
- (3) That consent to search the particular premises has been denied under subsection (d)(1)(A).

A copy of the administrative investigation warrant and all supporting affidavits shall be provided to the person served. If a suitable person is not available to be served after reasonable efforts to locate such a person, the administrative

investigation warrant may be left at the principal entry of the investigated premises.

(f) No person, company, organization, association, health care provider, medical facility, or other source that provides information requested by an authorized representative of the director, for the purpose of conducting an investigation under this section, shall be held civilly or criminally liable for providing that information to the department.

(g) All information provided to the department under this section shall be kept strictly confidential, except as the director determines is necessary to protect the public health and safety. Access to confidential records shall be restricted to those individuals specifically authorized to participate in any given investigation. However, epidemiologic and statistical information with no individual identifying information may be released to the public. The identities of individuals whose medical records are investigated shall be disclosed only to those persons authorized by the director or the director's representative to conduct a specific investigation under this section or determined by the director to be necessary to protect the health and safety of the public.

(h) The director shall adopt rules under chapter 91 as are appropriate to carry out the purposes of this section and its efficient administration. The rules shall:

- (1) Establish administrative remedies for the owner, owner's agent, or person in lawful control of the property to file a claim with the department for damaged and seized property; provided that there shall be no administrative remedy for the seizure of de minimis samples;
- (2) Provide notice to the owner, owner's agent, or person in lawful control of the property of the administrative remedies available for damaged and seized property; and
- (3) Provide penalties for the failure to comply with any rule. [L 1999, c 192, §2; am L 2002, c 169, §4; am L 2009, c 95, §1]

#### **Cross References**

Health care-associated infection reporting, see §325-2.5.

" **[§321-30] Human placenta.** Upon negative findings of infection or hazard after appropriate testing of the mother, the human placenta may be released by the hospital to the woman from whom it originated or to the woman's designee. The department shall establish a release form which shall stipulate appropriate

measures for the safe release of human placenta. [L 2006, c 12, §2]

" **§321-30.1 Medical marijuana registry and regulation special fund; established.** (a) There is established within the state treasury the medical marijuana registry and regulation special fund. The fund shall be expended at the discretion of the director of health:

- (1) To establish and regulate a system of medical marijuana dispensaries in the State;
- (2) To offset the cost of the processing and issuance of patient registry identification certificates and primary caregiver registration certificates;
- (3) To fund positions and operating costs authorized by the legislature;
- (4) To establish and manage a secure and confidential database;
- (5) To fund public education as required by section 329D-26;
- (6) To fund substance abuse prevention and education programs; and
- (7) For any other expenditure necessary, consistent with this chapter and chapter 329D, to implement medical marijuana registry and regulation programs.

(b) The fund shall consist of all moneys derived from fees collected pursuant to subsection (c) and section 329D-4. There is established within the medical marijuana registry and regulation special fund:

- (1) A medical marijuana registry program sub-account, into which shall be deposited all fees collected pursuant to subsection (c); and
- (2) A medical marijuana dispensary program sub-account, into which shall be deposited all fees collected pursuant to section 329D-4.

(c) The department, upon completion of the transfer of the medical use of marijuana program, shall charge a medical marijuana registration fee to qualifying patients of no more than \$35. [L 2013, c 177, §2; am L 2015, c 241, §4]

" **[§321-30.2] Civil monetary penalty special fund.** (a) There is established the civil monetary penalty special fund, to be administered by the department of health. The fund shall consist of moneys collected by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services as federally imposed civil monetary penalty funds when health care facilities or agencies do not meet medicare certification requirements as determined by the department of



health when it conducts medicare certification surveys and complaint investigations on health care facilities or agencies in Hawaii in accordance with section 1864 of the Social Security Act. Moneys in the fund shall be expended by the department of health as approved by the Centers for Medicare and Medicaid Services. Not more than \$30,000 of the moneys in the fund may be used during any fiscal year for the activities carried out by the department of health as approved by the Centers for Medicare and Medicaid Services.

(b) Pursuant to federal law, civil monetary penalty special fund moneys shall not be subject to deposit into the general fund for any reason.

(c) The department of health shall submit a report to the legislature concerning the status of the civil monetary penalty special fund, including the amount of moneys deposited into and expended from the civil monetary penalty special fund, and the sources of receipts and uses of expenditures, no later than twenty days prior to the convening of each regular session. [L 2015, c 71, §1]

## "PART II. PREVENTIVE MEDICINE

**§321-31 Functions of the department.** The powers, duties, and functions of the department of health relating to preventive medicine shall be as follows:

- (1) To supervise and coordinate activities in the fields of preventive medicine, including cancer control, crippled children, epidemiology, geriatrics, laboratories, maternal and child health, mental hygiene, nutrition, and communicable diseases;
- (2) To formulate and put into effect throughout the State educational programs for the purposes of preventing and reducing disease and disability;
- (3) To engage in the collection and analysis of statistical information pertinent to any of its activities;
- (4) To cooperate with and propose methods and programs to other governmental agencies relating to the fields of preventive medicine;
- (5) To serve as the coordinating agency for programs which provide for a range of child abuse and neglect prevention services in relation to assessed needs, regardless of whether the programs are conducted by the department, other government agencies, or private organizations and to coordinate the prevention programs with child abuse and neglect treatment services; provided that this paragraph shall not be

interpreted to compel a specified level of services;  
and

- (6) To perform such other appropriate functions as may be required. [L 1951, c 42, pt of §1; RL 1955, §46-29; am L Sp 1959 2d, c 1, §19; HRS §321-31; am L 1984, c 212, §3; am L 1990, c 143, §2]

" **§321-32 Epidemiological specialists.** Notwithstanding any other law to the contrary, epidemiological specialists may perform blood collection by venipuncture or capillary puncture and other methods of specimen collection, excluding catheterization, when employed by or acting as an agent of the department and when done under the direct or indirect supervision of a physician or osteopathic physician licensed pursuant to chapter 453. [L 1990, c 143, §1; am L 2009, c 11, §33]

" **[§321-33] Shaken baby syndrome.** (a) Any hospital that provides medical care to a newborn may provide each parent of the newborn with written educational information approved by the department of health and provided by nonprofit organizations about the dangerous effects of shaken baby syndrome and the different methods of preventing shaken baby syndrome.

(b) For the purpose of this section:

"Hospital" includes:

- (1) An institution with an organized medical staff, regulated under section 321-11(10), that admits patients for inpatient care, diagnosis, observation, and treatment; and
- (2) A health facility under chapter 323F.

"Medical care" means every type of care, treatment, surgery, hospitalization, attendance, service, and supplies as the nature of the injury or condition requires.

"Parent" includes a biological mother or father, foster mother or foster father, adoptive mother or adoptive father, and stepmother or stepfather.

"Shaken baby syndrome" means an injury caused by the vigorous shaking of an infant or young child that may result in injuries such as subdural [hematoma], head injury, irreversible brain damage, blindness, retinal hemorrhage, eye damage, cerebral palsy, hearing loss, spinal cord injury, paralysis, seizures, learning disability, central nervous system injury, rib fracture, or death. [L 2007, c 216, §2]

" **[§321-34] Cytomegalovirus public education.** (a) The department of health shall provide public education to inform pregnant women and women who may become pregnant regarding:

- (1) The transmission of the cytomegalovirus to pregnant women and women who may become pregnant;
  - (2) Birth defects caused by congenital cytomegalovirus;
  - (3) Methods of diagnosing congenital cytomegalovirus; and
  - (4) Available preventative measures.
- (b) The department of health shall provide the information described in subsection (a) to:
- (1) Hospitals licensed pursuant to section 321-14.5;
  - (2) Health care providers offering care to pregnant women and infants;
  - (3) Registered family child care homes;
  - (4) Licensed group child care centers;
  - (5) Licensed group child care homes;
  - (6) Licensed infant and toddler child care centers; and
  - (7) Religious, ecclesiastical, or denominational organizations offering children's programs as a part of worship services. [L 2015, c 232, §1]

" **[§321-35] Department of education student physical examination follow-up assistance and consultations.** (a) No later than the end of the seventh grade school year, the department of health shall contact the parents or guardians of students listed pursuant to section 302A-1159(b) and provide information to assist those persons in obtaining a physical examination for the student pursuant to section 302A-1159(b).

(b) Subject to the availability of funds, the department of health shall also provide follow-up notice to or consultations with the parents or guardians of the students contacted pursuant to subsection (a) on the benefits of a healthy lifestyle and preventative health care and the availability of health care coverage under the federal Patient Protection and Affordable Care Act or medicaid. [L 2016, c 185, §3]

## "[PART IIA.] CHILD ABUSE AND NEGLECT PREVENTION

### Cross References

Safe place for newborns, see chapter 587D.

Shaken baby syndrome (prevention), see §321-33.

**[§321-36] Definitions.** For the purposes of this part:

"Child screening for early identification and remediation of social and health problems" means routine follow up and progress checks for toddlers and preschoolers which include the location and support of isolated parents in need of assistance.

"Department" means the department of health.

"Education for parenthood" means programs to educate all levels of youths as to the needs and appropriate expectations for the different levels of infancy and childhood.

"Home visitor programs" mean services utilizing paraprofessionals or community volunteers for supportive intervention services to parents from the prenatal through infancy periods.

"Infants in need of extra services" include infants who are ill or handicapped or the result of a multiple birth.

"Mutual aid programs" mean peer-support groups for target populations.

"Perinatal bonding" means the process of attachment between parents and newborns around the circumstance of birth.

"Secondary prevention programs" mean programs directed at recognizing, assessing, and achieving change in high risk situations so that abuse and neglect do not occur. [L 1984, c 212, pt of §2]

" **[§321-37] Child abuse and neglect secondary prevention programs.** The department may provide secondary prevention programs which contain a continuum of services starting from before birth and ending in education for the adult parenting responsibility. The types of programs to be provided may include but need not be limited to, prenatal, perinatal bonding, interaction with infants, support for parents of infants in need of extra services, home visitor programs, mutual aid programs, child screening for early identification and remediation of social and health problems, and education for parenthood. [L 1984, c 212, pt of §2]

" **§321-38 Hawaii children's trust fund advisory committee.** There is established the Hawaii children's trust fund advisory committee as provided in section 350B-6. The advisory committee shall have the functions as provided in section 350B-6(b). [L 1984, c 212, pt of §2; am L 1993, c 336, §3]

### "PART III. CANCER CONTROL

**§321-41 Educational program.** The department of health may formulate and put into effect throughout the State an educational program for the purpose of preventing cancer and of aiding in its early diagnosis. In the furtherance of this program, the department may assist and cooperate with all territorial, state, and national organizations conducting educational programs for the prevention and control of cancer. [L 1949, c 79, §2; RL 1955, §46-31; am L Sp 1959 2d, c 1, §19; HRS §321-41]

" **§321-42 Tumor clinics.** The department of health may assist in the operation of tumor clinics which are now established or may be established in the State. This assistance may consist of furnishing statistical information on the incidence or prevalence of tumors of various kinds in the State. Other assistance, such as clerical or stenographic help, may be furnished as needed. In all activities under this section, the department may consult and cooperate with the Hawaii State Medical Association and the Hawaii Cancer Society.

Insofar as is needed the department may assist tumor clinics or private physicians in the follow-up of tumor cases for the purpose of determining the progress of the disease or for further treatment. This part of the program shall be limited to those cases on which follow-up is requested by the attending physicians, and it shall also be limited by the funds which are provided for this purpose. [L 1949, c 79, §3; RL 1955, §46-32; am L Sp 1959 2d, c 1, §19; HRS §321-42]

" **§321-43 Statistical activities.** The department of health shall engage in the collection and analysis of statistical information on the morbidity and mortality of cancer in the State. The morbidity data may be collected in cooperation with the University of Hawaii, Hawaii Medical Association, and the Hawaii Cancer Society. All data collected by a cooperating agency may be shared with the department of health in the form specified by the department of health. The mortality data as collected from death certificates shall be analyzed by the staff of the department in order to determine the significance of cancer in the State by race, sex, age, occupation, site in the body, and in any other way found desirable for the purpose of determining the areas where greatest emphasis should be laid in the statewide cancer control program. The morbidity data shall be used:

- (1) In determining the prognosis and chance of cure, as well as the number of persons cured of cancer in the State;
- (2) For assisting in the direction of tumor research;
- (3) For determining, if possible, the tendencies of benign tumors to become malignant;
- (4) For assisting in the follow-up of diagnosed or treated tumor cases as requested by attending physicians; and
- (5) For improving the reporting of the cause of death on death certificates.

All statistical material collected under this section shall be considered confidential as to the names of persons or physicians concerned, except that researchers may use the names of those

persons when requesting additional information for research studies when the studies have been approved by the cancer commission of the Hawaii Medical Association and the appropriate federally authorized human subjects protection board. [L 1949, c 79, §4; RL 1955, §46-33; am L Sp 1959 2d, c 1, §19; HRS §321-43; am L 1973, c 25, §2; am L 2008, c 117, §2]

" **§321-44 REPEALED.** L 1996, c 211, §2.

" **§321-45 Cancer examination.** Cancer examinations shall be part of a statewide comprehensive cancer control plan to be developed by the department. The plan shall include provisions for cancer examination, including cervical cancer screening. The department shall work with other government agencies, health care providers, health insurers, and others to improve the overall rates of screening, early diagnosis, and treatment of cancer. [L 1974, c 215, §1; am L 2003, c 107, §2]

" **[§321-46] Breast density mammography results; report and notification.** (a) Beginning January 1, 2014, every health care facility in which a mammography examination is performed shall provide a mammography report and notification to each patient who is categorized by the facility as having dense breast tissue. The notification shall include in the summary of the mammography report sent to the patient, the following information, pursuant to the federal Mammography Quality Standards Act:

"Your mammogram shows that your breast tissue is dense. Dense breast tissue is very common and is not abnormal. However, dense breast tissue can make it harder to find cancer on a mammogram and may also be associated with an increased risk of breast cancer. This information about the result of your mammogram is given to you to raise your awareness. Use this information to talk to your physician as to whether, based on your risk, more screening tests might be useful. A report of your results was sent to your physician."

(b) For purposes of this section, "dense breast tissue" means heterogeneously dense or extremely dense tissue as defined in nationally-recognized guidelines or systems for breast imaging reporting of mammography screening, including the Breast Imaging Reporting and Data System of the American College of Radiology, and any equivalent new terms, as such guidelines or systems are revised. [L 2013, c 5, §1]

"PART IV. CHILDREN WITH SPECIAL HEALTH NEEDS

## Note

Part heading amended by L 1988, c 4, §1.

**§321-51 Department to administer [part].** The department of health is designated as the agency of the State to administer a program of services for children with special health needs. [L 1939, c 179, §2; RL 1945, §2102; RL 1955, §46-41; am L Sp 1959 2d, c 1, §19; HRS §321-51; am L 1988, c 4, §2]

" **§321-52 Powers, duties, and activities of the department.** To carry out the purposes of this part, the department of health may:

- (1) Establish and administer a program of services for children with special health needs, which shall provide for developing, extending, and improving services, especially in rural areas, for locating such children, and for providing for medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and after-care; extend and improve any such services; cooperate with medical, health, nursing, and welfare groups and organizations and with any agency of the State charged with the administration of laws providing for vocational rehabilitation of children with special health needs; and, cooperate with the department of education for the education of such children;
- (2) Formulate and administer a detailed plan for the purposes specified in paragraph (1) above; and adopt such rules pursuant to chapter 91 as may be necessary or desirable for the administration of the plan and of this part. Any plan shall include provisions for:
  - (A) Financial participation by the State in the funds appropriated by the Congress of the United States under applicable federal legislation;
  - (B) Administration of the plan by the department;
  - (C) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan;
  - (D) Maintenance of records and preparation of reports of services rendered as shall be directed by the Secretary of Health and Human Services of the United States;
  - (E) Carrying out the purposes specified in paragraph (1) above; and

- (F) Cooperation with medical, health, nursing, and welfare groups and organizations and with any agency in the State charged with administering state laws providing for vocational rehabilitation of children with special needs;
- (3) Cooperate with the federal government through its appropriate agency or instrumentality in developing, extending, and improving such services and receive and expend all funds made available to the department by the federal government, the State, or its political subdivisions, or from any other sources, including private donations, for such purposes; and
- (4) Take all other actions necessary or desirable to carry out the purposes of this part. [L 1939, c 179, §3; RL 1945, §2103; RL 1955, §46-42; am L Sp 1959 2d, c 1, §§18, 19; HRS §321-52; am L 1981, c 71, §1; am L 1984, c 13, §1; am L 1988, c 4, §3]

" **§321-52.5 REPEALED.** L 1986, c 10, §2.

" **§321-53 Funds.** The director of finance shall be the custodian of all moneys appropriated for or received by the department of health from any sources whatsoever for the purposes of this part and shall deposit such moneys in the fund for children with special health needs. All expenditures and withdrawals from the fund shall be upon warrants issued by the comptroller of the State upon vouchers properly approved by the director of health. [L 1939, c 179, pt of §§5, 6; RL 1945, §2105; RL 1955, §46-44; am L 1957, c 152, §1; am L Sp 1959 2d, c 1, §§14, 19; am L 1963, c 114, §1; HRS §321-53; am L 1988, c 4, §4]

" **§321-54 Application of part.** The services provided by this part shall be for the benefit of and apply only to persons not over twenty-one years of age, who or whose estate, or whose parents or guardians are without sufficient means to pay for the services. The department of health shall have the final administrative authority in determining the acceptance of cases for the care and services provided in this part. [L 1939, c 179, §7; RL 1945, §2106; RL 1955, §46-45; am L Sp 1959 2d, c 1, §19; HRS §321-54]

## "PART V. DENTAL HEALTH

**§321-61 Dental health.** The department of health shall constitute the sole agency of the State for the purposes of carrying out the activities and performing the functions



provided in this part. [L 1949, c 208, §2; RL 1955, §46-50; am L Sp 1959 2d, c 1, §19; HRS §321-61]

" **§321-62 General duties of department.** The department of health shall study and appraise the State's dental health needs and resources, and shall foster the development and expansion of dental health services to the people of the State. The department may:

- (1) Conduct research, investigations, experiments, demonstrations, and studies relating to the incidence, causes, diagnosis, treatment, and prevention of dental diseases;
- (2) Supervise, provide, and direct clinical dental health services for adults and children in the State;
- (3) Develop and conduct a program of dental health education of the public;
- (4) Provide information and education relating to dental health to public health nurses, teachers, social workers, and others who deal in a professional capacity with the public, through publications, seminars, institutes, and other appropriate means; and
- (5) Provide training for professional personnel to staff state and local dental health programs. [L 1949, c 208, §5; RL 1955, §46-53; am L Sp 1959 2d, c 1, §19; HRS §321-62; am L 1992, c 70, §5]

" **§321-63 Director's specific duties and powers.** To carry out the purposes of this part the director of health shall:

- (1) Take such action as may be necessary, and authorized by law, to meet conditions prescribed for participation in all related federal dental health programs and the regulations adopted thereunder; determine qualifications of personnel requiring professional training and licenses and correlate the programs of the department with the profession and related agencies for the proper and efficient functioning of the department;
- (2) Enter into cooperative arrangements with other departments, agencies, and institutions, public or private;
- (3) Submit plans relating to dental health to the United States Public Health Service and make application for such federal funds as will assist in carrying out the purposes of this part;
- (4) Accept on behalf of the State and deposit with the director of finance any grant, gift, or contribution from the federal government or other source made to

assist in meeting the cost of carrying out the purposes of this part and expend the same for such purposes;

- (5) Make an annual report on activities and expenditures pursuant to this part, including recommendations for additional plans, measures, or legislation relating to the purposes of this part. [L 1949, c 208, §6; RL 1955, §46-54; am L Sp 1959 2d, c 1, §§14, 19; am L 1963, c 114, §1; HRS §321-63]

## "PART VI. INDUSTRIAL HYGIENE

**§321-71 Industrial hygiene.** The department of health shall make rules and regulations relating to or affecting industrial hygiene, and detect, prevent, and control: (1) conditions and exposures affecting health which are associated with conditions of employment, (2) atmospheric pollution, (3) improper fumigation, (4) inadequate and improper ventilation, (5) sources of ionizing radiation, and (6) other similar conditions.

Further, the department may conduct research and investigations, and disseminate knowledge and information to the public, concerning conditions in places of employment (and areas and places adversely affected by such places of employment) which may be responsible for the development of occupational diseases, afflictions, and poor health, and concerning all other matters which are the subject of its duties. [L 1951, c 18, §§1, 2; RL 1955, §46-70; am L Sp 1959 2d, c 1, §19; HRS §321-71]

" **§321-72 Sources of ionizing radiation; federal-state agreements.** The governor, on behalf of the State, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by the State. [L 1967, c 12, §1; HRS §321-72]

## "PART VII. NUTRITION

**§321-81 Nutrition.** The department of health shall be empowered to:

- (1) Conduct staff education in nutrition for the personnel of the department;
- (2) Cooperate in training staffs of schools, welfare agencies, and other persons who deal with problems involving food and nutrition;

- (3) Cooperate in the solution of nutrition problems of other agencies, such as schools, boarding homes, and institutions;
- (4) Stimulate interest in good nutrition and improved food practices in the State through talks, literature, radio, newspapers, movies, and exhibits;
- (5) Evaluate, prepare, and distribute nutrition education materials;
- (6) Give direct service on personal nutrition problems to members of the public through individual consultation, group conferences, and correspondence;
- (7) Assist organizations in coordinating and planning nutrition education programs;
- (8) Conduct research in food habits and nutritional status;
- (9) Conduct such other activities in the field of nutrition as the director of health may direct. [L 1951, c 34, §1; RL 1955, §46-71; am L Sp 1959 2d, c 1, §19; HRS §321-81]

" **§321-82 Field nutritionist, rural Oahu.** The director of health may appoint a field nutritionist for rural Oahu and establish, or arrange for the establishing of, a suitable office therefor. [L 1951, c 305, §1; RL 1955, §46-23; am L Sp 1959 2d, c 1, §19; HRS §321-82]

#### "PART VIII. HOME HEALTH SERVICES

**§321-91 Program of home health services.** The department of health is authorized to establish and administer a program to provide home health services, pursuant to the provisions of Title XVIII of the Social Security Act. Home health services shall mean ancillary paramedical services rendered in the patient's home, and shall include, but not be limited to, professional nursing care, physiotherapy, occupational therapy, speech and hearing therapy, medical social services, and home health aide services. The authority of the department hereunder shall be liberally construed in order that the State may receive the maximum benefits of said Title XVIII. [L 1966, c 23, pt of §2; HRS §321-91]

" **§321-92 Fees for services.** The department of health is authorized to establish, charge, and collect reasonable fees for services rendered under the program set forth in section 321-91. [L 1966, c 23, pt of §2; HRS §321-92]

" **§321-93 Home health services; source of funds; disposition of receipts.** (a) All moneys to provide ancillary paramedical services, professional nursing care, physiotherapy, occupational therapy, speech and hearing therapy, medical social services, and home health aide services under the home health services program shall be allocated by the legislature through appropriations out of the state general fund.

(b) The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this part.

(c) All moneys received by the department from charges and fees for services rendered under this part shall be deposited to the credit of the state general fund. [L 1966, c 23, pt of §2; HRS §321-93; am L 1993, c 280, §37]

#### "PART IX. SYSTEMATIC HEARING AND VISION PROGRAM

##### Note

Part heading amended by L 1981, c 193, §2; L 1993, c 6, §12.

**§321-101 Systematic hearing and vision program.** (a) There is established a systematic hearing and vision program for children to be conducted by the department of health. The purpose of the program shall be to:

- (1) Detect and identify hearing and vision deficiencies in school children; and
  - (2) Recommend to their parents or guardians the need for appropriate evaluation of children who have hearing or vision deficiencies, or both, and follow-up and track completed evaluations, including diagnostic and treatment information.
- (b) Within available resources, the program shall include:
- (1) Consultation with students, parents, and health and education personnel about treatment and rehabilitation of hearing and vision deficiencies; and
  - (2) Education of students, health and education personnel, and the general public about preserving and caring for hearing and vision and about preventing hearing and vision deficiencies.

(c) The departments of health and education, in cooperation with each other, may conduct classes and lectures in hearing and vision conservation and prevention of hearing loss and blindness for teachers, public health nurses, and others engaged in similar work. The departments shall also cooperate with public and private organizations and societies to educate the public in the importance of hearing and vision conservation.

[L 1965, c 246, §5; Supp, §46-100; HRS §321-101; am L 1981, c 193, §2; am L 1992, c 312, §1]

"[PART IXA. PREVENTION OF BLINDNESS]

**[§321-106] Prevention of blindness at childbirth.** The department of health may require the administration of prophylaxis for the prevention of blindness in the newborn at childbirth. [L 1982, c 17, §1]

"PART X. SEXUALLY TRANSMITTED DISEASES

**Note**

Part heading amended by L 1991, c 32, pt of §1.

**§321-111 Sexually transmitted disease prevention program.**

(a) The departments of health and education shall cooperate with each other and other public and private authorities as they may deem advisable for the education of minors and members of the general public on sexually transmitted diseases and the prevention of sexually transmitted diseases. For the purpose of this section, "minor" means any person fourteen years of age or older and under the age of majority.

(b) The department of health shall formulate, supervise, and coordinate throughout the State an educational program for the purposes of preventing sexually transmitted diseases, instructing the general public in detecting the diseases, and encouraging early treatment.

(c) The information shall be made available upon request to all minors and members of the general public without parental consent and the information shall be distributed to all public school counselors requesting educational materials concerning sexually transmitted disease prevention, detection, and treatment. [L 1969, c 149, §1; am L 1991, c 32, pt of §1]

" **§§321-112 to 114 REPEALED.** L 1981, c 241, §2.

" **§321-115 Prophylactics.** (a) As used in this section "prophylactic" means any device or appliance used or to be used for the prevention of sexually transmitted diseases.

(b) The department of health may adopt rules and charge fees to regulate the sale of prophylactics through vending machines and require that they be stocked with adequately labeled and scientifically approved devices only.

(c) It shall be unlawful for any person to vend prophylactics in mechanical coin-operated machines on the

premises of any school in this State. The term "school" as used in this section shall have the same meaning as defined by section 302A-501. [L 1981, c 241, §1; gen ch 1985; am L 1991, c 32, pt of §1; am L 1996, c 89, §14; am L 2000, c 82, §1]

**"PART XI. CHRONIC RENAL DISEASE--REPEALED**

**§§321-121 to 123 REPEALED.** L 1998, c 45, §1.

**"PART XII. SAFETY GLAZING OF GLASS--REPEALED**

**§§321-131 to 137 REPEALED.** L 1988, c 3, §2.

**"PART XIII. EMERGENCY SERVICES--REPEALED**

**§321-151 REPEALED.** L 1978, c 148, §1.

**Cross References**

For present provisions, see part XVIII of this chapter.

**"[PART XIV. BLOOD ALCOHOL]**

**§321-161 Chemical testing for alcohol concentration or drug content.** (a) The department of health shall establish and administer a statewide program relating to chemical testing of alcohol concentrations or drug content for the purposes of chapters 286, 291, 291C, and 291E, with the consultation of the state director of transportation. Under the program, appropriate procedures shall be established for specifying:

- (1) The qualifications of personnel who administer chemical tests used to determine alcohol concentrations or drug content;
- (2) The procedures for specimen selection, collection, handling, and analysis; and
- (3) The manner of reporting and tabulating the results.

(b) The director of health may adopt rules pursuant to chapter 91 necessary for the purposes of this section. [L 1973, c 139, §1; am L Sp 1977 1st, c 20, §12; am L 1990, c 188, §9; am L Sp 1991, c 1, §18; am L 1997, c 103, §10; am L 2001, c 157, §30]

**Case Notes**

The health department rules are applicable only to the proceedings enumerated in this section; and when the State seeks to introduce the breathalyzer results in a prosecution outside

the ambit of this section, it must establish a foundation independent of the rules. 1 H. App. 625, 623 P.2d 1271.

Intoxilyzer test result inadmissible where officer administering test had less than required training and had not been issued appropriate permit. 5 H. App. 575, 704 P.2d 927.

To admit intoxilyzer test result, there must be strict compliance with rules having direct bearing on validity and accuracy of test result. 6 H. App. 554, 732 P.2d 253.

Where intoxilyzer not checked for accuracy, test results inadmissible, though operator followed operational checklist and device allegedly "fail-safe". 6 H. App. 569, 733 P.2d 326.

## **"PART XV. MENTAL HEALTH SERVICES FOR CHILDREN AND YOUTH**

**§321-171 Children's mental health services; department responsibility.** It shall be the responsibility of the department of health to:

- (1) Provide preventative health services for children and youth;
- (2) Provide diagnostic and treatment services for emotionally disturbed children and youth; and
- (3) Provide treatment and rehabilitative services for mentally ill children and youth.

Such services shall be delivered at the earliest possible moment after the need for such services is established. All eligible children and youth between the ages of birth and seventeen shall receive the necessary mental health services to insure their proper and full development. If there is any adjudication or settlement of any legal action involving the delivery of children's mental health services, the department of health shall be responsible for the coordination of carrying out the terms of the judgment or settlement. [L 1974, c 211, pt of §1; am L 1996, c 125, §1]

" **§321-171.5 Employees of the department of health, its providers and subcontractors; background checks.** (a) The department of health shall develop procedures for obtaining verifiable background check information regarding persons who are seeking employment, or seeking to serve as providers or subcontractors, in positions that place them in direct contact with adult, child, or youth clients when providing non-witnessed direct mental health or health care services. These procedures shall include but not be limited to background checks as defined in section 321-15.2.

(b) Except as otherwise specified, any person who seeks employment with the department of health, or who is employed or seeks employment with a provider or subcontractor in a position

that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health or health care services, shall:

- (1) Be subject to background checks in accordance with section 321-15.2;
- (2) Authorize the disclosure to the department or its designee of background check information; and
- (3) Provide to the department of health or its designee written consent for the department or its designee to obtain background check information for verification.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the department of health for purposes of determining whether a person is suitable for working in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health or health care services. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) The department of health may refuse to employ or may terminate the employment of any employee or applicant for employment if:

- (1) The person refuses to authorize the department or its designee to conduct a background check;
- (2) The person refuses or fails to submit to the department or its designee information required to conduct a background check;
- (3) The person has been convicted of an offense for which incarceration is a sentencing option; or
- (4) The department of health finds by reason of the nature and circumstances of the background check information that the person poses a risk to the health, safety, or well-being of clients receiving non-witnessed direct mental health or health care services. Such refusal or termination may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91. Nothing in this subsection shall abrogate any applicable appeal rights under chapter 76 or 89.

(d) This section shall not be used by the department of health or its designee to secure background checks on persons who have been employed continuously on a salaried basis prior to July 1, 2015.

(e) Nothing in this section shall prohibit background checks on employees of all providers and subcontractors.

(f) The department or its designee, in obtaining and relying upon the background check information, shall be presumed



to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the background check information. The presumption of good faith may be rebutted upon a showing of proof by a preponderance of the evidence that the department or its designee relied upon information or opinion that it knew was false or misleading or that such reliance was not reasonable.

(g) For purposes of this section:

"Provider" means any organization or individual that intends to enter into a contract with or is currently contracted by the department of health to provide direct mental health or health care services to the department's eligible clients.

"Subcontractor" means any organization or individual that enters into a contract or agreement with a provider to provide direct mental health or health care services to the department's eligible clients.

(h) Notwithstanding any other law to the contrary, the department of health shall be exempt from section 831-3.1 for purposes of this section and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91. [L 2003, c 95, §5; am L 2004, c 79, §1; am L 2012, c 285, §3; am L 2015, c 190, §2]

" **§321-172 Children's mental health services branch.** There is established within the department of health, mental health division, a children's mental health services branch which shall coordinate the effective and efficient delivery of mental health services to children and youth, including services provided by private nonprofit agencies under contract to the department of health, and be responsible for the development and implementation of centralized and highly specialized programs for children and youth. [L 1974, c 211, pt of §1; am L 1980, c 59, §1]

" **§321-173 Community mental health services for children and youth.** There is established within each community mental health center a children's mental health services team which, in conjunction with other public and private agencies, shall develop and provide a network of preventative, early identification, screening, diagnostic, treatment, and rehabilitative services for children and youth based on the needs of each geographic region in which the community mental health center is located. The children's mental health services teams shall cooperate with and promote the coordination of the activities of local public and private agencies servicing children and youth in their particular geographic area. [L 1974, c 211, pt of §1; am L 1980, c 59, §2]

" **§321-174 Coordination of services with department of education.** The children's mental health services team shall cooperate with the schools located in their particular geographic region in identifying and referring for treatment such children or youths in need of mental health services. In conjunction with the children's mental health services team, the department of education and the department of health shall develop a memorandum of agreement which shall provide for a sharing of responsibilities for the affected agencies and shall include but not be limited to provisions for:

- (1) Accepting referrals from the school counselors and diagnostic teams for evaluation and direct treatment of children and youth suffering from mental and emotional disorders;
- (2) Providing consultation to enable teachers and other school personnel to aid in the identification and screening of children in need of professional mental health services and the services of psychologists, as defined in chapter 465;
- (3) Providing training and education about emotional disturbances of children to teachers, school counselors, and parents;
- (4) Assisting the department of education with mental health services and the services of psychologists, as defined in chapter 465 for handicapped children;
- (5) Developing an ongoing mechanism to assess, document and report to the legislature and the governor unmet needs for mental health services for students in each geographic region; and
- (6) Performing other related services for school personnel, children, and parents. [L 1974, c 211, pt of §1; am L 1980, c 59, §3; am L 1985, c 55, §3; am L 1988, c 257, §1]

" **§321-175 Statewide children's mental health services plan.**

(a) Commencing on September 1, 1980, and every four years thereafter, the children's mental health services branch, on or before September 1 of each four-year cycle, shall develop and present to the governor and the legislature, as well as release for public inspection and comment, a current statewide children's mental health services plan which shall include:

- (1) A survey of the children and youth in the State who are (A) in need of and (B) receiving mental health services showing the total number of such children and youth and their geographic distribution;

- (2) Identification of the public and private providers of mental health services to children and youth;
- (3) Identification of the criteria and standards for the treatment to be received by emotionally disturbed or mentally ill children and youth;
- (4) A program for the recruitment, orientation, and in-service training of personnel in community mental health services to children and youth, and to allied fields, including participation, as appropriate, by institutions of higher learning, state and local agencies, and other public and private agencies having relevant expertise;
- (5) A description of the provisions for prevention, early identification, diagnosis, screening, treatment, and rehabilitation (including, with regard to treatment and rehabilitation, services provided through inpatient, outpatient, and community residential facilities) of children and youth in need of mental health services;
- (6) An implementation plan for providing mental health services to all children and youth in the State in each of the above mentioned areas; and
- (7) Any additional matters which may be necessary or appropriate, including recommendations for amendment of laws, changes in administrative practices and patterns of organization, and changes in levels and patterns of financial support relating to children's mental health services.

(b) Prior to the submission of the statewide children's mental health services plan under subsection (a) to the governor and the legislature, the department of health shall hold hearings on the plan in accordance with chapter 91. There shall be at least one hearing in each county; except that the city and county of Honolulu shall have three hearings in strategic geographic locations to provide the widest exposure of the plan to the population.

(c) Any amendments to the statewide children's mental health services plan shall be in accordance with chapter 91. [L 1974, c 211, pt of §1; am L 1980, c 59, §4; am L 1984, c 87, §1; am L 1986, c 339, §39]

" **§321-176 Biennial review of progress.** Every two years, starting January 1, 1979, the department of health, on or before January 1 of each two-year cycle, shall submit to the legislature and the governor a report setting forth:

- (1) A detailed analysis of the progress made toward fulfilling the statewide children's mental health services plan developed under section 321-175; and
- (2) Other matters which are necessary or appropriate, including recommendations for any amendment to any law, any change in the administrative practices and patterns of organization, the current and prevailing memoranda of agreement, and any change in the levels and patterns of financial support. [L 1974, c 211, pt of §1; am L 1980, c 59, §5]

" **[§321-177] Rules.** The director of health may adopt rules pursuant to chapter 91 necessary to carry out the purposes of this part. [L 1980, c 59, §6]

## "[PART XVI.] SUBSTANCE ABUSE

### Cross References

Mental health, alcohol, or drug abuse treatment reviews, see chapter 334B.

Mental health and alcohol and drug abuse treatment insurance benefits, see chapter 431M.

Mental health and substance abuse special fund, see §334-15.

Substance abuse testing, see chapter 329B.

### **§321-191 Definitions.** As used in this part:

"Advisory commission" means the state advisory commission on drug abuse and controlled substances established in section 329-2.

"Clean and sober home" means a dwelling unit that is intended to provide a stable, independent environment of alcohol- and drug-free living conditions to sustain recovery and that is shared by unrelated adult persons who are recovering from substance abuse.

"Department" means the department of health.

"Substance" means alcohol, any drug on schedules I through IV of chapter 329, or any substance which includes in its composition volatile organic solvents.

"Substance abuse" means the misuse of a substance or the use of a substance to an extent deemed deleterious or detrimental to the user, to others, or to society. [L 1975, c 190, pt of §2; am L 2014, c 193, §4]

### Revision Note

Numeric designations deleted.

## Cross References

Diagnosis and counseling of minors, see §577-26.

" **[§321-192] Substance abuse program.** The department shall establish a substance abuse program in the State under this part. [L 1975, c 190, pt of §2]

" **[§321-192.5] Substance abuse treatment monitoring program.**

(a) To determine the effectiveness of substance abuse treatment services and maintain accurate numbers of individuals receiving publicly funded substance abuse treatment, the department shall establish a statewide substance abuse treatment monitoring program to collect the following information from all treatment providers accredited by the department, pursuant to section 321-198, on every individual who receives substance abuse treatment paid by public funds. Treatment providers shall report admission and discharge data, as determined by the department, with a final annual report due no later than sixty days after the close of the fiscal year, which shall include:

- (1) An accurate count of all admissions and discharges during the reporting period;
- (2) An unduplicated count of individuals served by each treatment provider;
- (3) Demographic data on each individual as determined by the department, which may include age, race, ethnicity, employment status, source of payment, source of referral to treatment, length of treatment, and the primary substance for which treatment was sought;
- (4) Data on the number of individuals who were discharged due to successful completion of treatment and the reasons individuals withdrew from treatment during the reporting period;
- (5) Six-month follow-up data on persons who were discharged due to successful completion of treatment, reporting on criteria for measurement of successful treatment as determined by the department; and
- (6) Any other information deemed relevant by the department to assess the effectiveness of treatment on each individual.

(b) The department shall establish criteria to measure the success of treatment for individuals and establish criteria to determine whether the treatment provider is achieving success in treating individuals with substance abuse. The department shall include in the contract with the treatment provider all criteria

to determine whether the treatment provider is achieving success in treating individuals with substance abuse.

(c) The department shall include the information under subsection (a) as part of the annual report to the legislature under section 321-195.

(d) This section shall not be construed to abrogate an individual's right to privacy. The department shall implement sufficient protections to ensure that the identity of a recipient of substance abuse treatment services remains strictly confidential and that aggregate data collected pursuant to this section is used solely for the purpose of this section. [L 2004, c 40, §24]

" **§321-193 Duties and responsibilities of department.** The department shall:

- (1) Coordinate all substance abuse programs including rehabilitation, treatment, education, research, and prevention activities.
- (2) Prepare, administer, and supervise the implementation of a state plan for substance abuse which may consist of a plan for alcohol abuse prevention and a plan for drug abuse prevention.
- (3) Identify all funds, programs, and resources available in the State, public and private, and from the federal government which are being used or may be used to support substance abuse prevention, rehabilitation, treatment, education, and research activities.
- (4) Be the designated agency required by, and receive and administer all available substance abuse funds including but not limited to funds received from, the federal government under Public Law 92-255, Public Law 91-616, Public Law 91-211, and Title IVA and XVI of the Social Security Act or other subsequent Acts of Congress which may amend or succeed such Acts.
- (5) Encourage and coordinate the involvement of private and public agencies in the assessment of substance abuse problems, needs, and resources.
- (6) Coordinate the delivery of available funding to public and private agencies for program implementation.
- (7) Establish mechanisms and procedures for receiving and evaluating program proposals, providing technical assistance, monitoring programs and securing necessary information from public and private agencies for the purposes of planning, management, and evaluation.
- (8) Review the state plan for substance abuse annually for the purpose of evaluation and make necessary

amendments to conform with the requirements of federal or state laws.

- (9) Do all things necessary to effectuate the purposes of this part.
- (10) Certify program administrators, counselors and accredit programs related to substance abuse programs in accordance with rules to be promulgated by the department. [L 1975, c 190, pt of §2; am L 1977, c 108, §1]

" **[§321-193.5] Interagency coordination.** (a) The department of public safety, Hawaii paroling authority, judiciary, department of health, department of human services, and any other agencies assigned oversight responsibilities for offender substance abuse treatment by law or administrative order, shall establish a coordinating body through an interagency cooperative agreement to oversee the development and implementation of offender substance abuse treatment programs in the State to ensure compliance with the intent of the master plan developed under chapter 353G. The coordinating body shall also include a representative from a community based prisoner advocacy group and a substance abuse treatment provider selected by the director of health, and an ex-offender selected by the director of public safety subject to the approval of the chairperson of the Hawaii paroling authority and the chief justice. The coordinating body shall meet not less than quarterly in a meeting subject to chapter 92. The interagency cooperative agreement shall set forth the role of the coordinating body and the responsibilities of each agency that is a party to the agreement.

(b) The department of health shall be the lead agency for interagency coordination of substance abuse treatment. As the lead agency, the department shall act as facilitator of and provide administrative support to the coordinating body.

(c) Notwithstanding any other provision to the contrary, any agency that is part of the interagency cooperative agreement shall provide, upon the request of any other participating agency, all medical, psychological, or mental health records of any offender receiving supervision or treatment while under custody of the State. Any participating agency receiving such records of any offender receiving supervision or treatment while under custody of the State, shall keep that information confidential in accordance with the requirements of 42 United States Code section 290dd-2. [L 2002, c 161, §2]

**Note**

Annual report on interagency cooperative agreement. L 2002, c 161, §10.

" **[§321-193.7] Clean and sober homes registry.** (a) The department shall establish a voluntary clean and sober homes registry to assist persons recovering from substance abuse to have a safe, clean, and sober environment that supports their recovery. The department shall establish procedures and standards by which homes will be allowed to be listed on the registry, including but not limited to:

- (1) Organizational and administrative standards;
- (2) Fiscal management standards;
- (3) Operation standards;
- (4) Recovery support standards;
- (5) Property standards; and
- (6) Good neighbor standards.

(b) Upon review and approval of a home operator's application, the department shall issue a certificate of registration that shall specify:

- (1) The name of the holder of the registration;
- (2) The address to which the registration applies;
- (3) The maximum number of persons to reside in the home; and

(4) The period for which the registration shall be valid. An owner, operator, or landlord shall not hold the property out to be or advertise to be a "registered clean and sober home" unless the home is registered and in good standing with the clean and sober homes registry.

(c) The certificate of registration shall be publicly displayed at the home.

(d) The certificate of registration shall not be transferred to a new owner or operator, or to an address other than as specified on the certificate of registration.

(e) Nothing in this section shall relieve a certificate holder from compliance with other pertinent statutory provisions, nor shall a certificate holder be relieved from compliance with other applicable provisions of federal, state, or county laws, ordinances, or rules.

(f) The department may revoke the certificate of registration if a home ceases to meet established standards or any other applicable federal, state, or county law, ordinance, or rule.

(g) The department may immediately revoke a certificate of registration if there are reasonable grounds to believe that the continued operation of the home presents an immediate danger to residents of the home or the general public.



(h) Any revocation of the certificate of registration shall be made in writing to the certificate holder.

(i) The department shall maintain a listing of all registered clean and sober homes on its website.

(j) The department shall establish a toll-free telephone number to receive complaints regarding clean and sober homes.

(k) This section shall not be construed to abrogate an individual's right to privacy. Unless otherwise provided by law, the department shall implement sufficient protections to ensure that the identity of a clean and sober home resident remains confidential and that information collected pursuant to this section is used solely for the purposes of this section.

(l) The department shall adopt rules under chapter 91 as necessary to carry out the purposes of this section. [L 2014, c 193, §3]

" **[§321-194] State advisory commission.** The state advisory commission on drug abuse and controlled substances established in section 329-2 shall advise the director on all matters relating to substance abuse including but not limited to the preparation of the state plan for substance abuse. In addition, the advisory commission shall perform such duties and assume such responsibilities as required by federal law for the purpose of receiving federal funding. [L 1975, c 190, pt of §2]

" **[§321-195] Annual report to the legislature.** The department shall submit an annual report to the legislature detailing its progress in the implementation of the state plan for substance abuse. The report shall be submitted twenty days before the beginning of each regular session of the legislature. [L 1975, c 190, pt of §2]

#### **Note**

Other annual reporting requirements. L 2004, c 40, §29.

" **[§321-196] Rules.** The department shall adopt rules in accordance with chapter 91 to carry out the purposes of this part. [L 1975, c 190, pt of §2]

" **[§321-197] Personnel.** The director of health may hire such necessary personnel to carry out the purposes of this part in accordance with chapter 76. [L 1975, c 190, pt of §2; am L 2000, c 253, §150]

" **§321-198 State funding of substance abuse agencies.** Certification of a private substance abuse agency pursuant to

section 321-193(10), shall be a necessary prerequisite to that substance abuse agency receiving any state funding. This section shall take effect on December 31, 1979. [L 1977, c 108, §2; am L 1978, c 68, §1]

**"PART XVII. SMOKING IN PUBLIC PLACES--REPEALED**

**§§321-201 to 206 REPEALED.** L 1987, c 234, §4.

**Cross References**

For present provisions, see chapter 328J.

**"[PART XVIIIA.] TOBACCO PRODUCTS**

**[§321-211] Definitions.** As used in this part:

"Electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling the device, an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.

"Possession" means knowingly having direct physical control at a given time or knowingly having the power and the intention, at a given time, to exercise dominion or control, including the actual use of the tobacco product.

"Tobacco product" means tobacco in any form, including an electronic smoking device, cigarettes, cigars, snuff, and chewing tobacco, that is prepared or intended for consumption by, or the personal use of, humans. [L 2015, c 122, pt of §2]

" **[§321-212] Tobacco products; possession or consumption prohibited.** Possession or consumption of a tobacco product by a person under twenty-one years of age in a public place shall be prohibited. [L 2015, c 122, pt of §2]

" **[§321-213] Exemptions.** This part shall not apply to:

- (1) Any person under twenty-one years of age, with parental authorization, who is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health under the supervision of law enforcement to determine the level of incidence of tobacco sales to persons under twenty-one years of age; or
- (2) Possession of tobacco products by a person under twenty-one years of age in the course of delivery, pursuant to the direction of the person's employer

lawfully engaged in business necessitating the delivery. [L 2015, c 122, pt of §2]

" **[§321-214] Enforcement; rules.** Any person under twenty-one years of age who violates section 321-212 shall be fined \$10 for the first offense. Any subsequent offense shall subject the violator to a fine of \$50, no part of which shall be suspended, or the person shall be required to perform not less than forty-eight hours nor more than seventy-two hours of community service during hours when the person is not employed and is not attending school. [L 2015, c 122, pt of §2]

**"PART XVIII. STATE COMPREHENSIVE EMERGENCY MEDICAL SERVICES SYSTEM**

**Cross References**

Enhanced 911 services for mobile phones, see chapter 138.  
Peer support counseling; sessions, see §78-52.  
Safe place for newborns, see chapter 587D.  
Trauma system special fund, see §321-22.5.  
Volunteer emergency medical disaster response personnel, see §321-23.3.

**§321-221 Findings and purpose.** The legislature finds that the establishment of a state comprehensive emergency medical services system to include but not be limited to emergency medical services for children is a matter of compelling state interest and necessary to protect and preserve the health of the people of the State. A system designed to reduce medical emergency deaths, injuries, and permanent long-term disability through the implementation of a fully integrated, cohesive network of components, the legislature further finds, will best serve the health needs of the people. Accordingly, the purpose of this part is to establish and maintain a state comprehensive emergency medical services system throughout the State, and to fix the responsibility for the administration of this state system which shall provide for the arrangement of personnel, facilities, and equipment for the effective and coordinated delivery of health care services under emergency conditions whether occurring as the result of a patient's condition or of natural disasters or other causes. The system shall provide for personnel, personnel training, communications, emergency transportation, facilities, coordination with emergency medical and critical care services, coordination and use of available public safety agencies, promotion of consumer participation, accessibility to care, mandatory standard medical recordkeeping,

consumer information and education, independent review and evaluation, disaster linkage, mutual aid agreements, and other components necessary to meet the purposes of this part. [L 1978, c 148, pt of §1; am L 1981, c 93, §1; am L 1994, c 242, §1]

" **§321-222 Definitions.** As used in this part, unless the context clearly requires otherwise:

"Advanced life support" means initiating all basic life support care as well as invasive patient care designed to stabilize and support a patient's condition due to sudden illness or injury. The care rendered, excluding basic life support, constitutes the practice of medicine.

"Advisory committee" means the emergency medical services advisory committee.

"Basic life support" means initiating noninvasive emergency patient care designed to optimize the patient's chances of surviving the emergency situation. The care rendered consists of all first aid procedures needed, but does not include invasive procedures which constitute the practice of medicine; provided that state-approved basic life support personnel may use fully automatic external defibrillators, initiate intravenous lines, and perform manual external defibrillation under the direction and personal supervision of a mobile intensive care technician and in accordance with rules adopted by the department.

"Department" means the department of health.

"Emergency aeromedical services" means a secondary response system that provides immediate critical care and transport by rotary-wing aircraft of a patient to a facility that provides specialized medical care.

"Emergency medical services for children" means comprehensive emergency medical services including preventive, pre-hospital, hospital, rehabilitative, and other post-hospital care for children.

"Emergency medical services personnel" means any mobile intensive care technician or emergency medical technician who is certified or licensed by the State.

"First responder personnel" means a person who has successfully completed a United States Department of Transportation approved First Responder Course of training in emergency basic life support.

"State system" means the state comprehensive pre-hospital emergency medical services system. [L 1978, c 148, pt of §1; am L 1980, c 285, §1; am L 1981, c 93, §2; am L 1991, c 115, §1; am L 1994, c 173, §2 and c 242, §2; am L Sp 2003, c 2, §1]

" **[§321-223] State comprehensive emergency medical services system, establishment.** The department of health shall establish, administer, and maintain the state comprehensive emergency medical services system to serve the emergency health needs of the people of the State. The department of health in the implementation of this part shall plan, coordinate and provide assistance to all entities and agencies, public and private, involved in the state system. All emergency medical services or ambulance services conducted by or under the authority of the department of health or any county shall be consistent with this part. [L 1978, c 148, pt of §1]

" **§321-224 Department of health, functions, duties.** (a) In addition to other functions and duties assigned under this part, the department shall:

- (1) Regulate ambulances and ambulance services;
- (2) Establish emergency medical services throughout the State, including emergency aeromedical services, which shall meet the requirements of this part, subject to section 321-228;
- (3) Review and approve the curricula and syllabi of training courses offered to emergency medical services personnel who provide basic, intermediate, and advanced life support, consult and coordinate with the University of Hawaii, or any other accredited community college, college, or university, or any professional organization that provides emergency medical services training, regarding the training for basic, intermediate, and advanced life support personnel, as provided in section 321-229;
- (4) Collect and evaluate data for the continued evaluation of the state system, subject to section 321-230;
- (5) Coordinate emergency medical resources and the allocation of the state system's services and facilities in the event of mass casualties, natural disasters, national emergencies, and other emergencies, ensuring linkage to local, state, and national disaster plans, and participation in exercises to test these plans;
- (6) Establish, administer, and maintain a communication system for the state system;
- (7) Assist each county in the development of a "911" emergency telephone system;
- (8) Secure technical assistance and other assistance and consultation necessary for the implementation of this part, subject to section 321-230;

- (9) Implement public information and education programs to inform the public of the state system and its use, and disseminate other emergency medical information, including appropriate methods of medical self-help and first-aid, and the availability of first-aid training programs in the State;
- (10) Establish standards and provide training for dispatchers in the state system, and maintain a program of quality assurance for dispatch equipment and operations;
- (11) Establish a program that will enable emergency service personnel to provide early defibrillation;
- (12) Establish within the department the emergency medical service system for children;
- (13) Consult with the advisory committee on matters relating to the implementation of this part; and
- (14) Establish and maintain standards for emergency medical services course instructor qualifications and requirements for emergency medical services training facilities.

(b) The department may assist in the implementation of a statewide poison information program, including the provision of a hospital-based poison center's services certified by the department. [L 1978, c 148, pt of §1; am L 1992, c 110, §1; am L 1993, c 279, §2; am L 1994, c 242, §3; am L 1996, c 210, §1; am L 1999, c 212, §1; am L 2002, c 168, §1; am L Sp 2003, c 2, §2]

### **Cross References**

Enhanced 911 telephone service, ratemaking, see §269-16.95.

" **§321-225 The state emergency medical services advisory committee.** (a) There is established within the department of health for administrative purposes only the state emergency medical services advisory committee, which shall sit in an advisory capacity to the department of health on all matters relating to the state system. The advisory committee may advise the department of health upon request of the department or upon its own initiative with regard to the state system. The advisory committee shall:

- (1) Monitor, review, and evaluate on an ongoing basis the operations, administration, and efficacy of the state system, or any components thereof, to determine conformity with and maximum implementation of this part.
- (2) Prepare and submit periodic assessments, reports, and other documents relating to the state system to ensure

the implementation of this part, as deemed necessary or desirable in the discretion of the advisory committee.

- (3) Seek the input of the public in relation to the state system to ensure adequate fulfillment of the emergency medical services needs of the State consistent with this part.
- (4) Participate in any planning or other policymaking with regard to the state system, and seek the participation of the public, including subarea health planning councils in its consideration of plans and policies relating to the state system.
- (5) Perform other functions, and have other duties necessary to ensuring the fullest implementation and maintenance of the state system.
- (6) Advise the department of health in formulating a master plan for emergency medical services, including medicom, the "911" system, and other components necessary to meet the emergency medical needs of the people of the State which shall be submitted to the legislature.

(b) The advisory committee shall be composed of twenty members: three nonvoting ex-officio members, who shall be the director of transportation, the adjutant general, and the administrator of the state health planning and development agency, or the designated representatives thereof, and seventeen members representing all counties of the State who shall be appointed by the governor subject to section 26-34 as follows:

- (1) Five members who shall be physicians experienced in the conduct and delivery of emergency medical services; provided that at least two shall be engaged in the practice of emergency medicine and be board-eligible or board-certified by the American Board of Emergency Medicine, and provided further that at least one physician shall be engaged in the practice of pediatrics and be board-eligible or board-certified by the American Board of Pediatrics;
- (2) Four members who shall be consumers of health care and who shall have no connection with or relationship to the health care system of the State and who shall be representative of all counties;
- (3) Four members of allied health professions related to emergency medical services; and
- (4) Four members, one from each county, who shall be mobile intensive care technicians or emergency medical technicians engaged in the practice of pre-hospital emergency medical service.

The members of the advisory committee shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties, including travel expenses. The chairperson of the advisory committee shall be elected by the members from among their numbers. A majority of the members of the advisory committee shall constitute a quorum for the conduct of business of the advisory committee. A majority vote of the members present at a meeting at which a quorum is established shall be necessary to validate any action of the committee.

(c) The advisory committee may adopt rules for its governance.

(d) The department of health shall provide necessary staff and other support required by the advisory committee for the performance of its duties. [L 1978, c 148, pt of §1; am L 1981, c 93, §3; am L 1991, c 115, §2; am L 1994, c 242, §4]

" **[§321-225.5] Fall prevention and early detection coordinator.** There is established within the emergency medical services and injury prevention system branch a fall prevention and early detection coordinator to coordinate the provision of public and private fall prevention and early detection services for the elderly. [L 2014, c 153, §2]

" **§321-226 Emergency medical services and systems, standards.** The department of health shall establish standards for emergency medical services and for emergency medical service systems consistent with the state system and applicable federal guidelines for such services, including a requirement that ambulance service providers licensed by the State establish and maintain an alcohol and substance abuse policy for employees that the department of health deems is equivalent to, or exceeds the provisions of, the safety and health standards established by the federal Department of Transportation for holders of commercial driver's licenses. In the event the standards are determined or regulated by any other law, or by applicable federal guidelines, standards required to be set by this section shall be at least equivalent to or exceed the other state and federal standards. [L 1978, c 148, pt of §1; am L 2003, c 106, §1]

" **§321-227 Regulation of ambulances.** The department of health shall adopt, amend, and repeal rules under chapter 91 for the regulation of ambulances within the State, including but not limited to the certification of vehicles, equipment, supplies, and communications systems. Any person who provides emergency medical service as an employee of any emergency ambulance



service shall be subject to chapter 453. [L 1978, c 148, pt of §1; am L 1984, c 168, §4]

" **§321-228 Emergency medical services; counties.** The department shall determine, in consultation with the advisory committee under section 321-225, the levels of emergency medical services that shall be implemented in each county. The department may contract to provide emergency medical services, including emergency aeromedical services, or any necessary component of a county emergency services system in conformance with the state system. In the event any county shall apply to the department to operate emergency medical ambulance services within the respective county, the department may contract with the county for the provision of those services. The department shall operate emergency medical ambulance services or contract with a private agency in those counties which do not apply to it under this section. Any county or private agency contracting to provide emergency medical ambulance services under this section shall be required by the department to implement those services in a manner and at a level consistent with the levels determined under this section. [L 1978, c 148, pt of §1; am L 1980, c 285, §2; am L 1981, c 93, §4; am L Sp 2003, c 2, §3]

" **§321-228.5 Renumbered as §321-23.3.**

" **§321-228.6 Renumbered as §321-23.**

" **§321-229 Emergency medical services personnel, training programs.** (a) The University of Hawaii shall provide training courses in basic, intermediate, and advanced life support for emergency medical services personnel. The curricula and syllabi of these courses shall be approved in advance by the department of health. The curricula and syllabi of courses for ambulance personnel shall be consistent with the scope and level of the practice of emergency medical services associated with emergency ambulance personnel certification defined by the Hawaii medical board under part II of chapter 453.

(b) The University of Hawaii, or other accredited community college, college, or university, or any professional organization that is approved by the department of health to provide emergency medical services training, shall consult with the department of health to determine the number and type of emergency medical services courses necessary to support the staffing requirements for emergency medical services. The basic life support and advanced life support training programs shall be relevant to and consistent with the training course required for certification under chapter 453.

(c) The department shall develop standards for emergency medical services course instructors and standards for emergency medical services training facilities for all basic life support personnel, advanced life support personnel, users of the automatic external defibrillator, and emergency medical dispatch personnel that shall be at least equivalent to or exceed the standards necessary to meet the requirements, pursuant to part II of chapter 453, for the certification of basic life support personnel and advanced life support personnel.

(d) The department of health may conduct annual inspections of the training facilities and evaluate the qualifications of course instructors to ensure that the standards and qualifications are consistent with the medical standards for basic life support personnel, advanced life support personnel, users of the automatic external defibrillators, and emergency medical dispatch personnel. [L 1978, c 148, pt of §1; am L 1980, c 285, §3; am L 1981, c 93, §5; am L 1984, c 168, §5; am L 1996, c 210, §2; am L 1999, c 212, §2; am L 2008, c 9, §3]

#### **Cross References**

Certification of emergency medical service personnel, see §§453-31 to 33.

" **§321-229.5 Renumbered as §321-23.6.**

" **§321-230 Technical assistance, data collection, evaluation.** (a) The department may contract for technical assistance and consultation, including but not limited to categorization, data collection, and evaluation appropriate to the needs of the state system. The collection and analysis of statewide emergency medical services data, including pediatrics, trauma, cardiac, medical, and behavioral medical emergencies, shall be for the purpose of improving the quality of services provided.

The department may implement and maintain a trauma registry for the collection of information concerning the treatment of critical trauma patients at state designated trauma centers, and carry out a system for the management of that information. The system may provide for the recording of information concerning treatment received before and after a trauma patient's admission to a hospital or medical center. All state designated trauma centers shall submit to the department of health periodic reports of each patient treated for trauma in the state system in such manner as the department shall specify.

For the purposes of this subsection, "categorization" means systematic identification of the readiness and capabilities of hospitals and their staffs to adequately, expeditiously, and efficiently receive and treat emergency patients.

(b) The department shall establish, administer, and maintain an aeromedical emergency medical services system designed to collect and analyze data to measure the efficiency and effectiveness of each phase of an emergency aeromedical program.

The aeromedical emergency medical services system shall serve the emergency health needs of the people of the State by identifying:

- (1) The system's strengths and weaknesses;
- (2) The allocation of resources; and
- (3) The development of rotary-wing emergency aeromedical services standards;

provided that emergency helicopter use, including triage protocols, shall be based on national aeromedical triage and transport guidelines established by the Association of Air Medical Services, the American College of Surgeons and the National Association of Emergency Medical Service Physicians. The department, in the implementation of this subsection, shall plan, coordinate, and provide assistance to all entities and agencies, public and private, involved in the system.

(c) The department shall use an emergency aeromedical services quality improvement committee comprised of representatives of trauma, emergency, and tertiary care physicians and providers to analyze information collected from the aeromedical quality improvement performance measures as established by the American College of Surgeons, and to recommend system standards and resources to maintain and improve the Hawaii emergency aeromedical services system. [L 1978, c 148, pt of §1; am L 1980, c 285, §4; am L 1981, c 93, §6; am L 1994, c 242, §5; am L 2002, c 150, §1; am L Sp 2003, c 2, §4]

" **[§321-231] Grants.** The state system may seek and accept any funds or property and other desirable support and assistance from any source whatsoever, whether gift, grant, services or any combination thereof, subject to applicable laws. In the event that any grant applications are made in relation to the state system, or any component thereof, the department shall consult with the advisory committee and provide technical assistance in the preparation, management, or administration of the application or the grant, or both. [L 1978, c 148, pt of §1]

" **§321-232 Revenues; deposit into state general fund.** (a) The department of health shall establish reasonable fees for

services rendered to the public by the department of health, any county, or private agency under this part; provided that all such revenues which shall be collected by the department of health and the respective counties shall be deposited into the state general fund, except such amounts necessary to provide for collection services for bad debt accounts. Fees required to be set by this section shall be established in accordance with chapter 91.

(b) No ambulance services, or any other emergency medical services available from or under the authority of this chapter shall be denied to any person on the basis of the ability of the person to pay therefor or because of the lack of prepaid health care coverage or proof of such ability or coverage.

(c) In the event of nonpayment of any fees required to be assessed by this section, the department of health shall determine whether the recipient of such services is financially able to pay such fees and make every reasonable effort to collect such fees. In the event the department finds the person is without sufficient resources to pay for the services, no further action to collect the fees shall be taken. If the services are paid by a county or any other entity, and collection of such fee is delegated by contractual agreement to the county or other agency which provides the services, the county or other agency shall forward records relating to unpaid fees for action by the department of health under this subsection. No county or other entity shall make a final determination of the ability of a person to pay under this subsection. Any determination of ability to pay for purposes of this subsection shall be in accordance with rules which the department of health shall adopt, subject to chapter 91, governing such determinations. [L 1978, c 148, pt of §1; am L 1984, c 77, §1]

" **[§321-233] Rules.** The director of health may adopt, amend, and repeal rules necessary to the implementation of this part, subject to chapter 91. [L 1978, c 148, pt of §1]

" **§321-234 Emergency medical services special fund.** (a) There is established within the state treasury a special fund to be known as the emergency medical services special fund to be administered and expended by the department.

(b) The moneys in the special fund shall be used by the department for operating a state comprehensive emergency medical services system including enhanced and expanded services, and shall not be used to supplant funding for emergency medical services authorized prior to [July 1, 2004].

(c) Fees remitted pursuant to section 249-31, cigarette tax revenues designated under section 245-15, interest and investment earnings attributable to the moneys in the special fund, legislative appropriations, and grants, donations, and contributions from private or public sources for the purposes of the fund, shall be deposited into the special fund.

(d) The department shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session that outlines the receipts of, and expenditures from, the special fund. [L 2004, c 158, §2; am L 2006, c 316, §6]

" **[§321-235] Immunity and limitation on liability for emergency aeromedical services.** The State shall not be liable for any claim of injury or death based on a failure to establish or continue emergency aeromedical services in any part of the State or in any county, including the failure of the department of health to establish emergency aeromedical services. [L 2004, c 105, §2]

" **[§321-236] Emergency medical services; use of latex gloves prohibited.** *[Section effective January 1, 2017.]* The use of latex gloves by personnel providing ambulance services or emergency medical services pursuant to this part shall be prohibited. [L 2016, c 180, §3]

#### **Cross References**

Dental health facilities; health care facilities; use of latex gloves, see §321-11.9.

#### **"PART XIX. SCHOOL HEALTH SERVICES PROGRAM--REPEALED**

#### **Cross References**

For present provisions, see §§302A-851 to 855.

**§§321-241 to 242 REPEALED.** L 2007, c 105, §5.

**§321-243 REPEALED.** L 1996, c 211, §3.

**§321-244 REPEALED.** L 1981, c 200, §3.

" **§§321-245, 246 REPEALED.** L 2007, c 105, §5.

#### **"PART XX. AGENT ORANGE--REPEALED**

**§§321-261 to 271 REPEALED.** L 1996, c 211, §4.

**"[PART XXI.] HEMOPHILIA**

**[\$321-281] Financial assistance fund for hemophilia.**

There is established within the department of health a financial assistance fund for persons suffering from hemophilia who require hemophilia-related medical care and treatment, but who are unable to pay the entire costs of such medical care and treatment. [L 1983, c 280, pt of §2]

" **[\$321-282] General duties of the department.** The department of health shall:

- (1) Provide financial assistance, within the limits of available funds in the financial assistance fund, for the medical care and treatment of persons suffering from hemophilia who meet the standards of eligibility established by the department; provided that the department may contract with a private, nonprofit organization to carry out this function;
- (2) Establish standards of eligibility for the financial assistance provided under this part; and
- (3) Adopt any necessary rules pursuant to chapter 91 to implement this part. [L 1983, c 280, pt of §2]

**"[PART XXII.] NEWBORN METABOLIC SCREENING**

**§321-291 Tests for phenylketonuria, hypothyroidism, and other metabolic diseases.** (a) The department of health may specify diseases to be screened for in newborn infants and methods to be employed to best prevent mortality and morbidity within the population of the State.

(b) The person in charge of each institution caring for newborn infants and the responsible physician attending the birth of a newborn or the person assisting the birth of a child not attended by a physician, shall ensure that every infant in the person's care be tested for phenylketonuria, hypothyroidism, and any other disease that may be specified by the department of health; provided that this section shall not apply if the parents, guardians, or other persons having custody or control of the child object thereto on the grounds that the tests conflict with their religious tenets and beliefs and written objection is made a part of the infant's medical record.

(c) The department of health shall adopt rules pursuant to chapter 91, necessary for the purposes of this section, including, but not limited to:

- (1) Administration of newborn screening tests;

- (2) Quality and cost control of screening tests;
  - (3) Retention of records and related data;
  - (4) Reporting of positive test results;
  - (5) Guidelines for care, treatment, and follow up of infants with positive test results;
  - (6) Informing parents about the purposes of these tests; and
  - (7) Maintaining the confidentiality of affected families.
- (d) There is created in the treasury of the State the

newborn metabolic screening special fund. All moneys for newborn metabolic screening services collected under this chapter shall be deposited in the newborn metabolic screening special fund to be used for the payment of its lawful operating expenditures, including but not limited to laboratory testing, follow-up testing, educational materials, continuing education, quality assurance, equipment, and indirect costs.

(e) The director shall submit an annual report to the legislature twenty days prior to the convening of each regular session, identifying all fund balances, transfers, and expenditures made from the newborn metabolic screening special fund, and the purposes for each expenditure. [L 1986, c 10, §1; am L 1996, c 259, §1]

#### "[PART XXIIIA. NEWBORN PULSE OXIMETRY SCREENING]"

##### Revision Note

Part heading added pursuant to §23G-15.

**[§321-296] Newborn pulse oximetry screening.** (a) Prior to discharge of any newborn in its care, a birthing facility shall perform on the newborn a pulse oximetry test for critical congenital heart defects or other medically accepted test that measures the percentage of blood oxygen saturation, as approved by the guidelines of the American Academy of Pediatrics.

(b) Subsection (a) shall not apply if the parents, guardians, or other persons having custody or control of the newborn object to performance of the test required by subsection (a) on the grounds that the test conflicts with their religious tenets and beliefs and written objection is made a part of the newborn's medical record.

(c) Each birthing facility shall report critical congenital heart defect screening data to the department of health for quality assurance and improvement activities. At a minimum, the data shall include:

- (1) Newborns screened and not screened;
- (2) The timing of screening after birth;

- (3) Pulse oximetry results;
  - (4) The outcomes of newborns who fail pulse oximetry screening; and
  - (5) Infants who are detected with a critical congenital heart defect and who pass pulse oximetry screening.
- (d) For the purposes of this section, "birthing facility" means an inpatient or ambulatory health care facility licensed by the department of health that provides birthing and newborn care services. [L 2015, c 212, §2]

**"[PART XXIII. HEALTH EDUCATION]**

**[\$321-301] Bilingual health education aide program; establishment.** There is established in the department of health a bilingual health education aide program. Under the program, bilingual health education aides shall assist in the provision of health education and public health services to non-English and limited English speaking persons living in the State. The department, subject to chapter 76, shall employ bilingual health education aides and other necessary personnel for the program. [L 1986, c 307, §2; am L 2000, c 253, §150]

**Cross References**

Bilingual mental health services, see §334-12.

**"[PART XXIV.] ENVIRONMENTALLY-RELATED ILLNESS AND INJURY**

**[\$321-311] Environmentally-related illness and injury surveillance.** The department of health shall maintain, as it deems advisable and within available resources, an environmentally-related human illness and injury surveillance system for conditions determined by the director to present a threat to public health in order to ascertain the incidence, distribution, and other epidemiological characteristics of these illnesses and injuries. [L 1987, c 186, pt of §2]

" **§321-311.5 Renumbered as §321-29.**

" **[\$321-312] Definition of environmentally-related illness or injury.** Environmentally-related human illnesses or injuries are those designated acute or chronic adverse health effects associated with exposure to pesticides, lead, or other toxic substances determined by the director to present a threat to public health. [L 1987, c 186, pt of §2]



" **§321-313 Definition of health care professional.** A health care professional means a physician or osteopathic physician as licensed under chapter 453. [L 1987, c 186, pt of §2; am L 2009, c 11, §34]

" **[§321-314] Reports to the department.** Any health care professional who has the primary responsibility for the treatment of an individual who is suffering from environmentally-related illness or injury shall report the occurrence or suspected occurrence of such illness or injury to the department in writing or in the manner specified by the director of health. Every laboratory director having laboratory data regarding an individual affected by or suspected to be affected by a toxic substance determined by the director of health to present a threat to public health shall report such data to the department of health in a manner specified by the director. Forms for the reporting of environmentally-related illness or injury shall be provided by the department. [L 1987, c 186, pt of §2]

" **[§321-315] Confidentiality.** Reports provided to the department under this section shall not be made public to protect the identity of the persons diagnosed to be suffering from an environmentally-related illness or injury; provided that statistical information collected under this part shall be public information. [L 1987, c 186, pt of §2]

" **[§321-316] Immunity from liability.** Any health care professional or laboratory director who complies with this part shall not be held civilly or criminally liable for providing the information required under this part. [L 1987, c 186, pt of §2]

" **[§321-317] Rules.** The director of health shall adopt rules necessary for the purposes of this part pursuant to chapter 91. The rules shall include the director's determination of the penalties to be assessed for any failure of a health care professional or laboratory director to comply with the reporting requirements established under this part. [L 1987, c 186, pt of §2]

**"PART XXV. MATERNAL AND CHILD HEALTH PROGRAM**

**[§321-321] Purpose.** The purpose of this part is to enable the department of health to assure the availability of programs and services which promote the health of women of childbearing age, mothers, families, infants, children, youths, and adolescents. These programs shall further the State's goals of

providing for the health and well-being of women and mothers and help to insure that healthy babies become healthy adults. [L 1988, c 203, pt of §1]

" **[§321-322] Administration of programs.** The department of health may administer programs to reduce infant and maternal mortality and morbidity, and otherwise promote the health of women of childbearing age, mothers, families, infants, children, youths, and adolescents. The types of services to be provided may include but need not be limited to perinatal care, prenatal education including individual risk reduction, maternal care, baby and child care, adolescent health care, and family planning. [L 1988, c 203, pt of §1]

" **[§321-323] Definitions.** For the purposes of this part:

"Preventive health care services" means services which promote, enhance, or maintain optimal health and well-being.

"Target population" means women of childbearing age, mothers, families, infants, children, youths, and adolescents. [L 1988, c 203, pt of §1]

" **[§321-324] Powers of the department.** The department of health may:

- (1) Make available to the target population quality health care services, with emphasis on preventive health services;
- (2) Develop, extend, and improve the services; and
- (3) Cooperate with the federal government, through its appropriate agency or instrumentality, in identifying needs, developing, extending, and improving the services, and receiving and expending all funds made available to the department by the federal government, the State, or its political subdivisions, or from any other source, including private donations, for the purposes of this part. [L 1988, c 203, pt of §1]

" **[§321-325] Agreements.** In carrying out the purposes of this part the director of health may:

- (1) Enter into agreements with the United States and with other state departments, agencies, and political subdivisions, and enter into assistance agreements for services with profit organizations incorporated under the laws of the State or nonprofit organizations determined to be exempt from the federal income tax by the Internal Revenue Service, and allocate and expend any funds appropriated for the purposes of such

- agreements and do all things necessary to accomplish the purposes and provisions of this part; and
- (2) Establish standards and review procedures to assure that recipients of state funding provide the services and facilities necessary to accomplish the purposes for which the funds are provided. [L 1988, c 203, pt of §1]

" **[§321-326] Rules.** The director shall adopt rules necessary to carry out the purposes of this part, including the establishment of criteria to determine eligibility to participate in the services provided under this part. [L 1988, c 203, pt of §1]

" **[§321-327] Hawaii home visiting program; established.** (a) There is established within the department of health the Hawaii home visiting program, which shall be responsible for statewide hospital-based screening and home visiting services to identify families of newborns at risk for poor health and safety outcomes, including child abuse and neglect, to promote healthy child development and strengthen families.

(b) Within the limits of available funds, the hospital-based screening and home visiting services program shall:

- (1) Provide proactive, universal screening of newborns' families, using one or more screening tools validated for identifying levels of risk for poor health and safety outcomes and child abuse and neglect as designated by the department of health;
- (2) Refer high-risk families to Hawaii home visiting program providers who shall employ evidence-based models of service; and
- (3) Consider as a high priority, families at risk for poor health outcomes, child abuse, or neglect. [L 2013, c 91, §2]

"**[PART XXVI. PRENATAL HEALTH CARE]**

**[§321-331] Prenatal health care; authority.** (a) The department of health may adopt rules pursuant to chapter 91 to ensure that all pregnant women in this State are offered appropriate information, quality testing, diagnostic services, and follow-up services concerning neural tube defects and other disorders amenable to prenatal diagnosis. The purpose of prenatal screening and diagnosis is to obtain vital information for the pregnant woman and her family as well as for the providers of her health care. It can be used to provide appropriate care and to assist the woman and her family to

achieve optimal health outcomes. Nothing in this section shall be construed to mean that prenatal screening and testing are mandatory.

- (b) The department of health may:
- (1) Provide educational resources to all women in the State before and early in pregnancy about the availability of prenatal tests, including non-directive counseling and impartial information on the benefits, risks, and limitations of prenatal tests;
  - (2) Make available prenatal screening and diagnosis tests to all pregnant women in this State who choose to be so screened;
  - (3) Specify the diseases which may be screened for;
  - (4) Determine screening and diagnostic test methodologies;
  - (5) Establish laboratory quality control standards for performance of designated tests;
  - (6) Provide technical assistance to laboratories, hospitals, physicians, and other health care providers;
  - (7) Maintain a confidential registry and collect appropriate statistical data for the purposes of research and evaluation;
  - (8) Collect fees for program services; and
  - (9) Maintain confidentiality of records of women and their families participating in the program. [L 1988, c 23, §1]

#### **"PART XXVII. CHILD DEATH REVIEW**

**[§321-341] Multidisciplinary and multiagency reviews.** The department of health may conduct multidisciplinary and multiagency reviews of child deaths in order to reduce the incidence of preventable child deaths. [L 1997, c 369, pt of §1]

" **§321-342 Definitions.** As used in this part:

"Child" means a person under eighteen years of age.

"Child death review information" means information regarding the child and child's family, including but not limited to:

- (1) Social, medical, and legal histories;
- (2) Death and birth certificates;
- (3) Law enforcement investigative data;
- (4) Medical examiner or coroner investigative data;
- (5) Parole and probation information and records;
- (6) Information and records of social service agencies;
- (7) Educational records; and
- (8) Health care institution information.

"Department" means the department of health.

"Director" means the director of health or the director's designated representatives.

"Family" means:

- (1) Each legal parent;
- (2) The natural mother;
- (3) The natural father;
- (4) The adjudicated, presumed, or concerned natural father as defined under section 578-2;
- (5) Each parent's spouse or former spouses;
- (6) Each sibling or person related by consanguinity or marriage;
- (7) Each person residing in the same dwelling unit; and
- (8) Any other person who, or legal entity that, is a child's legal or physical custodian or guardian, or who is otherwise responsible for the child's care, other than an authorized agency that assumes such a legal status or relationship with the child under chapter 587A.

"Preventable death" means a death that reasonable medical, social, legal, psychological, or educational intervention may have prevented.

"Provider of medical care" means any health care practitioner who provides, or a facility through which is provided, any medical evaluation or treatment, including dental and mental health evaluation or treatment. [L 1997, c 369, pt of §1; am L 2010, c 135, §7]

" **§321-343 Access to information; use of child death review information; protections.** (a) Upon written request of the director, all providers of health care, social services, and state and county agencies shall disclose to the department, and those individuals appointed by the director to participate in the review of child deaths, child death review information regarding the circumstances of a child's death so that the department may conduct a multidisciplinary and multiagency review of child deaths pursuant to section 321-31 and this part. All requested disclosures shall comply with state and federal privacy statutes and regulations, including the Health Insurance Portability and Accountability Act, and the department shall not request records of any internal hospital committee, peer review committee, or quality improvement review process. The department may enter into a memorandum of agreement with hospitals regarding requests for information to be used for child death reviews.

(b) To the extent that this section conflicts with other state confidentiality and disclosure laws, this section shall prevail.

(c) Except as otherwise provided in this part, all child death review information acquired by the department during its review of child deaths pursuant to this part is confidential and may only be disclosed as necessary to carry out the purposes of this part.

(d) No individual participating in the review of a child death shall be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a multidisciplinary review. Nothing in this subsection shall be construed to prevent a person from testifying to information obtained independently of the department's request for child death review information or the multidisciplinary team's review of the child death, or which is public information, or where disclosure is required by a court of law.

(e) Child death review information held by the department as a result of child death reviews conducted under this part shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that child death review information otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because they were provided to the department as required by this part. [L 1997, c 369, pt of §1; am L 2016, c 203, §3]

" **[§321-344] Exception.** Information regarding an ongoing civil or criminal investigation shall be disclosed at the discretion of the applicable state, county, or federal law enforcement agency. [L 1997, c 369, pt of §1]

" **§321-345 REPEALED.** L 2016, c 203, §4.

" **[§321-345.5] Child death reviews; reports.** (a) The director shall submit an annual written report to the legislature no later than twenty days prior to the convening of each regular session on the status of child death reviews conducted by the department pursuant to this part. The annual report shall cover the calendar year immediately prior to the year in which the report is due and shall describe the total number of child deaths in Hawaii and the causes of those deaths, the number of deaths of children in state custody and the causes of those deaths, any child death review activities conducted by the department, trends in child deaths, and recommendations for system changes, including any proposed legislation.

(b) Upon written request of the director, a state or county agency shall report deaths of children in the custody of the state or county agency to the department, including any information on the circumstances of the child's death deemed relevant by the director.

(c) The director shall submit a copy of any other child death review report published by the department, including findings and recommendations resulting from such a review, to the legislature upon the report's publication. [L 2016, c 203, §2]

" **[§321-346] Immunity from liability.** All agencies and individuals participating in the review of child deaths pursuant to this part shall not be held civilly or criminally liable for providing the information required under this part. [L 1997, c 369, pt of §1]

## "PART XXVIII. INFANTS AND TODDLERS

### Cross References

Safe place for newborns, see chapter 587D.

Shaken baby syndrome (prevention), see §321-33.

**[§321-351] Definitions.** As used in this part, unless the context requires otherwise:

"Biological risk" means prenatal, perinatal, neonatal, or early developmental events suggestive of biological insults to the developing central nervous system which increase the probability of delayed development.

"Case management" means an ongoing service of shared responsibility between families and professionals that identifies needs and assists in obtaining coordinated, appropriate services and resources.

"Delayed development" means a significant delay in one or more of the following areas of development: cognition, speech, language, physical, motor, vision, hearing, psychosocial, or self-help skills.

"Department" means the department of health.

"Director" means the director of health.

"Early intervention services" means services which:

- (1) Are provided under public supervision;
- (2) Are provided at no cost, except where federal or state law provides for a system of payments by families, including a sliding fee schedule;
- (3) Are designed to meet the developmental needs of infants and toddlers with special needs, which include

but are not limited to physical development, cognitive development, and self-help skills;

- (4) Are provided by qualified professional and paraprofessional personnel;
- (5) Are provided in conformity with an individualized family support plan; and
- (6) Include but are not limited to: family support, counseling, and home visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; case management services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; and health services necessary to enable the infant or toddler to benefit from the other early intervention services.

"Environmental risk" means physical, social, or economic factors which may limit development. Environmental risk includes, but is not limited to the following conditions:

- (1) Birthweight between 1,500 and 2,500 grams, in combination with any other environmental risk factor;
- (2) Parental age less than sixteen;
- (3) Parental age between sixteen and eighteen and less than a high school education in combination with any other environmental risk factor;
- (4) Any existing physical, developmental, emotional, or psychiatric disability in a primary caregiver;
- (5) Presence of physical, developmental, emotional, or psychiatric disability in a sibling or any other family member in the home in combination with any other environmental risk factor;
- (6) Abuse of any legal or illegal substance by a primary caregiver;
- (7) Child abuse and neglect of target child or siblings;
- (8) Economically disadvantaged family in combination with any other environmental risk factor;
- (9) Single parent in combination with any other environmental risk factor; and
- (10) Incarceration of a primary caregiver in combination with any other environmental risk factor.

"Individual family support plan" means a dynamic, voluntary plan of action and support developed by families and professionals that emanates from the families' expressions of needs and goals.

"Infants and toddlers with special needs" means infants and toddlers from birth to the age of three with delayed



development, biological risk, or environmental risk. [L 1989, c 107, pt of §2]

" **§321-352 Early intervention services for infants and toddlers with special needs.** The department may develop a statewide, coordinated, multidisciplinary program which contains a continuum of services to meet the needs of infants and toddlers with special needs. The department shall be the lead agency for the coordination of federal and state funding for those programs. Pursuant to chapter 103F, the department may purchase services appropriate to carry out activities under this part. [L 1989, c 107, pt of §2; am L 1991, c 335, §7; am L 1997, c 190, §6]

" **[§321-352.2] Early language services for children who are deaf, hard of hearing, or deaf-blind.** Early intervention services for infants and toddlers may include, but not be limited to, service providers and mentors of the deaf, hard of hearing, or deaf-blind who use American Sign Language; service providers and mentors of the deaf who use oral language; American Sign Language teachers for families of young children; family-to-family support; and training of early intervention providers. [L 2016, c 177, §2]

#### **Note**

Working group on age-appropriate development for children from birth to age five years who are deaf, hard of hearing, or deaf-blind; reports to 2017-2018 legislature (ceases to exist June 30, 2018). L 2016, c 177, §3.

" **§321-353 Hawaii early intervention coordinating council; establishment.** (a) There is established within the department for administrative purposes the Hawaii early intervention coordinating council. Members shall be appointed for three-year terms by the governor without the necessity of the advice and consent of the senate. The council shall comprise twenty-five members as follows:

- (1) At least twenty per cent of the members shall be parents of infants or toddlers with special needs, or children with special needs aged twelve years or younger, with knowledge of, or experience with, programs for infants and toddlers with special needs; provided that at least one parent shall be a parent of an infant or toddler with special needs, or of a child with special needs aged six years or younger;

- (2) At least twenty per cent of the members shall be public or private providers of early intervention services;
- (3) Two members shall be from the legislature, of which one member shall be selected by the president of the senate and one member shall be selected by the speaker of the house of representatives;
- (4) One member shall be involved in personnel preparation;
- (5) One member shall be from the department of health program involved in the provision of, or payment for, early intervention services to infants and toddlers with special needs and their families who has sufficient authority to engage in policy planning and implementation on behalf of the program;
- (6) One member shall be from the department of health program responsible for children's mental health;
- (7) One member shall be from the department of education program responsible for preschool services to children with disabilities who has sufficient authority to engage in policy planning and implementation on behalf of the program;
- (8) One member shall be from the department of education program responsible for the coordination of education of homeless children and youths;
- (9) One member shall be from the department of human services program responsible for the state medicaid program;
- (10) One member shall be from the department of human services program responsible for child care;
- (11) One member shall be from the department of human services program responsible for foster care;
- (12) One member shall be from the department of commerce and consumer affairs program responsible for state regulation of health insurance;
- (13) One member shall be from a Head Start or Early Head Start agency or program in the State; and
- (14) Other members involved in or interested in services to infants and toddlers with special needs and their families who are selected by the governor.

Any vacancy on the council shall be filled in the same manner in which the original position was filled.

(b) The council shall elect its officers, and thirteen members shall constitute a quorum. Members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties. No member shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise

give the appearance of a conflict of interest. No member from an executive or administrative department under chapter 26 may serve as the chairperson of the council.

(c) The council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and be open and accessible to the general public.

(d) The council shall perform the following functions:

- (1) Advise and assist the director in the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;
- (2) Advise and assist the department in the preparation of applications and amendments thereto;
- (3) Advise and assist the department of education regarding the transition of toddlers with special needs to preschool and other appropriate services; and
- (4) Prepare and submit an annual report to the governor on the status of early intervention programs for infants and toddlers with special needs and their families within the State. [L 1989, c 107, pt of §2; am L 1996, c 298, §3; am L 2012, c 96, §1]

" **[§321-354] Rules.** The director, in consultation with the council, private agencies, users of services under this part, and other interested parties, may adopt rules pursuant to chapter 91 to carry out the purposes of this part. [L 1989, c 107, pt of §2]

" **§321-355 Early intervention special fund.** (a) There is established in the state treasury a special fund to be known as the early intervention special fund to be administered by the department in accordance with this section.

(b) The fund shall consist of grants and income earned by the special fund. All program income consisting of federal reimbursement funds received by the State for early intervention funded by legislative appropriations under this part shall be deposited into the special fund; provided that no state appropriations shall be deposited into the special fund. [L 1997, c 378, pt of §2; ree L 1998, c 43, pt of §1(1); am L 2011, c 124, §42]

" **§321-356 REPEALED.** L 2016, c 43, §4.

" **§321-357 Early intervention special fund; purpose and use.**

(a) The purpose of the early intervention special fund is to expand and enhance early intervention services for infants and

toddlers with special needs by providing a cooperative funding mechanism between the public and private sectors to work together to make and secure appropriations and donations to the fund.

(b) The department may procure services under chapters 103D and 103F in accordance with criteria and procedures established by rules adopted pursuant to chapter 91, for community-based, family-centered, early intervention services including but not limited to:

- (1) Programs to provide early intervention services for infants and toddlers with developmental delays or at biological or environmental risk;
- (2) Family support programs to strengthen families to reduce the risk of child abuse and neglect;
- (3) Training and education for professionals, paraprofessionals, and families; and
- (4) Research, evaluation, and data management related to early intervention services.

(c) Services to be procured under this section shall be in accordance with chapters 103D and 103F and take the following forms:

- (1) Purchase of service contracts to private nonprofit organizations, public agencies, or qualified individuals to provide community-based, family-centered, early intervention services; or
- (2) Direct payments for services, educational materials, training, quality assurance, equipment, data collection, and program evaluation.

(d) The Hawaii early intervention coordinating council shall make recommendations to the department for the expenditure of moneys from the early intervention special fund. [L 1997, c 378, pt of §2; am L 1998, c 43, pt of §1(1); am L 2016, c 43, §3]

## **"PART XXIX. STATEWIDE NEWBORN HEARING SCREENING PROGRAM**

### **Revision Note**

In this part, "part" substituted for "chapter".

**[§321-361] Definitions.** As used in this part, unless the context clearly indicates otherwise:

"Department" means the department of health.

"Hearing-impaired infant" means an infant who has an impairment that is a dysfunction of the auditory system of any type or degree sufficient to interfere with the acquisition and development of speech and language skills.

"Infant" means a child from birth to thirty-six months of age.

"Management" means the habilitation of the hearing-impaired infant.

"Screening" means a test or battery of tests administered to determine the need for a professional examination. [L 1990, c 85, pt of §3]

" **§321-362 Duties.** It shall be the duty and responsibility of the department to:

- (1) Establish, implement, and evaluate a statewide program for early identification of, and intervention for, hearing impairment in infants;
- (2) Establish standards and guidelines for the screening, identification, diagnosis, intervention, and monitoring of infants with hearing impairment and infants at risk for delayed onset of hearing impairment;
- (3) Develop a plan in conjunction with the department of education's statewide center for students with hearing or visual impairments to involve the parents or guardians with the medical and educational follow-up and management of infants who have been identified as hearing-impaired or at risk of delayed onset of hearing impairments; and
- (4) Collect and analyze program data in relation to the duties and responsibilities of the department. [L 1990, c 85, pt of §3; am L 2001, c 42, pt of §2]

" **[§321-362.5] Screening for hearing impairment.** (a) All newborn infants shall be screened for hearing impairment for early identification of children with hearing loss and for the promotion of their development of language and communication.

(b) The person in charge of each birthing facility caring for newborn infants and the responsible physician attending the birth of a newborn or the person assisting the birth of a child not attended by a physician shall ensure that every infant in the person's care be screened for hearing impairment. This section shall not apply if the parent, guardian, or other person having custody or control of the child objects to the screening in writing on the grounds that the screening conflicts with their religious beliefs. The written objection shall be made a part of the infant's medical record.

(c) Birthing facilities screening newborn infants for hearing impairment shall report screening results to the department, for the purpose of the department ensuring a statewide system for the screening, diagnostic evaluation, and

intervention for all newborn infants with hearing impairment. [L 2001, c 42, §1]

" **§321-363 Rules.** The department shall adopt rules, pursuant to chapter 91, necessary for the purposes of this part, including but not limited to administration and quality of newborn hearing screening; retention of records and related data; reporting of positive screening results; diagnostic evaluation and intervention for infants with hearing impairment; informing parents about the purpose of screening; and maintaining the confidentiality of affected families. [L 1990, c 85, pt of §3; am L 2001, c 42, pt of §2]

## "[PART XXX.] TATTOO ARTISTS

### Revision Note

In this part, "part" substituted for "chapter".

### Cross References

Sunset evaluations modified, see §§26H-4, 5.

### Law Journals and Reviews

The Constitution and Inking: How Anderson v. City of Hermosa Beach Expanded First Amendment Protection for the Tattoo Industry. 33 UH L. Rev. 417 (2010).

**[§321-371] Purpose.** The purpose of this part is the protection of public health and safety through the licensing and regulation of tattoo artists. [L 1990, c 285, pt of §2]

" **§321-372 Definitions.** As used in this part:

"Department" means the department of health.

"Director" means the director of health.

"Tattoo artist" means any person who creates indelible marks or decorative designs by introducing pigments beneath the surface of the skin, resulting in permanent or semi-permanent markings, with the aid of needles, electric machines, hand tools, or other devices or means. [L 1990, c 285, pt of §2; am L 2009, c 130, §2]

" **§321-373 Regulation of tattoo artists.** The department shall adopt rules under chapter 91 to implement this part. The rules shall include but not be limited to:

- (1) Prohibiting the use of injections, unless administered by a physician or osteopathic physician licensed under chapter 453, or by a registered nurse licensed under chapter 457;
- (2) Appropriate restrictions on topical anesthetics;
- (3) Prescribing procedures and conditions for sterilization, storage of sterilized equipment, resterilization, and disposal of discarded needles and other equipment;
- (4) Creating examination standards; and
- (5) Fixing penalties and fines for violations of this part or any of the rules adopted by the department. [L 1990, c 285, pt of §2; am L 1996, c 202, §6; am L 2009, c 11, §35 and c 130, §3]

" **[§321-373.5] Permit; required for tattoo shop and temporary locations.** (a) No person, partnership, firm, corporation, or other legal entity shall operate a tattoo shop or temporary location without a permit pursuant to department rules.

(b) Each initial permit application under this section shall be accompanied by a fee of \$125 for a permit valid for one year. For renewal of a permit, each applicant shall pay a fee of \$75 per year. Initial permit application and renewal fees may be increased by not more than \$10 per year.

(c) All permits shall expire on December 31 of each year. The application for a permit renewal shall be submitted to the department in writing on or before December 31 annually.

(d) The department may issue a temporary permit valid for a maximum of seven consecutive days per calendar year for locations other than a permitted tattoo shop for the purpose of a trade show, product demonstration, or educational demonstration; provided that the show or demonstration shall meet all safety and hygiene standards as specified by the director and in this chapter. The temporary permit application shall be made in writing to the department at least sixty days prior to the scheduled event, shall include specific measures to meet specified health and safety standards, and may be subject to a site inspection. Temporary permit applicants shall pay a \$50 nonrefundable application fee in addition to:

- (1) A \$500 nonrefundable permit fee for an event featuring not more than forty participating tattoo artists; or
- (2) A \$50 nonrefundable permit fee for an event featuring less than three participating tattoo artists demonstrating for educational purposes only, without compensation, consideration, or donation by the public;

provided that the department may annually increase the fees specified in paragraphs (1) and (2) by not more than \$100 and \$10 per year, respectively. [L 2009, c 130, §1]

" **§321-374 License required; exemptions.** (a) Except as otherwise provided by law, no person shall practice the occupation of tattoo artist in this State, with or without compensation, consideration, or donation, or shall announce oneself either publicly or privately as prepared or qualified to practice that occupation without having a valid unrevoked license from the department to do so.

(b) Physicians or osteopathic physicians holding a valid unrevoked license under chapter 453 are exempt from the requirements of this part.

(c) The department may issue, to tattoo artists who are not licensed in the State, temporary licenses that are valid for a maximum of fourteen consecutive days per calendar year for:

- (1) Educational, trade show, or product demonstration purposes; or
- (2) The purpose of practicing the occupation of tattoo artist at a permitted tattoo location.

Temporary licensees shall be subject to this part and applicable rules.

(d) Applications for temporary licenses shall be made in writing to the department at least sixty days prior to the proposed event and accompanied by a nonrefundable application fee of \$100 and written proof satisfying the requirements under subsection (e). An applicant shall be notified of the disposition of the application within twenty business days of the receipt of application.

(e) An applicant for a temporary license shall have either:

- (1) Passed a blood borne pathogen course developed specifically for the tattoo industry, approved by the director, within two years of the date of application; or
- (2) Passed the state tattoo artist written examination within two years of the date of the application.

(f) Temporary license fees may be increased annually by not more than \$10.

(g) Licensed tattoo artists shall tattoo only in a shop or temporary location that has a valid unrevoked permit issued by the director. [L 1990, c 285, pt of §2; am L 1996, c 202, §7; am L 2009, c 11, §36 and c 130, §4]

" **§321-375 Examination, fees required.** (a) No license shall be issued unless the applicant takes an examination as



prescribed by the director and receives a passing score or meets the criteria specified in section 321-374(e). No license shall be issued unless all fees required by the director have been paid.

(b) The department may contract with a professional testing service to prepare, administer, and grade the examination for licensure as a tattoo artist. For these purposes, the department may require applicants to pay the examination fee directly to the testing service. [L 1990, c 285, pt of §2; am L 2009, c 130, §5]

" **§321-376 REPEALED.** L 2009, c 130, §8.

#### **Note**

L 2009, c 11, §37 purports to amend this section.

" **§321-377 Suspension or revocation of permit or license.**

(a) The director may revoke or suspend the permit or license of any person permitted or licensed under this part who:

- (1) Is found guilty of any fraud, deceit, or misconduct in the practice of the occupation of tattoo artist; or
- (2) Violates this part or any of the rules adopted by the department.

(b) In every case where it is proposed to revoke or suspend a permit or license, the director shall give the permittee or licensee concerned notice and a hearing. The notice shall be given in writing by registered or certified mail, with return receipt requested, at least fifteen days before the hearing. All hearings shall be conducted pursuant to chapter 91. [L 1990, c 285, pt of §2; am L 2002, c 34, §1; am L 2009, c 130, §6]

" **§321-378 REPEALED.** L 2009, c 130, §9.

" **§321-379 Enforcement; penalties.** (a) If the department determines that any person has violated or is violating any provision of this part, any rule adopted pursuant to this part, or any term or condition of a permit or license issued pursuant to this part, the department may take enforcement action and impose penalties as provided in section 321-20, except that the department may impose a penalty not to exceed \$10,000 per offense.

(b) Violations of this part include but are not limited to:

- (1) Submitting to or filing with the department any application, notice, statement, or other document in

procuring or attempting to procure licensure as a tattoo artist that is false or untrue or contains any material misstatement of fact, or assisting another party in doing so;

- (2) Using the title licensed tattoo artist or any other designation tending to imply that the person is a licensed tattoo artist when the person is not in fact licensed or the person's license has been suspended or revoked;
- (3) Violating the conditions or limitations of a permit or a license or assisting another party in violating those conditions;
- (4) Engaging in conduct resulting in physical injury to an individual or the public in the course of professional services or activities;
- (5) Aiding or abetting an unlicensed person, knowingly combining or conspiring with an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as agent or associate of an unlicensed person to evade the use of title restrictions of this part;
- (6) Tattooing any person under the age of eighteen without the written consent of the person's parent or legal guardian or not maintaining the consent forms in a confidential manner at the tattoo shop for not less than two years; or
- (7) Making a false or misleading statement to the department relating to any matter under this part.

(c) An enforcement action under this section may be combined with a permit or license revocation or suspension under section 321-377 and may be brought together as one administrative action.

(d) In any proceeding under this section, the person subject to the proceeding shall be given notice and the opportunity for a hearing in conformity with chapter 91. [L 1990, c 285, pt of §2; am L 2009, c 130, §7]

" **§321-380 REPEALED.** L 2009, c 130, §10.

" **[§321-381] Biennial renewal; failure to renew.** The biennial renewal fee shall be paid to the department of health on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any licensee to pay the biennial renewal fee on or before such date shall constitute a forfeiture of the license. [L 1990, c 285, pt of §2]

" **[\$321-382] Fees.** The director may establish fees by rules pursuant to chapter 91. [L 1990, c 285, pt of §2]

" **§321-383 REPEALED.** L 2009, c 130, §11.

**"PART XXXI. MIDWIVES--REPEALED**

**§§321-391 to 398 REPEALED.** L 1998, c 279, §3.

**Cross References**

Recognition of nurse midwives as advanced practice registered nurses, see §457-8.5.

**"[PART XXXII.] FOOD SAFETY CONSULTATIVE AND EDUCATION PROGRAM**

**[\$321-401] Findings and purpose.** The purpose of this part is to establish a non-enforcement program within the department of health to provide voluntary food safety surveillance and control, and educational activities to assist the food service industry and foodhandlers. The legislature finds that education is necessary for attaining voluntary compliance in food safety. Informed food managers and foodhandlers are essential for the control of foodborne pathogens in foods served to the public.

Restaurants, catering services, delicatessens, markets, and other food purveyors employ foodhandlers who need continuing education and training in food safety. Foodhandlers work with fresh, uncooked, or prepared foods which may contain foodborne disease microorganisms that can cause severe sickness to large numbers of people at the same time. It is the intent of the legislature to take preventive measures through educational programs and analytical studies of contamination outbreaks. [L 1992, c 219, pt of §1]

**Cross References**

Other food safety issues, see §§321-4.5, 4.6, 11.51, and 27.5.

" **[\$321-402] Food safety consultative and education program.**

(a) There is established the food safety consultative and education program within the department of health. The department may place this program within any appropriate division.

(b) The program shall be managed and staffed by persons who are trained and experienced in public health aspects of

food, including food science, foodborne disease epidemiology, food microbiology, and food sanitation.

(c) Generic food safety information gained from studies conducted as part of the program may be shared with foodhandlers in certification workshops and food safety classes. [L 1992, c 219, pt of §1]

" **[§321-403] Food safety control system.** The department may conduct studies using the hazard analysis critical control points system after foodborne disease outbreak investigations are completed by the department or when requested by food service operators. [L 1992, c 219, pt of §1]

" **[§321-404] Public information monitoring system.** Within the program, the department of health shall investigate foodhandling practices which appear to represent poor food safety techniques, and shall develop ways in which the public can gain information on food safety and can report practices which appear to represent poor food safety techniques. [L 1992, c 219, pt of §1]

" **[§321-405] Confidentiality of information.** For purposes of this part, the program shall maintain confidentiality of critical information received from food purveyors and foodhandlers or other persons in the food service industry. Critical information is information, including trade secrets, necessary for the department to prevent food safety problems from occurring and to ensure that potentially hazardous foods are safe for public consumption. [L 1992, c 219, pt of §1]

## "[PART XXXIII.] INDOOR AIR QUALITY

### **Cross References**

Noise, radiation, and indoor air quality special fund; established, see §342P-7.

**[§321-411] Definitions.** As used in this part:

"Department" means the department of health.

"Director" means the director of health.

"Publicly owned building" means any building or structure, including a hospital or a school, that is owned, leased, or operated by the State; provided that it shall be a building or structure in which individuals employed by the State work during normal operations. [L 1994, c 234, pt of §2]

" **[§321-412] Indoor air quality program.** There is established an indoor air quality program within the department. The department may place this program within any appropriate division. [L 1994, c 234, pt of §2]

" **[§321-413] General functions, powers, and duties of the department.** (a) The director shall provide information and educational material regarding indoor air pollution to the managers, owners, and occupants of publicly owned buildings, and may assist any manager, owner, or occupant of a publicly owned building to identify, assess, and correct indoor air pollution problems.

(b) The director may provide information and educational material regarding indoor air pollution to any manager, owner, or occupant of a building that is not a publicly owned building, and may assist any manager, owner, or occupant of a building that is not a publicly owned building to identify, assess, and correct indoor air pollution problems.

(c) The director shall establish and coordinate an indoor air quality assessment network of state agencies and facility managers of publicly owned buildings to identify, assess, and correct indoor air pollution problems.

(d) The director may establish a program for the approval of plans to construct ventilation systems, the inspection of ventilation system construction, and the monitoring of existing ventilation systems for proper maintenance.

(e) The director may adopt rules in accordance with chapter 91 to effectuate the purposes of this part. [L 1994, c 234, pt of §2]

#### "[PART XXXIV.] BIRTH DEFECTS PROGRAM

##### Revision Note

Throughout this part, "birth defects program" substituted for "Hawaii birth defects program".

**[§321-421] Definitions.** As used in this part, unless the context requires otherwise:

"Adverse reproductive outcome" means a birth defect, stillbirth, infant death up to one year of age, or spontaneous or medical termination of pregnancy for a birth defect.

"Birth defect" means an abnormality of structure, function, or body metabolism present at birth that adversely affects a child's health and development, results in a physical or mental disability, or is fatal.

"Institutional review board" means an institutional review board established in accordance with 7 Code of Federal Regulations 1c.107, 10 Code of Federal Regulations 745.107, 14 Code of Federal Regulations 1230.107, 15 Code of Federal Regulations 27.107, 16 Code of Federal Regulations 1028.107, 21 Code of Federal Regulations 56.107, 22 Code of Federal Regulations 225.107, 24 Code of Federal Regulations 60.107, 28 Code of Federal Regulations 46.107, 32 Code of Federal Regulations 219.107, 34 Code of Federal Regulations 97.107, 38 Code of Federal Regulations 16.107, 40 Code of Federal Regulations 26.107, 45 Code of Federal Regulations 46.107, 45 Code of Federal Regulations 690.107, or 49 Code of Federal Regulations 11.107. [L 2002, c 252, pt of §1]

" **[§321-422] Birth defects program.** The department of health shall establish the statewide birth defects program to:

- (1) Collect surveillance information on birth defects and other adverse reproductive outcomes;
- (2) Report the incidence, trends, and causes of birth defects and other adverse reproductive outcomes;
- (3) Report information for the development of prevention strategies to reduce the incidence of birth defects and other adverse reproductive outcomes; and
- (4) Develop strategies to improve the access of children with birth defects to health and early intervention services. [L 2002, c 252, pt of §1]

" **[§321-423] Confidentiality of data.** (a) The identity of, or any information which alone or in combination with other reasonably available information that may be used to identify, any person whose information is collected under this part shall be confidential.

(b) Statistical data and information that do not identify any person may be released. [L 2002, c 252, pt of §1]

" **[§321-424] Rules.** The department may adopt rules pursuant to chapter 91 as necessary for the birth defects program. [L 2002, c 252, pt of §1]

" **[§321-425] Requests for information.** The department shall provide information about appropriate health and early intervention services to persons who request the information. [L 2002, c 252, pt of §1]

" **[§321-426] Birth defects special fund.** There is established within the state treasury the birth defects special fund to be administered and expended by the department of

health, into which shall be deposited fees remitted pursuant to section 572-5. Moneys in the special fund shall be used for the payment of the operating expenses of the birth defects program. [L 2002, c 252, pt of §1]

**"PART XXXV. CASE MANAGEMENT SERVICES FOR  
MEDICALLY FRAGILE CHILDREN**

**Note**

Part heading amended by L 2015, c 147, §7.

**[\$321-431] Definitions.** As used in this part, unless the context clearly requires otherwise:

"Case management services" means services that assist medically fragile children under the medicaid state plan in gaining access to needed medical, social, educational, and other services.

"Medically fragile children" means children under the age of twenty-one with complex medical conditions that may or may not require technological interventions, including but not limited to ventilator care, tracheostomy care, catheterizations, parenteral nutrition, complex enteral feeding, and complex wound care. [L 2002, c 149, pt of §2]

**" §321-432 Case management services for medically fragile children.** The department of health shall provide ongoing case management services and staff training in case management services in collaboration with the department of human services' medicaid early and periodic screening, diagnosis, and treatment program, including but not limited to:

- (1) Assessment of children who are medically fragile to determine service needs;
- (2) Development of a specific care plan;
- (3) Referral for and linkages to services to implement the specific care plan; and
- (4) Monitoring and follow-up.

Medicaid reimbursements received by the department for case management services provided to families of medically fragile children shall be deposited into the general fund. [L 2002, c 149, pt of §2; am L 2015, c 147, §8]

**"[PART XXXVI. EMERGENCY RESPONSE STOCKPILE]**

**[\$321-441] Definitions.** Whenever used in this part, unless a different meaning clearly appears from the context:

"CBRNE event" means the use of chemicals, biological agents, radioactive materials, nuclear devices, or explosives to kill or sicken people, animals, or plants.

"Department" means the department of health.

"Director" means the director of health.

"Emergency response stockpile" means a strategic supply of drugs, vaccines and other biological products, medical devices, and related supplies maintained by the department to protect or treat the population of the State in the event of a CBRNE event. [L 2005, c 46, pt of §1]

" **§321-442 [Exemption from certain laws and rules.]** (a) In addition to any other power or duty prescribed by law or in this part, the director, through the department, may maintain an emergency response stockpile to prepare for or respond to a CBRNE event. The director may undertake all lawful activities necessary to carry out this part, including but not limited to adopting rules pursuant to chapter 91, disbursing funds for grants pursuant to chapter 42F, and procuring goods or services pursuant to chapter 103D or 103F.

(b) Notwithstanding any other law to the contrary, in preparing for or responding to a CBRNE event, the director and the department shall be exempt from chapters 328 and 461 and any related administrative rules, as those chapters and rules relate to the dispensing, labeling, prescribing, or storage of the emergency response stockpile. [L 2005, c 46, pt of §1; am L 2014, c 96, §19]

## "[PART XXXVII.] DOMESTIC VIOLENCE FATALITY REVIEW

**§321-471 Definitions.** As used in this part:

"Dating relationship" as used in this section has the same meaning prescribed in section 586-1.

"Department" means the department of health.

"Director" means the director of health or the director's designated representative.

"Domestic violence" means physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse or malicious property damage between family or household members.

"Domestic violence fatality review information" means information regarding a victim, including but not limited to:

- (1) Social, medical, and legal history;
- (2) Death and birth certificates;
- (3) Law enforcement investigative information and data;
- (4) Medical examiner or coroner investigative information and data;



- (5) Parole and probation information and records;
- (6) Information and records of social services agencies;
- (7) Educational records; and
- (8) Health care institution information.

"Domestic violence fatality review team" means those individuals appointed by the director to review domestic violence fatalities.

"Extreme psychological abuse" as used in this section has the same meaning prescribed in section 586-1.

"Family or household members" as used in this section means:

- (1) Each legal parent;
- (2) The natural mother;
- (3) The natural father;
- (4) Each natural or adopted child;
- (5) Each sibling or person related by consanguinity;
- (6) Spouses or former spouses;
- (7) Reciprocal beneficiaries or former reciprocal beneficiaries;
- (8) Each person who has or has had a dating relationship;
- (9) Each person jointly residing or formerly residing in the same dwelling unit; and
- (10) Any other person who, or legal entity that, is a victim's legal or physical custodian or guardian, or who is otherwise responsible for the victim's care, other than an authorized agency that assumes such a legal status or relationship with the victim under chapter 587A.

"Malicious property damage" as used in this section has the same meaning prescribed in section 586-1.

"Preventable death" means a death that reasonable medical, social, legal, psychological, or educational intervention may have prevented.

"Provider of medical care" means any health care practitioner who provides, or a facility through which is provided, any medical evaluation or treatment, including dental and mental health evaluation or treatment.

"Suspect" means a person suspected of having caused a victim's death.

"Victim" means an adult whose death is suspected of having been caused by domestic violence or domestic violence-related suicide. [L 2006, c 82, pt of §1; am L 2010, c 135, §7]

" **§321-472 Multidisciplinary and multiagency reviews.** The department shall conduct multidisciplinary and multiagency reviews of domestic violence fatalities, near-deaths, and suicides to reduce the incidence of preventable intimate partner

homicides. The director may form domestic violence fatality review teams, as necessary, by appointing individuals to review domestic violence fatalities. A domestic violence fatality review team shall not be subject to part I, chapter 92. [L 2006, c 82, pt of §1; am L 2015, c 203, §1]

" **§321-473 Access to information.** (a) Upon request of the director or a domestic violence fatality review team, all medical examiners, physicians acting under the direction of a coroner, providers of medical care, state agencies, and county agencies shall disclose to the department and the domestic violence fatality review team all information and records regarding the circumstances of a victim's death so that the department may conduct a multidisciplinary and multiagency review of domestic violence fatalities pursuant to this part.

(b) Members of the domestic violence fatality review team shall develop procedures related to near-deaths resulting from intimate partner violence.

(c) The department may enter into memoranda of understanding with the relevant state agencies and branches of government and county agencies to obtain information relating to near-deaths resulting from intimate partner violence.

(d) To the extent that this section conflicts with other state confidentiality laws, the provisions of this section shall require disclosure, notwithstanding the existence of a specific confidentiality statute.

(e) An entity represented on a domestic violence fatality review team and any entity cooperating with an entity represented on a domestic violence fatality review team may share with other members of the team:

- (1) Information in its possession concerning the victim;
- (2) Information in its possession concerning any person who was in contact with the victim; and
- (3) Any other information in its possession deemed by the entity to be pertinent to the domestic violence fatality review.

(f) Any information shared by an entity with other members of a domestic violence fatality review team is subject to the same restrictions on disclosure of the information or the records as the originating entity.

(g) To the extent possible, the review conducted pursuant to section 321-472 shall commence no later than one year following the death, near-death, or suicide. [L 2006, c 82, pt of §1; am L 2015, c 203, §2]

" **[§321-474] Exception.** Information regarding an ongoing civil or criminal investigation shall be disclosed at the

discretion of the applicable state or county law enforcement agency. [L 2006, c 82, pt of §1]

" **§321-475 Use of domestic violence fatality review information and records.** (a) Except as otherwise provided in this part, all information and records acquired by the department during its review of domestic violence fatalities pursuant to this part are confidential and shall only be disclosed as necessary to carry out the purposes of this part.

(b) Domestic violence fatality review information and statistical compilations of data that do not contain any information not previously publicly disclosed that would permit the identification of any person, shall be public records.

(c) An individual participating in the domestic violence fatality review of a victim's death shall not be questioned in any civil or criminal proceeding regarding information presented in or an opinion formed as a result of a domestic violence fatality review meeting. Nothing in this section shall be construed to prevent an individual from testifying to information obtained independently of the domestic violence fatality review of a victim's death, or which is public information, or where law or court order requires disclosure.

(d) Domestic violence fatality review information held by the department as a result of domestic violence fatality reviews conducted under this part shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that domestic violence fatality review information otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because it was provided as required by this part.

(e) Information collected and recommendations derived from the review process shall be compiled for use in system reform efforts relating to the reduction of preventable deaths, near-deaths, and suicides resulting from domestic violence. [L 2006, c 82, pt of §1; am L 2015, c 203, §3]

" **[§321-476] Immunity from liability.** A domestic violence fatality review team, its members, and any entity, agency, or individual participating in, or cooperating in, the review of a domestic violence fatality pursuant to this part shall not be civilly or criminally liable for providing the information required under this part. [L 2006, c 82, pt of §1]

"**[PART XXXVIII.] HOME AND COMMUNITY-BASED CASE MANAGEMENT AGENCIES AND COMMUNITY CARE FOSTER FAMILY HOMES**

## Cross References

Inspections of state-licensed care facilities; public notice, see §321-1.8.

**[§321-481] Definitions.** As used in this part:

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

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

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

- (1) Is regulated by the department in accordance with rules that are equitable in relation to rules that govern expanded adult residential care homes;
- (2) Is issued a certificate of approval by the department or its designee to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, at least one of whom shall be a medicaid recipient, who are at the nursing facility level of care, who are unrelated to the foster family, and who are receiving the services of a licensed home and community-based case management agency; provided that the department, in its discretion, may certify a home for a third adult who is at the nursing level of care and a medicaid recipient; provided further that the:
  - (A) Home has been certified and in operation for not less than one year;
  - (B) Primary caregiver is a certified nurse aide, as defined in section 457A-1.5, who has completed a state-approved training program and other training as required by the department; and
  - (C) Substitute caregiver is a nurse aide, as defined in section 457A-1.5, who has completed a state-approved training program and other training as required by the department; and
- (3) Does not include expanded adult residential care homes or assisted living facilities.

"Department" means the department of health.

"Designee" means a person, institution, organization, or agency authorized by the department to issue certificates of approval to community care foster family homes and to monitor

these homes for certificate compliance and quality assurance. The department's designee shall perform these functions for the department and shall not, at the same time, function as a home and community-based case management agency or a community care foster family home as defined in this section.

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

"License" means an approval issued by the department or its authorized agents for a person, agency, or organization to operate as a home and community-based case management agency. [L 2012, c 93, pt of §2]

" **§321-482 Home and community-based case management agency, authority over and evaluation of.** (a) Any person, agency, or organization engaged in providing, coordinating, or monitoring comprehensive services to clients in community care foster family homes, or medicaid clients in expanded adult residential care homes, and assisted living facilities, shall meet the standards of conditions, management, and competence set by the department, and hold a license in good standing issued for this purpose by the department.

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

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

(c) As a condition for obtaining a license, a person, agency, or organization shall comply with rules adopted under subsection (b)(1), (2), and (3), and satisfy the background check requirements under section 321-15.2. The department may deny a license if:

- (1) An operator, employee, or new employee of the home and community-based case management agency has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less;
- (2) The department finds that the background check record of an operator, employee, or new employee poses a risk to the health, safety, or well-being of adults

receiving care in community care foster family homes, expanded adult residential care homes, or assisted living facilities;

- (3) An operator, employee, or new employee of the home and community-based case management agency is a perpetrator of abuse as defined in section 346-222; or
- (4) The holder of or an applicant for a home and community-based case management agency license, or one of its employees, has a certificate of approval to operate a community care foster family home, or a license from the department to operate an adult residential care home, expanded adult residential care home, or assisted living facility.

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

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

- (1) Annually or biennially; or
- (2) Upon receipt of a complaint that the home and community-based case management agency is in violation of the requirements established under this section.

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

- (1) Upon suspension or revocation of a license, the home and community-based case management agency shall no longer be licensed and shall immediately notify the agency's clients and community care foster family homes, expanded adult residential care homes, and assisted living facilities in which the agency is providing services to clients;
- (2) A home and community-based case management agency whose license has been suspended or revoked may appeal the suspension or revocation to the department through its established process, but the appeal shall not stay the suspension or revocation;
- (3) A suspended or revoked license may be reinstated if the department deems that the agency is willing and

able to comply with the rules adopted under this section; and

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

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

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

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

(j) A home and community-based case management agency shall not enter into an agreement that requires a community care foster family home to accept that agency's clients exclusively. [L 2012, c 93, pt of §2; am L 2015, c 190, §4]

" **§321-483 Community care foster family home, authority over and evaluation of.**

(a) Any person in any household who wants to take in, for a fee, any adult who is at the nursing facility level of care and who is unrelated to anyone in the household, for twenty-four hour living accommodations, including personal care and homemaker services, may do so only after the household meets the required standards established for certification and obtains a certificate of approval from the department or its designee.

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

- (1) Standards of conditions and competence for the operation of community care foster family homes;
- (2) Procedures for obtaining and renewing a certificate of approval from the department;
- (3) Minimum grievance procedures for clients of community care foster family home services; and
- (4) Requirements for primary and substitute caregivers caring for three clients in community care foster family homes including:
  - (A) Mandating that primary and substitute caregivers be twenty-one years of age or older;
  - (B) Mandating that primary and substitute caregivers complete a minimum of twelve hours of continuing education every twelve months or at least twenty-four hours of continuing education every twenty-four months;

- (C) Allowing the primary caregiver to be absent from the community care foster family home for no more than twenty-eight hours in a calendar week, not to exceed five hours per day; provided that the substitute caregiver is present in the community care foster family home during the primary caregiver's absence;
- (D) Where the primary caregiver is absent from the community care foster family home in excess of the hours as prescribed in subparagraph (C), mandating that the substitute caregiver be a certified nurse aide; and
- (E) Mandating that the substitute caregiver have, at a minimum, one year prior work experience as a caregiver in a community residential setting or in a medical facility.

(c) As a condition for obtaining a certificate of approval, community care foster family homes shall comply with rules adopted under subsection (b) and satisfy the background check requirements under section 321-15.2. The department or its designee may deny a certificate of approval if:

- (1) An operator or other adult residing in the community care foster family home, except for adults receiving care, has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less;
- (2) The department or its designee finds that the background check record of an operator or other adult residing in the home, except for adults receiving care, poses a risk to the health, safety, or well-being of adults in care; or
- (3) An operator or other adult residing in the community care foster family home, except for adults receiving care, is a perpetrator of abuse as defined in section 346-222.

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

(e) Any community care foster family home shall be subject to investigation by the department or its designee at any time



and in the manner, place, and form as provided in procedures to be established by the department.

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

- (1) The suspension or revocation shall be immediate when conditions exist that constitute an imminent danger to the life, health, or safety of adults receiving care;
- (2) A community care foster family home whose certificate of approval has been suspended or revoked shall immediately notify its clients and their case managers;
- (3) A community care foster family home whose certificate of approval has been suspended or revoked may appeal to the department through its established process, but the appeal shall not stay the suspension or revocation;
- (4) A suspended or revoked certificate of approval may be reinstated if the department or its designee deems that the home is willing and able to comply with the rules adopted under subsection (b); and
- (5) A revoked certificate of approval shall be restored only after a new application for a certificate of approval is submitted to the department or its designee and approved.

(g) Any community care foster family home shall be subject to monitoring and evaluation by the department or its designee for certification compliance and quality assurance on an annual or biennial basis. [L 2012, c 93, pt of §2; am L 2015, c 190, §5]

" **§321-484 REPEALED.** L 2015, c 190, §8.

" **[§321-485] Penalty.** Any person violating this part or any rule adopted pursuant to this part shall be fined not more than \$500. [L 2012, c 93, pt of §2]

## "[PART XXXIX.] SERVICES TO ADULTS

### Cross References

Inspections of state-licensed care facilities; public notice, see §321-1.8.

**[§321-491] Purpose.** The purpose of this part is to establish the nature and type of services to elders, disabled, and aged who are qualified to receive social services according to standards and conditions prescribed by the department of health. [L 2012, c 93, pt of §2]

" **[§321-492] Definitions.** As used in this part:

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

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

"Department" means the department of health.

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

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

Nothing in section 321-493 shall be construed to include a relative caring for another relative; a neighbor or friend caring for an adult by mutual choice and agreement; or any center or facility conducted primarily or solely for educational, social, recreational, athletic, or other group functions that may provide for twenty-four hour boarding, personal, or nursing care accommodation. [L 2012, c 93, pt of §2]

" **[§321-493] Day care centers for disabled and aged persons.** The department shall be responsible for the recruitment and licensing of day care centers for elder disabled and aged persons. The department shall adopt any necessary rules, regulations, and minimum standards to protect the best interests of adults receiving care in day care centers. The rules and regulations shall have the force and effect of law and shall be administered by the department. [L 2012, c 93, pt of §2]

" **[§321-494] Purchase of service.** The department may negotiate the purchase of day care services for elder disabled and aged recipients, including other social services from individuals or other organizations, institutions, or agencies.

Other social services shall be necessary and essential to maximize the functioning and well-being of the recipient. Purchase of day care center services shall include services that enhance the social functioning of each participant, promote and develop activities in daily living and personal independence by therapeutic arts and crafts, community excursions, hobby cultivation, group dynamics, and provisions for counseling to the participants and their families. [L 2012, c 93, pt of §2]

" **[§321-495] Penalty.** Any individual, organization, or agency operating a day care center for disabled or aged persons without a license from the department shall be cited and fined an amount deemed to be appropriate by the court, but not to exceed a maximum of \$5,000. [L 2012, c 93, pt of §2]

" **§321-496 REPEALED.** L 2015, c 190, §9.

**"[PART XL.] MORTALITY REVIEW OF DEATHS OF PERSONS WITH DEVELOPMENTAL OR INTELLECTUAL DISABILITIES**

**[§321-501] Multidisciplinary and multiagency mortality reviews.** The department may conduct multidisciplinary and multiagency mortality reviews of deaths of persons with developmental or intellectual disabilities in order to reduce the incidence of preventable deaths to persons with developmental or intellectual disabilities. [L 2012, c 162, pt of §1]

" **[§321-502] Definitions.** As used in this part:

"Adult" means a person eighteen years of age or older.

"Adult death review information" means information regarding the adult person and person's family, including:

- (1) Social, medical, and legal histories;
- (2) Death and birth certificates;
- (3) Law enforcement investigative data;
- (4) Medical examiner or coroner investigative data;
- (5) Parole and probation information and records;
- (6) Information and records of social service agencies;
- (7) Educational records; and
- (8) Health care institution information.

"Department" means the department of health.

"Developmental disability" means a severe, chronic disability of a person that:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;

- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity:
  - (i) Self-care;
  - (ii) Receptive and expressive language;
  - (iii) Learning;
  - (iv) Mobility;
  - (v) Self-direction;
  - (vi) Capacity for independent living; and
  - (vii) Economic self-sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

"Director" means the director of health or the director's designated representative.

"Intellectual disability" means significantly subaverage general intellectual functioning resulting in or associated with concurrent moderate, severe, or profound impairments in adaptive behavior and manifested during the developmental period.

"Person with developmental or intellectual disabilities" means an adult with a developmental or intellectual disability.

"Preventable death" means a death that reasonable medical, social, legal, psychological, or educational intervention may have prevented.

"Provider of medical care" means any health care practitioner who provides, or a facility through which is provided, any medical evaluation or treatment, including dental and mental health evaluation or treatment. [L 2012, c 162, pt of §1]

" **[§321-503] Access to information.** (a) Upon written request of the director, all providers of medical care or other related services and state and county agencies shall disclose to the department and to those individuals appointed by the director to participate in the mortality review of the death of a person with developmental or intellectual disabilities, adult death review information regarding the circumstances of the death of a person with developmental or intellectual disabilities to allow the department to conduct multidisciplinary and multiagency mortality review of deaths of persons with developmental or intellectual disabilities pursuant to section 321-31 and this part.

(b) To the extent that this section conflicts with other state confidentiality laws, this section shall prevail. [L 2012, c 162, pt of §1]

" **[§321-504] Exception.** Information regarding an ongoing civil or criminal investigation shall be disclosed at the discretion of the applicable state, county, or federal law enforcement agency. [L 2012, c 162, pt of §1]

" **[§321-505] Use of information and records from mortality reviews of deaths of persons with developmental or intellectual disabilities.** (a) Except as otherwise provided in this part, all information and records acquired by the department during its multidisciplinary and multiagency mortality reviews of deaths of persons with developmental or intellectual disabilities pursuant to this part shall be kept confidential and may be disclosed only as necessary to carry out the purposes of this part.

(b) Information and statistical compilations of data from the multidisciplinary and multiagency mortality reviews of deaths of persons with developmental or intellectual disabilities that do not contain any information that would permit the identification of any person shall be public records.

(c) No individual participating in the department's multidisciplinary and multiagency mortality review of the death of a person with developmental or intellectual disabilities may be questioned in any civil or criminal proceeding regarding information presented in, or opinions formed as a result of, a meeting of the multidisciplinary and multiagency mortality review of deaths of persons with developmental or intellectual disabilities. Nothing in this subsection shall be construed to prevent a person from testifying to information obtained independently of the department's multidisciplinary and multiagency mortality review of deaths of persons with developmental or intellectual disabilities, or that is public information, or where disclosure is required by law or court order.

(d) Information held by the department as a result of a multidisciplinary and multiagency mortality review of the death of a person with developmental or intellectual disabilities conducted under this part shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because it was provided as required by this part. [L 2012, c 162, pt of §1]

" **[§321-506] Immunity from liability.** All agencies and individuals participating in multidisciplinary and multiagency

mortality reviews of deaths of persons with developmental or intellectual disabilities pursuant to this part shall not be held civilly or criminally liable for providing the information required under this part. [L 2012, c 162, pt of §1]

"[PART XLI.] **COMPASSIONATE CARE FOR SEXUAL ASSAULT VICTIMS**

**[§321-511] Definitions.** As used in this part, unless the context otherwise requires:

"Compulsion" means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.

"Department" means the department of health unless otherwise specified in this part.

"Emergency contraception" means one or more prescription drugs used separately or in combination that are:

- (1) Used postcoitally within a recommended amount of time;
- (2) Used for the purposes of preventing pregnancy; and
- (3) Approved by the United States Food and Drug Administration.

"Hospital" means any institution with an organized medical staff, regulated under sections 321-11(10) and 321-14.5, that admits patients for inpatient care, diagnosis, observation, and treatment.

"Sexual assault" means vaginal penetration without the person's consent, by compulsion or strong compulsion.

"Sexual assault victim" means a person who alleges or is alleged to have been sexually assaulted and as a result of the sexual assault presents as a patient at a hospital.

"Strong compulsion" means the use of or attempt to use one or more of the following to overcome a person:

- (1) A threat, express or implied, that places a person in fear of bodily injury to the person or another person, or in fear that the person or another person will be kidnapped;
- (2) A dangerous instrument; or
- (3) Physical force. [L 2013, c 27, pt of §2]

" **[§321-512] Compassionate care.** (a) Any hospital at which a female sexual assault victim presents for emergency services shall:

- (1) Provide any female sexual assault victim with medically and factually accurate and unbiased written and oral information about emergency contraception;
- (2) Orally inform each female sexual assault victim of the option to receive emergency contraception at the hospital;

- (3) When medically indicated, offer emergency contraception to each female sexual assault victim;
- (4) Dispense a complete course of emergency contraception to each female sexual assault victim who accepts or requests it; and
- (5) Ensure that providers who may prescribe or administer emergency contraception shall be trained to provide a female sexual assault victim with medically and factually accurate and unbiased written and oral information about emergency contraception and sexual assault treatment options and access to emergency contraception.

(b) No hospital shall deny a female sexual assault victim emergency contraception based on a refusal to undergo a forensic examination or a refusal to report the alleged sexual assault to law enforcement.

(c) No hospital shall be required to dispense emergency contraception to a female sexual assault victim who has been determined to be pregnant through the administration by the hospital staff of a pregnancy test approved by the United States Food and Drug Administration.

(d) If private insurance is not or cannot be utilized for payment, the cost of any emergency contraception dispensed pursuant to this part shall be paid by the department of human services. [L 2013, c 27, pt of §2]

" **[§321-513] Enforcement; administrative penalties.** (a) The department may set, charge, and collect administrative fines and recover administrative fees and costs, including attorney's fees and costs, resulting from a violation of this part or any rule adopted under this part.

(b) The department shall:

- (1) Establish a policy and procedures to monitor compliance with this part, including a complaint process;
- (2) Respond to any complaint received by the department concerning noncompliance by a hospital with the requirements of section 321-512; and
- (3) Provide written notice to any hospital that the department determines is in violation of this part or any rule adopted under this part, including notice of an opportunity to take corrective action.

(c) Any hospital that violates this part or any rule adopted under this part after receiving written notice and an opportunity to take corrective action pursuant to subsection (b)(3) shall be fined not more than \$1,000 for each separate offense.

(d) All enforcement processes shall comply with section 321-20.

(e) Sanctions under this section shall not be issued for violations occurring before July 1, 2014. [L 2013, c 27, pt of §2]

" **[\$321-514] Rules.** The department may adopt rules under chapter 91 for the purposes of this part. [L 2013, c 27, pt of §2]

**"[PART XLII.] STROKE CARE**

**[\$321-531] Definitions.** As used in this part, unless the context requires otherwise:

"Department" means the department of health.

"Stroke coalition" means a multi-organizational process of public, private, and nonprofit organizations working together for a common purpose to improve stroke outcomes throughout the State.

"Stroke database" means a stroke coalition-approved, existing, nationally recognized and validated data platform available to the department and all participating hospitals statewide and that has features to maintain confidentiality standards and data security. [L 2015, c 211, pt of §2]

" **[\$321-532] Stroke system of care; department duties.** (a) The department shall participate in a systematic process to evaluate, improve, and sustain stroke care throughout the State to reduce death and disability from stroke. The stroke system of care shall include:

- (1) The requirement that hospitals meet specific stroke patient treatment capabilities that will ensure that stroke patients receive safe and effective care;
- (2) The coordination with the State's emergency medical services system to ensure that stroke patients are quickly identified, transported to, and treated in facilities that have specialized programs for providing timely and effective treatment for stroke patients to improve outcomes; and
- (3) The continuation of a statewide stroke coalition to provide a mechanism to evaluate and improve stroke care in the State.

(b) The department shall participate in the stroke coalition to:

- (1) Provide agreed upon state level reports of de-identified and aggregated data to the stroke coalition, government agencies, hospitals,



- researchers, and other interested parties that have a role in improving stroke care;
- (2) Analyze data generated by the stroke database to identify potential interventions to improve stroke response and treatment;
  - (3) Identify issues related to early identification, triage, treatment, and transport of possible acute stroke patients;
  - (4) Encourage sharing of information and data among health care providers on ways to improve the quality of care of stroke patients in the State; and
  - (5) Develop and implement strategies to improve stroke early identification and treatment, including identifying specific hospital capabilities to receive, treat, and transfer stroke patients. [L 2015, c 211, pt of §2]

" **[§321-533] Stroke database.** (a) All acute care hospitals that receive stroke patients from emergency medical services shall report data consistent with requirements of the stroke database on the treatment of all individuals with a suspected or confirmed stroke.

(b) The department shall participate in a stroke database that compiles information and statistics on stroke care that aligns with the consensus stroke metrics developed and approved by national subject-matter organizations and utilize it to support the stroke coalition's evaluation of stroke care in the State for performance improvement. [L 2015, c 211, pt of §2]

" **[§321-534] Confidential information.** The department and stroke coalition shall not disclose any confidential information or other data in violation of the federal and state privacy regulations. [L 2015, c 211, pt of §2]

**"[PART XLIII.] DURABLE MEDICAL EQUIPMENT SUPPLIER  
LICENSE PROGRAM**

**Note**

Part effective January 1, 2017.

**[§321-541] Title.** This part shall be known and may be cited as the "durable medical equipment supplier license program". [L 2016, c 137, pt of §2]

" **[§321-542] Definitions.** As used in this part:

"Consumer" means a health care facility, health care professional, or health care provider, as defined in section 432E-1, or any individual who is prescribed durable medical equipment as the result of medical necessity.

"Department" means the department of health.

"Durable medical equipment" means equipment that is considered a selected product under the Centers for Medicare and Medicaid Services durable medical equipment, prosthetics, orthotics, and supplies competitive bidding program that can stand repeated use; is primarily and customarily used to serve a medical purpose; is generally not useful to a person in the absence of an illness or injury; is appropriate for use in the home; does not contain any prescription drug; and is not considered to be a specialty item, equipment, or service.

"Durable medical equipment supplier" means a person who sells, dispenses, delivers, or services durable medical equipment. [L 2016, c 137, pt of §2]

" **[§321-543] Licensing.** It shall be unlawful for any person to operate as a durable medical equipment supplier that sells, dispenses, delivers, or services durable medical equipment to a consumer in the State without first obtaining a license. To receive a license, a durable medical equipment supplier shall attest and provide corroborating documentation to the department that the supplier:

- (1) Is in compliance with the business registration laws of the State and has all required tax identification numbers;
- (2) Is licensed and in good standing in the state in which its dispensing facilities are primarily located, if applicable, and complies with all applicable state and federal laws, rules, and standards;
- (3) Has designated a responsible agent or agents either in or out of the State who will be responsible for providing timely and satisfactory services to consumers in the State; provided that:
  - (A) The responsible agent or agents must be available to consumers in the State by phone during standard business hours in Hawaii to answer inquiries or resolve issues; and
  - (B) If the responsible agent or agents are not immediately available, then the supplier shall have a system capable of accepting and recording incoming phone inquiries; provided that the supplier shall respond no later than one business day after the inquiry is received;

- (4) Has implemented and maintains written procedures at each location for handling complaints and problems from all consumers, which includes a complaint file documenting complaints or problems and resolution of the complaints or problems; and
- (5) Will agree to notify consumers within two business days if the supplier cannot or will not provide the equipment, item, or service ordered; provided that suppliers may be exempt from this requirement if selling, dispensing, delivering, or servicing specialty equipment or items. [L 2016, c 137, pt of §2]

" **[\$321-544] License fee.** The department may assess a license fee of no more than \$350 on each durable medical equipment supplier who receives a license pursuant to section 321-543. The license fee collected shall be deposited into the office of health care assurance special fund pursuant to section 321-1.4. [L 2016, c 137, pt of §2]

" **[\$321-545] Exemptions.** Pharmacies licensed pursuant to chapter 461 are exempt from this part. [L 2016, c 137, pt of §2]

" **[\$321-546] Rules.** The department may adopt rules pursuant to chapter 91 to carry out the purpose of this part. [L 2016, c 137, pt of §2]

" **[\$321-547] Severability.** If any provision in this part or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or application of this part that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable. [L 2016, c 137, pt of §2]