

CHAPTER 346
DEPARTMENT OF HUMAN SERVICES

Part I. General and Administrative Provisions

Section

- 346-1 Definitions
- 346-1.7 Repealed
- 346-2 Appointment of personnel
- 346-3 Compensation of employees
- 346-4 Repealed
- 346-4.5 Investigators; authority and access to records
- 346-5 Reports
- 346-6 Appropriations; expenditures; donations
- 346-7 Acceptance of grants-in-aid or outright grants
- 346-7.5 Spouse and child abuse special account; department of human services
- 346-8 Additional funds
- 346-9 Workshop program
- 346-10 Protection of records; divulging confidential information prohibited
- 346-11 Unauthorized disclosure or inspection
- 346-12 Hearing
- 346-13 Attendance and testimony of witnesses
- 346-14 Duties generally
- 346-14.3 Guiding principles to be used by state agencies when dealing with children of incarcerated parents
- 346-14.5 Financial assistance advisory council; established
- 346-15 Death benefits for deceased medical or financial assistance recipients and disposition of unclaimed dead human bodies
- 346-16 Definitions
- 346-17 Child placing organizations, child caring institutions, and resource family homes; authority over, investigation of, and standards for
- 346-17.2 Health assessment
- 346-17.3 Motor vehicle insurance
- 346-17.4 Higher education stipends for students
- 346-17.5 Federal aid to children in foster care
- 346-17.6 Consent to no cost emergency shelter and related services
- 346-18 to 19.6 Repealed
- 346-19.7 Prospective adoptive parents; standards and home studies
- 346-20 to 25 Repealed
- 346-26 Prevention and treatment of conditions giving rise to need
- 346-27, 28 Repealed

- 346-28.5 Family self-sufficiency escrow accounts; asset test exemption
 - 346-29 Applications for public assistance; manner, form, conditions
- 346-29.3 Medical assistance application information; annual report; public disclosure
- 346-29.5 Real property liens
 - 346-30 Relief limited
 - 346-31 Assignment of persons in need of public assistance to work on public projects
 - 346-32 Application of chapter 386 to persons in need of public assistance assigned to work projects
 - 346-33 Assistance payments inalienable
 - 346-34 Frauds, penalties
 - 346-35 Cancellation or revision
 - 346-36 Assistance payments, subject to change or repeal
 - 346-37 Recovery of payments and costs of medical assistance
- 346-37.1 Payment of public assistance for child requires payment of child support to department by natural or adoptive parents
- 346-37.2 Department subrogated to rights
- 346-37.3 Notice of child support debt
- 346-37.4 to 37.6 Repealed
 - 346-38 Incompetency of recipient
 - 346-39 Legal representative
- 346-39.5 Unclaimed financial assistance balances in electronic benefit transfer accounts
 - 346-40 Maintenance and availability of records; penalty
 - 346-41 Inspection of institutional facilities
- 346-41.5 Hawaii qualified health centers
 - 346-42 Administrative inspections and warrants
 - 346-43 Penalties under other laws
- 346-43.5 Medical assistance fraud; penalties
 - 346-44 Recovery of public assistance overpayments
 - 346-45 Confidentiality of court records
 - 346-46 Certified nurse aides; training programs and recertification
 - 346-47 Repealed

Part II. Specific Provisions Covering Public Assistance and Child Welfare Services

- 346-51 Public assistance and child welfare services administered by department
 - 346-51.5 Expenditure of temporary assistance for needy families funds
 - 346-52 Aged, blind, and permanently and totally disabled

- persons; eligibility for assistance
- 346-53 Determination of amount of assistance
- 346-53.2 Temporary assistance for needy families; funding and programs; public comment
- 346-53.3 Temporary assistance for needy families and food stamps for individuals with a felony conviction which has as an element the possession, use, or distribution of a controlled substance
- 346-53.4 Reimbursement to expanded adult residential care home operators
- 346-53.5 Repealed
- 346-53.6 Federally qualified health centers; rural health clinics; reimbursement
- 346-53.61 Centers for Medicare and Medicaid Services approval
- 346-53.62 Federally qualified health centers and rural health clinics; reconciliation of managed care supplemental payments
- 346-53.63 Federally qualified health center or rural health clinic; adjustment for changes to scope of services
- 346-53.64 Federally qualified health center or rural health clinic visit
- 346-53.65 Appeal
- 346-53.8 Kahuku medical center
 - 346-54 Report to the legislature
 - 346-55 Repealed
- 346-55.1 Visitation, custody, and support when public assistance paid
- 346-55.5 Repealed
 - 346-56 State reimbursement
 - 346-57 Loans to applicants for federal supplemental security income
- 346-57.5 Interim assistance reimbursement special fund
 - 346-58 Repealed
 - 346-59 Medical care payments
- 346-59.1 Coverage for telehealth
- 346-59.2 Comprehensive breast and cervical cancer control program
- 346-59.4 Medical assistance to other children
- 346-59.5 Enforcement of contracts
- 346-59.6 Medicaid overpayment recovery
- 346-59.7 Enforcement of decisions regarding medicaid overpayment recovery; judgment rendered thereon
- 346-59.8 Repealed
- 346-59.9 Psychotropic medication
 - 346-60 Group therapy; reimbursement for services
 - 346-61 Optometric services, choice
 - 346-62 Examination of blind

- 346-63 Social services
- 346-64 Repealed
- 346-64.5 Eligibility for chore services
- 346-65 Child abuse and neglect discretionary emergency assistance
- 346-66 Psychological services
- 346-67 Medical foods and low-protein modified food product; treatment of inborn error of metabolism; notice
- 346-68 Bridge to hope program; transitional benefits
- 346-69 Welfare safety net program; department of human services
- 346-70 Medical assistance for other pregnant women

Part III. General Assistance to Households Without
Minor Dependents

- 346-71 General assistance to households without minor dependents
- 346-72 Applications
- 346-73 Repealed
- 346-74 Representative payee
- 346-75 Repealed

Part IV. Services to Adults

A. Day Care Center--Repealed

- 346-81 to 85 Repealed

B. Family Boarding Homes--Repealed

- 346-90 to 96 Repealed

C. General Provisions

- 346-97 Criminal history record checks

Part V. Public Service Employment

- 346-101 Findings and purpose
- 346-102 Public service employment; established
- 346-103 Wages or salaries of public service employment
- 346-104 Refusal to work; ineligibility for public assistance

Part VI. Licensure of Independent Group
Residences--Repealed

- 346-121 to 124 Repealed

Part VII. Resident Alien and Naturalized Citizen
Program

- 346-141 Purpose
- 346-142 Definitions
- 346-143 Administration
- 346-144 Application; approval; statement; return
- 346-145 Transportation assistance
- 346-146 Penalty

Part VIII. Child Care

A. General

- 346-151 Definitions
- 346-152 Exclusions; exemptions
- 346-152.3 Investigations
- 346-152.5 Requirements for persons exempt pursuant to section 346-152
- 346-152.7 Safe sleep policy
- 346-153 Records of deficiencies and complaints; release to public
- 346-154 Background checks
- 346-155 Rules
- 346-156 Penalty
- 346-157 Liability insurance coverage; no requirement
- 346-158 No smoking in child care facilities
- 346-159 Repealed

B. Group Child Care Home and Group Child Care Center Licensure

- 346-161 License for group child care home, group child care center required
- 346-162 Rules; minimum standards
- 346-163 Licenses and temporary permits
- 346-164 Suspension and revocation of licenses and permits; reissuance
- 346-165 Visitation and inspection of group child care home, group child care center
- 346-166 Records

C. Family Child Care Home Registration

- 346-171 Registration for family child care home required
- 346-172 Rules for registration
- 346-173 Procedure for registration
- 346-174 Informing parent and legal guardian of children and general public
- 346-175 Visitation and inspection of family child care home; revocation of registration
- 346-176 Family child care system
- 346-177 Program of incentive for registration

D. Miscellaneous Provisions

346-181 Preschool open doors program

Part IX. Workfare--Repealed

346-201 to 215 Repealed

Part X. Adult Protective Services

346-221 Purpose; construction

346-222 Definitions

346-223 Jurisdiction; venue

346-224 Reports

346-225 Confidentiality of reports

346-226 Access to records

346-227 Investigation

346-228 Action upon investigation

346-229 Right of entry

346-230 Termination of services

346-231 Order for immediate protection

346-232 Order to show cause hearing

346-233 Petition

346-234 Guardian ad litem; counsel

346-235 Consolidation with guardianship proceedings

346-236 Permanent changes

346-237 Notice of proceedings

346-238 Service

346-239 Required findings concerning postponed hearings

346-240 Adjudicatory hearing

346-241 Disposition

346-242 Review hearings

346-243 Appeal

346-244 Admissibility of evidence

346-245 Hearings

346-246 Failure to comply with court orders

346-247 Payment for service or treatment provided to a party

346-248 Fiscal and service responsibility

346-249 Cooperation

346-250 Immunity from liability

346-251 Presumption of capacity

346-252 Advanced age

346-253 Rules

Part XI. First-To-Work Program

346-261 First-To-Work; establishment; purpose

346-262 to 276 Repealed

Part XIII. Adoption Assistance

- 346-301 Adoption assistance program established
- 346-302 Equal benefits
- 346-303 Rules
- 346-304 Eligibility
- 346-305 Effect on prior adoption assistance agreements

Part XIII. Rx Plus Program--Repealed

- 346-311 to 319 Repealed

Part XIV. Home and Community-Based Case Management
Agencies and Community Care Foster Family
Homes--Repealed

- 346-331 to 336 Repealed

Part XV. State Pharmacy Assistance Program--Repealed

- 346-341 to 347 Repealed

Part XVI. Medicaid Preauthorization Exemption

- 346-351 Findings
- 346-352 Preauthorization exemption for certain physicians
and physician assistants

Part XVII. Homeless Programs

- 346-361 Definitions
- 346-362 Duties
- 346-363 Exception to liability for donors
- 346-364 Contract or conveyance to the department
- 346-365 Program administration
- 346-366 Time limits
- 346-367 Determination of eligibility and need
- 346-368 Abuse of assistance
- 346-369 Exemptions
- 346-370 Emergency or transitional shelter volunteers
- 346-371 Annual financial audit
- 346-372 Provider agency and donor cooperation are not
in restraint of trade
- 346-373 Construction of part
- 346-374 Homeless shelter stipends
- 346-374.5 Emergency shelter; minimum requirements
- 346-375 Temporary emergency shelter
- 346-376 Additional powers
- 346-377 Repealed
- 346-378 Housing first programs

Part XVIII. Hawaii Interagency Council on
Homelessness

- 346-381 Hawaii interagency council on homelessness;
establishment
- 346-382 Membership
- 346-383 Meetings; quorum

Part XIX. Young Adult Voluntary Foster Care Program

- 346-391 Purpose
- 346-392 Definitions
- 346-393 Rights of the young adult
- 346-394 Jurisdiction
- 346-395 Eligibility
- 346-396 Voluntary care agreement
- 346-397 Provision of extended foster care services
- 346-398 Petition; venue
- 346-399 Notice of hearings and reviews
- 346-400 Case plan; reports to be submitted by the
department
- 346-401 Court proceedings
- 346-402 Court-appointed attorneys
- 346-403 Periodic review
- 346-404 Termination of jurisdiction
- 346-405 Reestablishing jurisdiction
- 346-406 Liability of the department
- 346-407 Repealed

Note

Chapter heading amended by L 1987, c 339, §4.

L Sp 2005, c 4, §3 provides:

"SECTION 3. The department of human services shall not take any action to remove pharmaceutical benefits management from managed care plans that provide health care coverage for Hawaii medicaid beneficiaries."

L 2008, c 241, §2 provides:

"SECTION 2. The department of human services shall apply to the federal Centers for Medicare and Medicaid Services to allow persons who are eligible to receive medicaid funds for care at nursing home facilities to remain at home and receive home- and community-based long-term care; provided that the cost for the home- and community-based services shall not exceed the total expenditures that would have been incurred if the person received facility-based long-term care, services, or support."

Certain positions in the Med-QUEST division and the director's office 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.

Contracts that take effect after June 30, 2017, between the department of human services and a provider agency for the operation or management of an emergency or transitional shelter to comply with L 2016, c 234. L 2016, c 234, §6.

Equitable referral system for discharge of medicaid patients from hospitals, nursing homes, and long-term care facilities. L 2012, c 211, §7.

Homeless assistance working group; interim report to legislature (dissolved June 30, 2016). L 2013, c 222, §§15 to 17; L 2014, c 134, §7.

Hospital sustainability program (repealed June 30, 2016 and December 31, 2016). L 2012, c 217; L 2013, c 141; L 2014, c 123; L 2015, c 70.

Nursing facility sustainability program (repealed June 30, 2016 and December 31, 2016). L 2012, c 156; L 2013, c 142; L 2014, c 124; L 2015, c 69.

Return-to-home pilot program for eligible homeless individuals (terminated December 31, 2016). L 2013, c 222, §§12 to 14.

State's program integrity compliance with the federal Patient Protection and Affordable Care Act of 2010 with respect to medicaid program integrity within certain programs; reports to 2015-2017 legislature. L 2013, c 240.

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

Cross References

Commission on fatherhood, see chapter 577E.
Early intervention services for infants and toddlers, see §§321-351 to 321-357.
Hawaii children's trust fund, see chapter 350B.
Hawaii health insurance exchange, see chapter 435H.
Hospital sustainability program, see chapter 346G.
Medicaid contracts; nonprofit and for-profit reporting requirements, see §103F-107.
Medicaid-related mandates, see chapter 431L.
Nursing facility sustainability program, see chapter 346F.
Primary health care incentive program, see §321-1.5.
Safe place for newborns, see chapter 587D.
Sex offender treatment program, see chapter 353E.
State health insurance program, see chapter 431N.
Transfer of head start collaboration office, see §302L-1.5(e).

"PART I. GENERAL AND ADMINISTRATIVE PROVISIONS

§346-1 Definitions. Unless the context clearly requires a different meaning, when used in this chapter:

"Abused or neglected" means subjected to "harm", "imminent harm", or "threatened harm" as defined in section [587A-4].

"Adoption assistance" means the provision of one or more of the following to enable the adoption of children with special needs:

- (1) Monetary assistance;
- (2) Medical benefits; or
- (3) Social services.

"Applicant" means the person for whose use and benefit application for services or public assistance is made.

"Assistance allowance" means a single monthly public assistance grant, including funds received from the federal government, expressed in a dollar amount per recipient or per recipient family to be provided a recipient or recipient family for all usual recurring living and shelter expenses, including rent or mortgage payment and utilities, and excluding medical care.

"Child welfare services" means:

- (1) All services necessary for the protection and care of abused or neglected children and children in danger of becoming delinquent; and
- (2) All services necessary for the adoption of children.

"Child with special needs" means a child:

- (1) Who is legally free for adoption;
- (2) Whose adoption is in his or her best interests;

- (3) Who may not be adopted without adoption assistance because one or more specific factors or special circumstances identified by the department of human services in its rules are applicable to the child; and
- (4) For whom a reasonable, but unsuccessful effort has been made to find a suitable adoptive placement without providing adoption assistance, except, where it would not be in the child's best interests.

"Critical access hospital" means a hospital located in the State that is included in Hawaii's rural health plan approved by the federal Centers for Medicare and Medicaid Services and approved as a critical access hospital by the department of health as provided in Hawaii's rural health plan and as defined in title 42 United States Code section 1395i-4.

"Department" means the department of human services.

"Director" means the director of human services.

"Domiciliary care" means the provision of twenty-four-hour living accommodations and personal care services and appropriate medical care, as needed, to adults unable to care for themselves by persons unrelated to the recipient in private residences or other facilities. "Domiciliary care" does not include the provision of rehabilitative treatment services provided by special treatment facilities.

"Financial assistance" means public assistance, except for payments for medical care, social service payments, transportation assistance, and emergency assistance under section 346-65, including funds received from the federal government.

"Hawaii security net" means those public and private assistance and social service programs designed to provide the basic necessities of life: food, clothing, shelter, and medical care.

"Medical assistance" means payment for medical care or personal care services, including funds received from the federal government.

"Medical care" means all kinds of medical care, psychiatric care, dental care, and maternity care, including surgical care, hospital care, eye care (which includes optical appliances), materials, supplies, and all other appliances used in the care, treatment and rehabilitation of patients, and hospitalization.

"Medical institution" means a facility in which health care services are provided that also provides long-term care services at a nursing facility level of care for the purposes of dealing with medicaid liens in this chapter.

"Minor dependents" means dependents living in the home of a specified adult, as defined by rules, in which the adult is the primary caretaker and the dependent is under eighteen or if

between eighteen and nineteen, enrolled full-time in a program of secondary or equivalent level vocational or technical school, and is expected to complete the program before reaching age nineteen.

"Non-work eligible household" means a household in which each adult member is receiving assistance under the temporary assistance for needy families program, or is a non-recipient parent, who is:

- (1) A parent of a household member who provides care for a disabled family member living in the home; provided that the need for such care is supported by medical documentation. Only one parent in a household may claim this status;
- (2) A single custodial parent personally providing care for the parent's child under twelve months of age for a lifetime limit of twelve months;
- (3) A non-needy caretaker; or
- (4) A recipient of Supplemental Security Income or Social Security Disability Insurance under title 42 United States Code sections 1381-1383.

"Other work eligible household" means a household in which there is no work eligible individual and at least one adult member is an adult receiving assistance under the temporary assistance for needy families program, or a non-recipient parent, who is:

- (1) Unable to engage in full-time employment as defined by the work participation requirements of the Social Security Act, title 42 United States Code section 607, at a job for which the non-recipient parent is equipped by education, training, or experience, for a period of more than thirty days from the onset of an illness, incapacity, or disability due to a physical or mental impairment or substance abuse, as determined by a licensed physician or psychologist;
- (2) A domestic violence victim or any other adult in the assistance unit who meets the criteria established by the department; or
- (3) An adult sixty-five years of age or older.

"Provider" means any person or public or private institution, agency or business concern authorized by the department to provide health care, service or supplies to beneficiaries of medical assistance.

"Public assistance" means financial assistance to or for the benefit of persons whom the department has determined to be without sufficient means of support to maintain a standard consistent with this chapter, payments to or on behalf of such

persons for medical care, and social service payments as described under the Social Security Act.

"Recipient" means the person for whose use and benefit services are rendered or a grant of public assistance is made.

"Residential treatment facility" means a facility which provides twenty-four-hour living accommodations, treatment, and rehabilitation to two or more persons who are alcohol or drug abusers, mentally ill, or socially or emotionally distressed persons. It shall not be considered a domiciliary care facility.

"Social services" means crisis intervention, counseling, case management, and support activities such as day care and chore services provided by the department staff, by purchase of service, or by cooperative agreement with other agencies to persons meeting specified eligibility requirements.

"Work eligible household" means a household in which at least one member is:

- (1) An adult receiving assistance under the temporary assistance for needy families program; or
- (2) A non-recipient parent,

who is not a non-work eligible individual or an other work eligible individual. [L 1941, c 296, pt of §1; RL 1945, §4821; am L 1951, c 125, §1; am L 1953, c 153, §1; RL 1955, §108-1; am L Sp 1959 2d, c 1, §20; am L 1961, c 128, §5; HRS §346-1; am L 1970, c 105, §5; am L 1971, c 135, §2; am L 1975, c 145, §1(1); am L 1978, c 105, §1, c 107, §1, and c 110, §2; am L 1979, c 52, §2; am L 1980, c 120, §1, c 121, §1, c 227, §1, and c 276, §3; am L 1982, c 54, §3; am L 1983, c 213, §2 and c 297, §1; am L 1985, c 225, §1 and c 272, §7; gen ch 1985; am L 1986, c 160, §3; am L 1987, c 339, §4; am L 1988, c 327, §1; am L 1992, c 190, §2; am L 1996, c 300, §§2, 6; am L 1997, c 200, §§1, 2, 9, 11; am L 1998, c 92, §1 and c 127, §§4, 5; am L 2000, c 226, §§2, 9; am L 2004, c 148, §2; am L 2009, c 101, §1; am L 2011, c 43, §9; am L 2012, c 211, §2]

" **§346-1.7 REPEALED.** L 2012, c 178, §7.

" **§346-2 Appointment of personnel.** The director of human services shall appoint such personnel in conformity with law as the director deems necessary. All employees of the department of human services shall be appointed subject to any civil service law relating to state employees; in the event there is no civil service law in effect, then in accordance with a merit system meeting applicable federal requirement; provided that in the event of any conflict between applicable mandatory federal requirements and any state civil service law or regulations, the former requirements shall prevail. [L 1941, c 296, §1(3); RL

1945, §4803; RL 1955, §107-3; HRS §346-2; am L 1970, c 105, §5; gen ch 1985; am L 1987, c 339, §4]

Cross References

Civil service law, see chapter 76.

" **§346-3 Compensation of employees.** The compensation of all personnel in the department of human services shall be fixed by the director of human services pursuant to any applicable classification law. [L 1941, c 296, §1(4); RL 1945, §4804; am L 1951, c 264, §2; RL 1955, §107-4; HRS §346-3; am L 1970, c 105, §5; am L 1987, c 339, §4]

Cross References

Classification law, see §76-13.5.

" **§346-4 REPEALED.** L 1989, c 247, §1.

" **§346-4.5 Investigators; authority and access to records.**

(a) The director shall appoint and commission one or more investigators as the exigencies of the public service may require. Persons appointed and commissioned under this section shall have and may exercise all the powers and authority of a police officer or of a deputy sheriff, provided that the persons so appointed and commissioned shall not carry any firearms.

(b) Information necessary to investigate fraud and other crimes relating to public assistance, to locate absent parents, to establish paternity, to obtain and enforce court orders of support, and to investigate incidents at the Hawaii youth correctional facilities, and contained within the records of any agency, board, commission, authority, or committee of the State or its political subdivisions shall be made available to any commissioned investigator of the department of human services, notwithstanding any provision for confidentiality. [L 1976, c 83, §1; am L 1979, c 176, §1; am L 1987, c 339, §4; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2009, c 62, §2]

Cross References

Medicaid fraud unit, see §28-91.

Case Notes

State has compelling interest in ensuring that medicaid program is not being defrauded. 481 F. Supp. 1028 (1979).

" **§346-5 Reports.** The director of human services shall file with the governor a written report or reports at such times, at least once in each year, and in such form as shall be requested by the governor covering the condition and activities of the department of human services and of each division thereof. [L 1941, c 296, §1(10); RL 1945, §4810; RL 1955, §107-10; HRS §346-5; am L 1970, c 105, §5; am L 1987, c 339, §4]

Cross References

Annual reports, see §93-12.

" **§346-6 Appropriations; expenditures; donations.** Moneys provided by the legislature for expenditure by the department of human services shall be expended upon vouchers approved by the director of human services or the director's duly authorized subordinates.

All contributions or donations of money to the department shall be paid into the state treasury to be expended according to law and for purposes in accordance with the terms and conditions of the contributions or donations, and all such moneys are appropriated for such purposes; provided that no such contributions or donations shall be accepted by the department except for expenditures within the purposes of this chapter. The department may accept donations other than money, provided the donations may be used within the purposes of this chapter, and if accepted, may pay for the storage, handling, and distribution of same; provided that any capital expenditures in connection with the storage, handling, and distribution shall be approved by the governor. [L 1941, c 296, pt of §1; RL 1945, §4822; RL 1955, §108-2; HRS §346-6; am L 1970, c 105, §5; gen ch 1985; am L 1987, c 339, §4]

" **§346-7 Acceptance of grants-in-aid or outright grants.**

(a) The department of human services may accept, at any time, grants-in-aid or outright grants from the federal government or any department thereof for general assistance, medical assistance, care of transients, and other nonresidents, and cooperate with the federal government in connection therewith.

(b) The department shall submit a report detailing all funds received under this section to the legislature no later than twenty days prior to the convening of each regular session. [L 1941, c 296, pt of §1; RL 1945, §4823; RL 1955, §108-3; HRS §346-7; am L 1970, c 105, §5; am L 1987, c 339, §4; am L 1993, c 280, §58]

" **§346-7.5 Spouse and child abuse special account; department of human services.** (a) There is established within the state treasury a special fund to be known as the "spouse and child abuse special account", and to be administered and expended by the department of human services.

(b) The proceeds of the account shall be reserved for use by the department of human services for staff programs, and grants or purchases of service, consistent with chapters 42F and 103F, that support or provide spouse or child abuse intervention or prevention as authorized by law. These proceeds shall be used for new or existing programs and shall not supplant any other funds previously allocated to these programs. The account shall be kept separate and apart from all other funds in the treasury.

(c) The account shall consist of fees remitted pursuant to sections 338-14.5 and 572-5, income tax remittances allocated under section 235-102.5, interest and investment earnings, grants, donations, and contributions from private or public sources. All realizations of the account shall be subject to the conditions specified in subsection (b).

(d) The department of human services, in coordination with the department of health, shall submit an annual report to the legislature, prior to the convening of each regular session, providing an accounting of the receipts of and expenditures from the account. [L 1994, c 232, §2; am L 1997, c 190, §6; am L 2004, c 228, §3]

" **§346-8 Additional funds.** (a) The department of human services may accept and deposit with the director of finance, for use in carrying out any of the purposes of this chapter or for costs of administration, any funds which may be provided by the United States government, any county, or any other source, in each case upon such terms and conditions as the department, in its discretion, may approve. All such funds shall be deemed additional to the funds provided by legislative appropriation. Any such funds received in reimbursement of expenditures made from funds provided by legislative appropriation for any purpose are reappropriated for the same purpose.

(b) Except as expressly otherwise provided, all appropriations made by the legislature shall be deemed subject to the foregoing provisions, to the end that the amounts of such appropriations shall be deemed to limit the amounts expendable from the general fund of the State but not to limit the amounts expendable by the department.

(c) The department shall submit a report detailing all moneys received under this section to the legislature no later than twenty days prior to the convening of each regular session.

[L 1933, c 209, §22; RL 1935, chap IV, appendix, §22; am L 1941, c 213, §1(19); am L 1943, c 101, pt of §2; RL 1945, §4813; RL 1955, §107-11; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §346-8; am L 1970, c 105, §5; am L 1987, c 339, §4; am L 1993, c 280, §59]

Case Notes

Cited: 35 H. 855, 864 (1941), aff'd 130 F.2d 786 (1942).

" **§346-9 Workshop program.** (a) All moneys to fund workshop or home labor activities for welfare recipients or other persons who, in the opinion of the department, would benefit from the experience, and all moneys for the purchase of materials, machinery, and other facilities and for the erection, operation, and conduct of the workshops, and for the payment of compensation, as the department may authorize, 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 section.

(c) All moneys received from other funding sources, including federal sources and all moneys derived from the sale of products of the workshops or home labor shall be deposited to the credit of the state general fund. [L 1941, c 296, pt of §1; RL 1945, §4824; RL 1955, §108-4; am L 1959, c 246, §18; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §346-9; am L 1970, c 105, §5; am L 1987, c 339, §4; am L 1993, c 280, §40]

" **§346-10 Protection of records; divulging confidential information prohibited.** (a) The department and its agents shall keep records that may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when the official duties are directly connected with the administration of any form of public assistance, medical assistance, food stamps, or social services;
- (2) Purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any form of public assistance, food stamps, medical assistance, or social services, including disclosure by the

department of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations regarding any aspect of theft, fraud, deception, or overpayment in connection with any aspect of public assistance, food stamps, medical assistance, or social services; provided that disclosure by recipient agencies and personnel shall be permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided;

- (3) Disclosure to the extent necessary to provide services for applicants and recipients, to determine eligibility, or to determine the amount of public assistance, including verification of information provided by the recipient of public assistance, medical assistance, or food stamps, or to determine the type, kind, frequency, and amount of social services, including health and mental health related services needed;
- (4) Disclosure to banks, financial institutions, or any other payor of a public assistance warrant or check of any information indicating that a public assistance warrant or check honored by the bank, institution, or payor has been forged or otherwise wrongfully presented for payment;
- (5) Federal agencies responsible for the administration of federally assisted programs that provide assistance in cash or in kind for services directly to individuals on the basis of need and the certification of receipt of assistance to needy families with minor dependents to an employer for purposes of claiming tax credit under Public Law 94-12, the Tax Reduction Act of 1975, shall be permitted;
- (6) Employees acting within the scope and course of their employment of recognized social welfare organizations as may be approved by the department;
- (7) Purposes directly connected with any investigation, prosecution, or criminal proceeding conducted in connection with the licensure or operation of an adult day care center, including disclosure by the department of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or

federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations;

- (8) Disclosure to the child support enforcement agency for obtaining or enforcing a child support order under chapter 576D;
- (9) Disclosure of a recipient's residence and business address to law enforcement officers who request information if the information is needed for an official administrative, civil, or criminal law enforcement purpose to identify a recipient as a fugitive felon or parole violator, and in cases where the information is needed for an official purpose and where the department has informed the recipient of the circumstances in which the recipient's address may be released under section 92F-19(a)(1), (3), or (4);
- (10) Disclosure of reports and records relating to child abuse or neglect to the extent allowed by rules adopted under section 350-1.4; and
- (11) Disclosure pursuant to a court order, after an in camera review of the records by the court, upon a showing of good cause by the party seeking the release of the records.

(b) Disclosure to any committee or legislative body (federal, state, or local) of any information that identifies by name and address any such applicant or recipient; and publication of lists or names of applicants and recipients shall be prohibited.

(c) The department shall promulgate and enforce such rules as may be necessary to prevent improper acquisition or use of confidential information. Any information secured pursuant to this section by the officials or employees may be used in connection with their official duties or within the scope and course of their employment but not otherwise, and shall be kept in confidential records or files, which shall not be subject to any other law permitting inspection of government records. The department and its agents shall determine whether or not such inspection is in connection with such official duties or within the scope and course of such employment.

(d) The use of the records, and other communications of the department or its agents by any other agency or department of government to which they may be furnished, shall be limited to the purposes for which they are furnished.

(e) Confidential information shall be released if requested by specific written waiver of the applicant or recipient concerned.

(f) The identity of foster parents, adoptive parents, and foster care facility staff parents, and the location of the foster home, adoptive home, or foster care facility is confidential but may be released with the consent of the foster parent, adoptive parent, or foster care facility staff. If the department determines it is in the best interest of the child and of the adoptive parents, foster parents, or facility, the identity and location of the adoptive parents or foster parents, foster home, or facility may be stricken from the individual's case file or withheld from the child's parents, guardians, or other interested persons. Notwithstanding the above, the department shall release the identity, mailing address, and telephone number of licensed or certified foster parents and approved relative caregivers to any association, agency, or government entity which would be of benefit to the foster parents or relative caregivers or to the foster care program, unless the foster parents or relative caregivers submit to the department a signed statement requesting that such information be kept confidential. To be effective, this statement must be submitted to the department by December 31, 1996, or with the application to the department thereafter. The identity, mailing address, and telephone number of licensed or certified foster parents and approved relative caregivers provided to an association, agency, or government entity shall not be released by the association, agency, or government entity without the consent of the foster parent or relative caregiver.

(g) All reports concerning adult abuse or neglect, as well as all records of such reports, are confidential and any unauthorized disclosure of a report or record of a report shall be a violation. The director of human services may adopt, amend, or repeal rules, pursuant to chapter 91, to provide for the confidentiality of reports and records and for the authorized disclosure of reports and records. [L 1941, c 296, pt of §1; am L 1943, c 113, §1; RL 1945, §4825; am L 1951, c 226, §1; am L 1953, c 153, §2; RL 1955, §108-5; HRS §346-10; am L 1970, c 105, §5; am L 1978, c 105, §2; am L 1983, c 213, §1; am L 1985, c 272, §8; am L 1986, c 332, §6; am L 1987, c 339, §4 and c 345, §2; am L 1991, c 145, §2; am L 1996, c 33, §1; am L 1997, c 200, §§3, 11; am L 1998, c 127, §5; am L 1999, c 34, §1; am L 2012, c 91, §1]

Attorney General Opinions

Dissemination of data in DSSH files is limited to officials and employees, therefore HMSA is entitled only to information essential to its fiscal functions. Att. Gen. Op. 77-5.

Case Notes

Confidentiality requirement insufficient to prevent administrative inspection procedures from unconstitutionally intruding into patient's freedom to decide whether to seek aid of psychiatrist and communicate personal information. 481 F. Supp. 1028 (1979).

" **§346-11 Unauthorized disclosure or inspection.** Any person, including any person acquiring information through inspection permitted the person or another under section 346-10, who, knowing the information to have been acquired from the confidential records or files of the department of human services, intentionally divulges the same other than as authorized by law, or who intentionally and knowingly aids or abets in the inspection of such applications or records by any person unauthorized to inspect the same under this chapter or other provisions of law, shall be guilty of a violation. [L 1941, c 296, pt of §1; RL 1945, §4826; RL 1955, §108-6; HRS §346-11; am L 1970, c 105, §5; am L 1978, c 105, §3; gen ch 1985; am L 1987, c 339, §4]

Case Notes

Confidentiality requirement insufficient to prevent administrative inspection procedures from unconstitutionally intruding into patient's freedom to decide whether to seek aid of psychiatrist and communicate personal information. 481 F. Supp. 1028 (1979).

" **§346-12 Hearing.** An applicant or recipient, deeming oneself aggrieved, shall be entitled to appeal to the director in the manner prescribed by department rules and shall be afforded reasonable notice and opportunity for a hearing at which all of the evidence presented by the parties, to the extent allowed by chapter 91, shall be considered in a fair and impartial manner. [L 1941, c 296, §1(8); RL 1945, §4808; RL 1955, §107-8; HRS §346-12; am L 1970, c 105, §5; gen ch 1985; am L 1987, c 339, §4; am L 2004, c 207, §1]

Cross References

Hearings, see chapter 91.

Case Notes

Section together with 45 CFR 2505.10, satisfies due process.
66 H. 489, 666 P.2d 1135 (1983).

" **§346-13 Attendance and testimony of witnesses.** (a) In all hearings or investigations conducted by or initiated at the request of the director of human services or the director's designated subordinate with respect to all matters reasonably related to department functions and programs, the director or the director's designated subordinate shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of books, papers, documents, or objects deemed relevant to the investigation or inquiry, and examining or causing to be examined witnesses as are possessed by a circuit court and may take depositions and certify to official acts. Books, papers, documents, or objects obtained pursuant to such an investigation or inquiry may be retained by the director or the director's designated subordinate for a reasonable period of time for the purpose of examination, audit, copying, testing, or photographing. The circuit courts upon application by any of such officers shall have power to enforce by proper proceedings the attendance and testimony of any witnesses so subpoenaed and the production of books, papers, documents, or objects. Subpoena and witness fees and mileage in such cases shall be the same as in criminal cases in the circuit court. Necessary expenses of or in connection with the hearings or investigations shall be payable from the funds appropriated for expenses of the department of human services.

(b) Upon the written request of the director of human services or a designated subordinate, a financial institution, including but not limited to banks, savings and loan associations, and credit unions, shall furnish the records of accounts, deposits, and withdrawals of any applicant for or recipient of public assistance. Notwithstanding any other law to the contrary, the director shall require every applicant for public assistance to furnish written consent to authorize any financial institution to furnish the records of accounts, deposits, and withdrawals of such applicant. The director at the time of making a written request for information, shall provide to the financial institution written certification that the applicant for or recipient of public assistance has furnished such written consent. The director shall pay a reasonable fee to each such institution, not to exceed the actual cost of providing the information requested. [L 1941, c 296, §1(9); RL 1945, §4809; RL 1955, §107-9; HRS §346-13; am L 1973, c 31, pt of §21; am L 1978, c 105, §4; am L 1984, c 197, §1; gen ch 1985; am L 1987, c 339, §4]

" **§346-14 Duties generally.** Except as otherwise provided by law, the department of human services shall:

- (1) Establish and administer programs and standards, and adopt rules as deemed necessary for all public assistance programs;
- (2) Establish, extend, and strengthen services for the protection and care of abused or neglected children and children in danger of becoming delinquent to make paramount the safety and health of children who have been harmed or are in life circumstances that threaten harm;
- (3) 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;
- (4) Assist in preventing family breakdown;
- (5) Place, or cooperate in placing, abused or neglected children in suitable private homes or institutions and place, or cooperate in placing, children in suitable adoptive homes;
- (6) Have authority to establish, maintain, and operate receiving homes for the temporary care and custody of abused or neglected children until suitable plans are made for their care; and accept from the police and other agencies, for temporary care and custody, any abused or neglected child until satisfactory plans are made for the child;
- (7) Administer the medical assistance programs for eligible public welfare and other medically needy individuals by establishing standards, eligibility, and health care participation rules, payment methodologies, reimbursement allowances, systems to monitor recipient and provider compliance, and assuring compliance with federal requirements to maximize federal financial participation;
- (8) Cooperate with the federal government in carrying out the purposes of the Social Security Act and in other matters of mutual concern pertaining to public welfare, public assistance, and child welfare services, including the making of reports, the adoption of methods of administration, and the making of rules as are found by the federal government, or any properly constituted authority thereunder, to be necessary or desirable for the efficient operation of the plans for public welfare, assistance, and child welfare services or as may be necessary or desirable

for the receipt of financial assistance from the federal government;

- (9) Carry on research and compile statistics relative to public and private welfare activities throughout the State, including those dealing with dependence, defectiveness, delinquency, and related problems;
- (10) Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare problems;
- (11) Adopt rules governing the procedure in hearings, investigations, recording, registration, determination of allowances, and accounting and conduct other activities as may be necessary or proper to carry out this chapter;
- (12) Supervise or administer any other activities authorized or required by this chapter, including the development of the staff of the department through in-service training and educational leave to attend schools and other appropriate measures, and any other activities placed under the jurisdiction of the department by any other law;
- (13) Make, prescribe, and enforce policies and rules governing the activities provided for in section 346-31 it deems advisable, including the allocation of moneys available for assistance to persons assigned to work projects among the several counties or to particular projects where the apportionment has not been made pursuant to other provisions of law, if any, governing expenditures of the funds;
- (14) Determine the appropriate level for the Hawaii security net, by developing a tracking and monitoring system to determine what segments of the population are not able to afford the basic necessities of life, and advise the legislature annually regarding the resources required to maintain the security net at the appropriate level;
- (15) Subject to the appropriation of state funds and availability of federal matching assistance, expand optional health care to low-income persons as follows:
 - (A) Pregnant women and infants under one year of age living in families with incomes up to one hundred eighty-five per cent of the federal poverty level and without any asset restrictions;
 - (B) Children under six years of age living in families with incomes up to one hundred thirty-three per cent of the federal poverty level and without any asset restrictions;

- (C) Older children to the extent permitted under optional federal medicaid rules;
 - (D) Elder persons;
 - (E) Aliens;
 - (F) The homeless; and
 - (G) Other handicapped and medically needy persons; and
- (16) Subject to the appropriation of state funds and availability of federal matching assistance, establish the income eligibility level for the medically needy program at one hundred thirty-three per cent of the assistance allowance. [L 1941, c 296, pt of §1; am L 1943, c 213, pt of §1; RL 1945, §4827; am L 1945, cc 113, 157, §1; am L 1953, c 153, §3; RL 1955, §108-7; am L 1961, c 128, §6; HRS §346-14; am L 1970, c 104, §1 and c 105, §5; am L 1971, c 20, §1; am L 1978, c 107, §5; am L 1979, c 11, §1; am L 1983, c 297, §2; am L 1987, c 339, §3; am L 1988, c 296, §1; am L 1989, c 393, §2; am L 1990, c 67, §8 and c 202, §4; am L 1996, c 167, §1; am L 1998, c 92, §2]

Note

L Sp 2005, c 4, §3 provides:

"SECTION 3. The department of human services shall not take any action to remove pharmaceutical benefits management from managed care plans that provide health care coverage for Hawaii medicaid beneficiaries."

Cross References

General authority, see §26-14.

Medical assistance to other children, see §346-59.4.

Rulemaking and hearings by administrative agencies, see chapter 91.

Case Notes

Eleventh Amendment to the U.S. Constitution did not bar plaintiffs' individual suits under Title II of the Americans with Disabilities Act or §504 of the Rehabilitation Act regarding class action suit based on State's exclusion of certain disabled people from health insurance program; determinations of unlawful discrimination and awards of compensatory damages and expert witness fees affirmed. 303 F.3d 1039 (2002).

Where plaintiffs claimed that Basic Health Hawaii violated the equal protection clause because it provided less health coverage to Compact of Free Association with the United States (COFA) residents than the health coverage that Hawaii provided to citizens and qualified aliens eligible for federal reimbursement through medicaid, plaintiffs failed to offer any evidence that Hawaii had not closely followed the federal direction and adhered to requirements prescribed by Congress. Plaintiffs also did not allege that state expenditures for health insurance for aliens within the discretionary category were less than the state expenditures for health insurance for others. 748 F.3d 875 (2014).

Re cooperation with Federal Aid to Families with Dependent Children regulations in determining eligibility. 396 F. Supp. 375 (1975).

State welfare manual regulations held to violate federal regulations regarding payment of benefits while termination of benefits hearing is pending. 434 F. Supp. 1173 (1977); 434 F. Supp. 1177 (1977).

State regulations not allowing deduction of reasonable work related expenses in determining need and imposing burdensome verification of expenses violated federal regulations. 438 F. Supp. 238 (1977).

Department's manual of instruction covering investigation of fraud dealt only with internal management and was not required to be adopted in accordance with chapter 91. 58 H. 94, 564 P.2d 1271 (1977).

" **[\$346-14.3] Guiding principles to be used by state agencies when dealing with children of incarcerated parents.**

The guiding principles to be used by the state agencies when dealing with children of incarcerated parents shall be as follows:

- (1) Children should be treated with respect and dignity at all times;
- (2) The children's safety and care should be of paramount importance to all involved;
- (3) If the children so choose, communication avenues should be made available such that the children should have opportunities to see, speak to, or visit parents, where appropriate;
- (4) State support for the children should be provided as resources permit;
- (5) The children should be kept safe and informed at the time of the parent's arrest;

- (6) The children's wishes should be taken into consideration regarding any decisions made concerning their welfare;
- (7) The children's wishes should be taken into consideration when decisions are made about their incarcerated parent;
- (8) Children should be well cared for in the absence of an incarcerated parent;
- (9) Children should receive proper support during any struggles with the parent's incarceration;
- (10) Children should not be judged, blamed, or labeled because of a parent's incarceration; and
- (11) Children should receive support for the desire to retain a relationship with an incarcerated parent, where appropriate. [L Sp 2008, c 7, §2]

" **[§346-14.5] Financial assistance advisory council; established.** (a) There is created within the department for administrative purposes the financial assistance advisory council. The financial assistance advisory council shall be composed of fifteen members appointed by the director. The members of the financial assistance advisory council shall serve at the pleasure of the director and without compensation.

(b) The financial assistance advisory council shall have the function of rendering advice and information to the department on matters relating to financial assistance programs including rendering advice and information for the determination of the amount of benefit payments under sections 346-52, 346-53, and 346-71, including but not limited to temporary assistance to needy families (TANF), temporary assistance to other needy families (TAONF), and general assistance to households without minor dependents. The council shall be advisory and informational in nature only and shall not have the power to adopt rules.

(c) The financial assistance advisory council may request the assistance of professional facilitators and mediators as necessary. [L 1998, c 127, §1]

" **§346-15 Death benefits for deceased medical or financial assistance recipients and disposition of unclaimed dead human bodies.** (a) Where the decedent was a medical assistance or financial assistance recipient at the time of death and is ineligible for the Social Security Administration's one-time lump-sum death benefit, the department may issue a lump-sum death benefit in an amount equal to the Social Security Administration's one-time lump-sum death benefit for the year in which the recipient died.

(b) All unclaimed dead human bodies shall be cremated. The department may bear the cost of the mortuary and crematory services for unclaimed dead human bodies furnished by any licensed provider of mortuary or crematory services. Payments for mortuary and crematory services shall be made to the extent of the cost, or in the sum of \$800 in total, whichever is less, for each unclaimed dead human body. Individuals who have possession, charge, or control of any unclaimed dead human body to be cremated at public expense shall have sixty days from the date of the deceased's death to submit in writing to the department its determination that the dead human body is unclaimed and its application for payment for cremation. The county medical examiners or coroners shall have no time limitation by which to submit their written determination that the dead human body is unclaimed and their application for payment for cremation.

(c) Any person submitting an application for the lump-sum death benefit described in subsection (a), on behalf of a deceased medical or financial assistance recipient, shall have sixty days from the date of death of the deceased to submit the application to the department.

(d) A person or public or private agency, including the department, shall not be liable for any damage or subject to criminal prosecution for any act done pursuant to and in compliance with this section.

(e) For the purposes of this section, "unclaimed dead human body" means the remains of any deceased person for whom no one has assumed responsibility for disposition and no legally responsible individual has been identified. Pursuant to section 327-32, the department shall review the written description of the efforts used in making the determination that a dead human body is unclaimed and approve the determination for purposes of payment of the mortuary and crematory services, if it meets the department's requirements.

(f) The department shall adopt rules pursuant to chapter 91 for purposes of administering and implementing this section. [L 1943, c 36, §1; RL 1945, §4828; am L 1945, c 161, §1; am L 1947, c 22, §1; am L 1953, c 153, §4; RL 1955, §108-8; HRS §346-15; am L 1970, c 88, §1 and c 105, §5; am L 1976, c 177, §1; am L 1985, c 34, §1; am L 1987, c 339, §4; am L 1992, c 20, §1; am L 2000, c 101, §2; am L 2001, c 41, §2; am L 2010, c 205, §§5, 9; am L 2012, c 62, §§2 to 5]

Cross References

State responsibility, see §27-1.

Case Notes

Duty of burial. 42 H. 500 (1958).

" **§346-16 Definitions.** (a) As used in this chapter:

"Child caring institution" means any institution other than an institution of the State, maintained for the purpose of receiving six or more minor children for care and maintenance, not of common parents, apart from their parents or guardians on a twenty-four hour basis for monetary payment. This term shall not apply to any boarding school which is essentially and primarily engaged in educational work.

"Child placing organization" means any person, agency, or organization, except family courts and the department of human services, engaged in the investigation, placement, and supervision of children in foster care.

"Former foster youth" means a person formerly placed under the jurisdiction of the department as a foster child by the family court pursuant to chapter 587A who has attained the age of eighteen while under the placement responsibility of the department or who was under the placement responsibility of the department when a legally responsible caregiver was granted custody.

"Institution of higher education" means any institution normally requiring a high school diploma or equivalency certificate for enrollment, including but not limited to colleges, universities, and vocational or technical schools.

"Prospective adoptive parents" means a person, or persons who are married to each other, applying with the department to adopt a child or children.

"Resource family home" means any boarding home in which:

- (1) One or more, but fewer than six, minor children are received; or
- (2) Six or more minor siblings are placed together in the best interests of the children,

for care and maintenance apart from their parents or guardians on a twenty-four hour basis for fee or charge.

(b) None of the facilities defined in subsection (a) shall be considered a special treatment facility in the sense of section 321-11(10) 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. [L 1941, c 296, pt of §1; RL 1945, pt of §4830; am L 1949, c 353, pt of §1; am L 1953, c 153, pt of §5 and c 191, pt of §1; RL 1955, §108-10; am L Sp 1959 2d, c 1, §20; am L 1965, c 232, §1; HRS §346-16; am L 1970, c 105, §5; am L 1980, c 303, §9(1); am L 1981, c 84, §2; am L 1985, c 209, §1; am L 1986, c 297, §1;

am L 1987, c 339, §4; am L 1989, c 394, §2; am L 1999, c 152, §1; am L 2000, c 108, §2; am L 2001, c 80, §1; am L 2003, c 95, §9(1); am L 2008, c 198, §1; am L 2010, c 135, §7; am L 2016, c 133, §2]

" **§346-17 Child placing organizations, child caring institutions, and resource family homes; authority over, investigation of, and standards for.** (a) No child placing organization shall engage in the investigation, placement, and supervision of minor children in foster care unless it meets the standards of conditions, management, and competence set by the department of human services.

(b) No child caring institution shall receive minor children for care and maintenance unless it meets the standards of conditions, management, and competence to care for and educate children set by the department.

(c) No resource family home shall receive for care and maintenance any child unless:

- (1) It meets with the standards of conditions, management, and competence set by the department; and
- (2) The resource family home applicant successfully completes resource caregiver training; provided that new special licensed or relative resource family home caregivers licensed for a specific child or children shall successfully complete resource caregiver training within the first year following placement of the first child into the new special licensed or relative resource family home.

(d) The department shall adopt rules pursuant to chapter 91 relating to:

- (1) Standards for the organization and administration of child placing organizations; and
- (2) Standards for the conditions, management, operations, and competence of child caring institutions and resource family homes for the care, education, and protection of minor children.

(e) All rules of the department shall have the force and effect of law, and any violation thereof or of this section shall be punishable by a fine of not more than \$200.

(f) As a condition for a certificate of approval, any organization, institution, or resource family home, including all adults residing in the resource family home, shall:

- (1) Meet all standards and requirements established by the department;
- (2) Be subject to criminal history record checks in accordance with section 846-2.7, and child abuse and

neglect registry checks, in accordance with departmental procedures; and

- (3) Provide consent to the department or its designee to obtain criminal history record and child abuse and neglect registry information.

New employees of the organization, institution, or home shall be fingerprinted within five working days of employment.

(g) Upon approval of the organization, institution, or resource family home, the department or its authorized agents shall issue a certificate of approval that shall continue in force for one year or for two years if the organization, institution, or resource family home meets the criteria established by the department, unless sooner revoked for cause. The certificate shall be renewed by the department or its authorized agents, after annual or biennial investigation, if the investigation discloses that the organization, institution, or resource family home continues to meet the standards set by the department. The certificate of approval shall be a permit to operate the child placing organization, child caring institution, or resource family home, and no person or organization shall operate or maintain the organization, institution, or resource family home without the certificate.

(h) Any child placing organization, child caring institution, or resource family home shall be subject to review or investigation at any time and in a manner, place, and form as may be prescribed by the department or its authorized agents.

(i) As used in this section, "resource caregiver training" means training or instruction in special skills and knowledge to care for foster children.

(j) The department or its designee shall request:

- (1) A criminal history record check through the Hawaii criminal justice data center on all operators, employees, and new employees of child care institutions, child placing organizations, and resource family homes, including all adults residing in the resource family homes, subject to checks pursuant to section 846-2.7; and
- (2) A child abuse and neglect registry check on all operators, employees, and new employees of child care institutions, child placing organizations, and adults residing in a resource family home subject to licensure in accordance with departmental procedures.

(k) The department may deny a certificate of approval if an operator, employee, or new employee of a child care institution or child placing organization's facility, or any adult residing in a resource family home, was convicted of a crime other than a minor traffic violation involving a fine of

\$50 or less and if the department finds that the criminal history record or child abuse registry history of an operator, employee, new employee, or adult residing in a resource family home poses a risk to the health, safety, or well-being of the children in care.

(l) The department or its designee shall make a name inquiry into the criminal history records for the first two years of certification of a resource family home and annually or biennially thereafter and into the child abuse and neglect registry in accordance with departmental procedures depending on the certification status of the home.

(m) Any resource caregiver or child caring institution issued a certificate of approval pursuant to this section shall be immune from liability in a civil action to recover damages for injury, death, or loss to a person or property that results by authorizing a child in the caregiver's or institution's foster care to participate in an extracurricular, enrichment, cultural, or social activity; provided that the authorization is in accordance with the reasonable and prudent parent standard as defined in title 42 United States Code section 675(10)(A). [L 1941, c 296, pt of §1; RL 1945, pt of §4830; am L 1949, c 353, pt of §1; am L 1953, c 153, pt of §5 and c 191, pt of §1; RL 1955, §108-11; HRS §346-17; am L 1970, c 105, §5; am L 1985, c 209, §2; am L 1987, c 339, §4; am L 1996, c 5, §1; am L 1999, c 271, §3; am L 2003, c 95, §9(2); am L 2007, c 46, §1; am L 2008, c 136, §1; am L 2016, c 133, §3]

Cross References

Criminal history checks, child abuse record checks, and adult abuse perpetrator checks (child care facilities), see §346-154.

Operation of adult foster homes for developmentally or intellectually disabled, see §321-11.2.

Rulemaking, see chapter 91.

Case Notes

Cited: 73 H. 314, 832 P.2d 265 (1992).

" **[§346-17.2] Health assessment.** The department shall ensure the provision of a comprehensive health assessment for each child in out-of-home placement forty-five days before or after an initial placement. [L 2010, c 135, pt of §2]

" **[§346-17.3] Motor vehicle insurance.** The parents of a child under foster care who has obtained a driver's license shall pay the costs of the child's motor vehicle insurance,

unless the court determines the parents to be financially unable to pay the costs, in which case the child's insurance costs shall be paid pursuant to sections 431:10C-407 and 431:10C-410. [L 2010, c 135, pt of §2]

" **§346-17.4 Higher education stipends for students.** (a) An eligible former foster youth shall be eligible for a higher education stipend after reaching the age of majority, and the higher education stipend for that former foster youth shall be paid to an intermediary contracted by the department, to the former foster youth, or to the former foster youth's former resource caregivers, adoptive parents, or legal custodians, as appropriate; provided that:

- (1) The former foster youth is twenty-six years old or younger;
- (2) The former foster youth has submitted a completed application for a higher education stipend six months prior to the youth's twenty-seventh birthday; and
- (3) The former foster youth is attending or has been accepted to attend an accredited institution of higher education.

(b) The higher education stipend may be issued and applied to costs incurred while the former foster youth is attending an accredited institution of higher education on a full-time basis or on a part-time basis, in accordance with rules adopted by the department.

(c) The duration of the total higher education stipend shall not exceed a cumulative total of sixty months.

(d) The amount of the higher education stipend shall be based on the financial support the department provides in accordance with rules adopted by the department.

(e) The department's standards relating to income resources of foster children shall be applicable to this section.

(f) Higher education stipends shall be provided subject to the availability of state and federal funds. [L 1989, c 394, §1; am L 1990, c 276, §1; am L 1999, c 124, §1; am L 2000, c 79, §1; am L 2001, c 80, §2; am L 2006, c 289, §3; am L 2008, c 198, §2; am L 2016, c 134, §2]

" **[§346-17.5] Federal aid to children in foster care.** (a) Beginning October 1, 1983, not more than forty per cent of the total number of children for whom maintenance is provided pursuant to part E of title IV of the Social Security Act may have been in foster care for more than twenty-four months.

(b) Commencing with the federal fiscal year beginning October 1, 1984, the department shall reduce by one per cent

each fiscal year the total number of children for whom maintenance is so provided and who have been in foster care for more than twenty-four months. [L 1982, c 212, §1]

" **[§346-17.6] Consent to no cost emergency shelter and related services.** (a) A provider may provide no cost emergency shelter and related services to a consenting minor if the provider reasonably believes that:

- (1) The minor understands the significant benefits, responsibilities, risks, and limits of the shelter and services and can communicate an informed consent;
- (2) The minor understands the requirements and rules of the shelter and services; and
- (3) The shelter and services are necessary to ensure the minor's safety and well-being;

and the provider has conducted an assessment and determined that the minor does not pose a danger to the minor's self or to other persons at the same location. If the provider determines that admitting the minor poses a danger, the provider shall report the matter to an appropriate agency.

(b) A minor may consent to no cost emergency shelter and related services if the minor understands the benefits, responsibilities, risks, and limits of the shelter and services, and the minor agrees to adhere to the provider's rules and cooperate and participate in those services recommended by the provider; provided that:

- (1) The provider has not, despite reasonable efforts, been able to contact the minor's parent, legal guardian, or legal custodian;
- (2) The provider has made contact with the minor's parent, legal guardian, or legal custodian, and the minor's parent, legal guardian, or legal custodian has refused to give consent and, based on the information available to the provider, the provider reasonably believes that the minor would incur harm, or would be subject to threatened harm, if the minor returned immediately to the home of the parent, legal guardian, or legal custodian; or
- (3) The minor has refused to provide contact information for the minor's parent, legal guardian, or legal custodian, and the provider reasonably believes that the minor would incur harm, or would be subject to threatened harm, if the minor returned immediately to the home of the parent, legal guardian, or legal custodian.

(c) Any consent given by a minor under this section shall, for the duration of the period of shelter and with respect to

all services, including medical services, be valid and binding as if the minor had reached the age of majority.

(d) The consent given under this section shall not be subject to later disaffirmance by reason of the minor's minority.

(e) Any provider who renders emergency shelter and related services to a minor pursuant to subsections (a) and (b) of this section and can demonstrate compliance with this section shall be immune from any civil or criminal liability based on the provider's determination to provide the shelter and related services; provided that if a provider's assessment and determination, or conduct in providing emergency shelter and related services, is the result of the provider's gross negligence or wilful or wanton acts or omissions, the provider may be held liable for the provider's gross negligence or wilful or wanton acts or omissions.

(f) A provider who renders emergency shelter and related services to a minor shall document in writing the efforts made to contact the minor's parent, legal guardian, or legal custodian.

(g) The provider shall report any suspected child abuse or neglect to the department or the police department in accordance with section 350-1.1.

(h) For purposes of this section:

"Minor" means a person less than eighteen years of age.

"No cost emergency shelter and related services" means accommodation at no cost for a continuous period of no more than thirty days, unless extended for emergency purposes and in compliance with subsection (b), including beds, meals, individual showering facilities, transportation to and from the place of shelter, and any of the following services as deemed appropriate by the provider:

- (1) Assistance with reunification with the family, legal guardian, or legal custodian of the minor;
- (2) Referral to safe housing;
- (3) Individual, family, and group counseling;
- (4) Assistance in obtaining clothing;
- (5) Access to medical and dental care, and mental health counseling;
- (6) Education and employment services;
- (7) Recreational activities;
- (8) Case management, advocacy, and referral services;
- (9) Independent living skills training; and
- (10) Aftercare services, as those services are defined in title 45 Code of Federal Regulations section 1351.1.

"Provider" means any child placing organization, or child caring institution authorized by the department under section

346-17 to receive or place minor children for care and maintenance and to provide related services, health care, or supplies to these minors. [L 2011, c 179, §1]

" **§§346-18 to 346-19.5 REPEALED.** L 1985, c 208, §4.

" **§346-19.6 REPEALED.** L 2003, c 95, §9(3).

" **§346-19.7 Prospective adoptive parents; standards and home studies.** (a) The department shall develop standards to ensure the reputable and responsible character of prospective adoptive parents as defined in this chapter.

(b) The department shall develop procedures for obtaining verifiable information regarding the criminal history and child abuse and neglect registry information of persons who are seeking to become adoptive parents. The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7, and child abuse record information from the department in accordance with departmental procedures.

(c) Except as otherwise specified, any person who seeks to become an adoptive parent, including all adults residing in the prospective adoptive home, shall:

- (1) Meet all standards and requirements established by the department;
- (2) Be subject to criminal history record checks in accordance with section 846-2.7, and child abuse and neglect registry checks in accordance with departmental procedures; and
- (3) Provide consent to the department to obtain criminal history record and child abuse and neglect registry information.

Information obtained pursuant to subsection (b) and this subsection shall be used by the department for the purpose of determining whether or not a person is suitable to be an adoptive parent. All decisions shall be subject to federal laws and regulations.

(d) The department may deny a person's application to adopt a child if either of the prospective adoptive parents or any adult residing in the prospective adoptive home was convicted of an offense for which incarceration is a sentencing option, and if the department finds by reason of the nature and circumstances of the crime that either of the prospective adoptive parents, or any adult residing in the prospective adoptive home, poses a risk to the health, safety, or well-being of the child. A denial shall 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.

(e) The department may deny a person's application to adopt a child if either of the prospective adoptive parents or any adult residing in the prospective adoptive home has a history of confirmed child abuse or neglect, or both, revealed by the child abuse and neglect registry check, and if the department finds by reason of the nature and circumstances of the abuse or neglect, or both, that either of the prospective adoptive parents or any adult residing in the prospective adoptive home poses a risk to the health, safety, or well-being of the child. A denial shall occur only after an appropriate investigation, notification of results and planned action, and an opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91.

(f) The department may authorize or contract for home studies of prospective adoptive parents for children under the department's custody by experienced social workers with specialized adoption experience. [L 2000, c 108, §1; am L 2003, c 95, §9(4); am L 2007, c 46, §2; am L 2008, c 136, §2]

" **§§346-20 to 346-25 REPEALED.** L 1985, c 208, §4.

" **§346-26 Prevention and treatment of conditions giving rise to need.** The department of human services may carry on or administer or cooperate with other public or private agencies in work or activities for the purpose of preventing or treating conditions giving rise to the need for public assistance in any case in which such work or activities may prevent, shorten, or eliminate the need of public assistance. Such work or activities, if any, shall be taken into consideration in deciding upon or deferring action upon any application for public assistance. [L 1941, c 296, pt of §1; RL 1945, §4831; RL 1955, §108-12; HRS §346-26; am L 1970, c 105, §5; am L 1987, c 339, §4]

" **§346-27 REPEALED.** L 1969, c 173, §1.

" **§346-28 REPEALED.** L 1976, c 73, §1.

" **[\$346-28.5] Family self-sufficiency escrow accounts; asset test exemption.** Moneys within an escrow account established under the family self-sufficiency program of the United States Department of Housing and Urban Development shall be disregarded when determining eligibility for assistance or other benefits under this chapter. [L 2007, c 30, §2]

" **§346-29 Applications for public assistance; manner, form, conditions.** (a) Applications for public assistance under this chapter shall be made by the applicant, or by someone acting in the applicant's behalf, in the manner, place, and form prescribed by the department.

(b) No applicant or recipient who is found guilty of fraudulently misrepresenting residence to obtain assistance in two or more states shall be entitled to public assistance under this chapter for ten years from date of conviction. No applicant or recipient shall be entitled to public assistance under this chapter who is a fugitive felon or who is in violation of a condition of probation or parole or has sufficient income or other resources to provide a standard above that provided in this chapter, or who is an inmate of any public institution, except that any inmate of a public institution who is otherwise eligible for medical assistance and who has been determined by the medical director of the institution as having a major illness or medical condition requiring the provision of medical care outside of the institution may receive assistance under this chapter. An inmate of a public institution or resident of a medical institution may apply for assistance to begin after the inmate's discharge from the institution. To enforce this subsection, the department shall examine each list of inmates within, or newly admitted to, a correctional facility in the State that is submitted to the department by the director of public safety pursuant to section 353-12.5, regardless of the nature of the offense for which an inmate is incarcerated or the duration of incarceration, to determine whether an inmate is eligible for public assistance under this chapter.

(c) In determining the needs of an applicant or recipient for public assistance by the department, the department shall:

- (1) Disregard the amounts of earned or unearned income as required or allowed by federal acts and other regulations, to receive federal funds and disregard from gross earned income twenty per cent plus \$200 and a percentage of the remaining balance of earned income consistent with federal regulations and other requirements;
- (2) Consider as net income in all cases the income as federal acts and other regulations require the department to consider for receipt of federal funds and may consider the additional income and resources as these acts and regulations permit to be considered;
- (3) For households with minor dependents, disregard assets in determining the needs of persons for financial assistance; provided that the amount to be disregarded shall not exceed standards under federally funded

financial assistance programs. This paragraph shall not apply to persons eligible for federal supplemental security income benefits, aid to the aged, blind or disabled, or general assistance to households without minor dependents. In determining the needs of persons eligible for federal supplemental security income benefits, aid to the aged, blind or disabled, or general assistance to households without minor dependents, the department shall apply all the resource retention and exclusion requirements under the federal supplemental security income program;

- (4) Apply the resource retention requirements under the federal supplemental security income program in determining the needs of a single person for medical assistance only;
- (5) Apply the resource retention requirements under the federal supplemental security income program in determining the needs of a family of two persons for medical assistance only and an additional \$250 for each additional person included in an application for medical assistance only;
- (6) Disregard amounts of emergency assistance granted under section 346-65;
- (7) Not consider as income or resources any payment for services to or on behalf of, or any benefit received by, a participant under the first-to-work program of part XI, other than wages. Wages earned by a participant while participating in the first-to-work program shall be considered income of the participant, unless the wages are excluded or disregarded under any other law;
- (8) Not consider as income or resources payment made to eligible individuals, eligible surviving spouses, surviving children or surviving parents as specified under title I of the Civil Liberties Act of 1988, Public Law 100-383, which made restitution to individuals of Japanese ancestry who were interned during World War II;
- (9) Allow the community spouse of an individual residing in a medical institution to maintain countable resources to the maximum allowed by federal statutes or regulations with provisions for increases, as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree, without jeopardizing the eligibility of the institutionalized spouse for medical assistance;

- (10) Allow an individual residing in a medical institution to contribute toward the support of the individual's community spouse, thereby enabling the community spouse to maintain the monthly maximum income allowed by federal statutes or regulations, with provisions for increases as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree;
- (11) Consider the transfer of assets from the applicant's name to another name within the specified time period as required by federal regulations, known as the "lookback" period, prior to the application for medical assistance for care in a nursing home or other long-term care facility. Pursuant to rules adopted under chapter 91, the director may attribute any assets that have been transferred within the required federal "lookback" period from the applicant if the director determines that transfer of certain assets was made solely to make the applicant eligible for assistance under this chapter; and
- (12) Not consider as income or resources any funds deposited into a family self-sufficiency escrow account on behalf of a participant under a federal housing choice voucher family self-sufficiency program as required or allowed under federal law.

(d) In determining eligibility for medical assistance, the department shall require from all applicants and recipients the assignment of any benefits due to a third party liability. Any rights or amounts so assigned shall be applied against the cost of medical care paid under this chapter.

(e) The director shall adopt rules pursuant to chapter 91 defining assets and to determine eligibility for medical assistance; provided that the cash surrender value of life insurance policies owned by persons included in an application shall be treated as assets. [L 1941, c 296, pt of §1; RL 1945, §4834; am L 1951, c 169, §§1, 2; RL 1955, §108-15; am L 1962, c 6, §2; HRS §346-29; am L 1969, c 173, §3; am L 1970, c 105, §5; am L 1972, c 32, §1; am L 1975, c 145, §1(2); am L 1976, c 73, §2; am L 1979, c 52, §5; am L 1982, c 67, §1 and c 216, §1; am L 1984, c 95, §5; am L 1986, c 109, §1 and c 160, §4; am L 1987, c 345, §3; am L 1989, c 60, §1 and c 395, §1; am L 1990, c 322, §1; am L 1994, c 187, §1; am L 1996, c 300, §§3, 6; am L 1997, c 200, §§4, 9, 11; am L 1998, c 127, §§4, 5; am L 2007, c 237, §2; am L 2009, c 188, §3; am L 2013, c 18, §1]

Case Notes

Income tax refund is not "income". 396 F. Supp. 375 (1975).
Department's food stamp regulation term "unusual expense" includes cost of replacing casualty losses not due to recipient's negligence and which are verifiable. 421 F. Supp. 24 (1976).

In determining need, State must consider reasonable work related expenses of applicant for assistance. 438 F. Supp. 238 (1977).

Validity of policies and provisions contained in Hawaii Public Welfare Manual for evaluating equity that recipients of AFDC benefits may have in their home property while receiving assistance. 475 F. Supp. 368 (1979).

Regulations providing that applications be processed within a stated period require good faith compliance that is reasonable in view of the resources available to the department to carry out welfare functions. 54 H. 125, 504 P.2d 1217 (1972).

" **[\$346-29.3] Medical assistance application information; annual report; public disclosure.** (a) Each applicant for medical assistance under any program administered by the department shall identify the employer of the proposed beneficiary of medical assistance. If the proposed beneficiary is unemployed, the applicant for medical assistance shall identify the employer of any adult who is responsible for providing all or some of the proposed beneficiary's support.

For the purposes of this section, "proposed beneficiary" means any person who files an application for health care benefits or hospital care for the person, or any other individual on whose behalf an application is filed, including children or other dependents of the applicant.

(b) Before October 1 of each year, the department shall submit to the legislature a written annual report identifying all employers identified pursuant to subsection (a) who employ twenty-five or more beneficiaries of medical assistance programs administered by the department. In determining whether the twenty-five-employee threshold is met, the department shall include all beneficiaries employed by the employer and its subsidiaries at all locations within the State. In the event the department requires assistance to ascertain information, such as an employer's subsidiaries or location, the department shall consult with the department of commerce and consumer affairs. The report shall include:

- (1) Each employer's name and names of subsidiaries, if appropriate, that employ beneficiaries of department medical assistance programs;
- (2) The location of the employer;

- (3) For each department medical assistance program, the total number of the employer's employees and dependents who are enrolled in the program; and
- (4) The total cost to the State per year of providing medical assistance benefits for the employees and enrolled dependents of each identified employer.

The report shall not include the name of any individual medical assistance program beneficiary and shall be subject to applicable privacy standards established under federal medicaid regulations and the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

(c) The department shall make the annual report available to the public through any means the director deems appropriate. [L Sp 2005, c 10, §2]

" **§346-29.5 Real property liens.** (a) The department of human services may require of any person applying for or currently receiving assistance under the department's programs, including but not limited to social service payments, financial assistance, medical assistance, and food stamps, who owns or has any interest in real property, that the person shall enter into an agreement with the department that future grants of assistance shall be and constitute a lien against the interest in real property, and shall remain a lien until satisfied and discharged, with the exception of home property lived on by the assistance household.

(b) The department may also place a lien against the real property of any recipient receiving medical assistance who is an inpatient in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution, after a state determination, pursuant to notice and hearing requirements of chapter 91, that the recipient cannot reasonably be expected to be discharged from the medical institution and returned home. The written notice of lien shall be accompanied by an itemized list of payments made by the department that identifies the provider of services, the dates of services, the amounts billed and paid, and the dates of payments, and shall be provided to the person against whom restitution is sought. Absent a good faith basis contesting the amount or validity of a specific line item charge or charges in the lien, the entire lien amount shall be presumed to be valid. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if

the recipient has been institutionalized for six months or longer without a discharge plan.

(1) The department may not place a lien on the recipient's home if the recipient's:

- (A) Spouse;
- (B) Minor, blind, or disabled child; or
- (C) Sibling who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the date of the recipient's admission to the medical institution;

is lawfully residing in the home.

(2) The department shall not recover funds from the lien on the recipient's home when:

- (A) A sibling who was residing in the home for a period of at least one year immediately before the date of the recipient's admission to the medical institution; or
- (B) A son or daughter who was residing in the recipient's home for a period of at least two years immediately before the date of the recipient's admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to the recipient that permitted the recipient to reside at home rather than in an institution;

lawfully resides in the home and has lawfully resided in the home on a continuous basis since the date of the recipient's admission to the medical institution.

(3) The department also shall not recover funds from the lien if the recipient has a surviving spouse; or surviving minor, blind, or disabled child.

(4) Any lien imposed with respect to this subsection shall be dissolved upon the individual's discharge from the medical institution and return home.

(c) The agreement in subsection (a) or the lien in subsection (b) shall be recorded in the bureau of conveyances, or filed in the office of the assistant registrar of the land court. When the agreement or lien is recorded in the bureau of conveyances, the registrar shall forthwith cause the same to be indexed in the general indexes of the bureau of conveyances. From and after the recording in the bureau of conveyances the liens shall attach to all interests in real property then owned by the person and not registered in the land court, and from and after the filing thereof in the office of the assistant registrar of the land court, the liens shall attach to any such interest in land then registered therein. The liens shall be

for all amounts of assistance, unless otherwise provided by rules adopted pursuant to chapter 91, then or thereafter paid in accordance with the programs from which the person receives assistance. The department shall be obligated to annually update, as an accounting measure, the actual amount of the liens recorded in the bureau of conveyances.

(d) The department shall issue certificates of release or partial release upon satisfaction or partial satisfaction of the liens. Certificates of release or partial release of any real property lien issued by the director or the director's authorized representative shall be recorded in the bureau of conveyances. The director shall consider issuing conditional certificates of release in cases of extreme hardship as set out in rules adopted under chapter 91. The registrar shall forthwith cause the same to be indexed in the general indexes in a like manner as the original liens. No fee shall be charged for any of the recording. The liens herein provided for shall take priority over any other lien subsequently acquired or recorded except tax liens and except that, in the estate of a beneficiary, the actual funeral expenses, the expenses of the last sickness, the cost of administration of the estate, and any allowance made to the surviving spouse and children for their support during administration of the estate, shall have priority and preference over the liens herein imposed, and over any claim against an estate filed under section 346-37.

The liens shall be enforceable by the department by suit in the appropriate court or shall be enforceable as a claim against the estate of the recipient under section 346-37, having priority over all other debts except taxes, the actual funeral expenses, the expenses of last sickness, the cost of administration of the estate, and any allowance made to the surviving spouse and children for their support during administration of the estate.

The liens shall be enforceable as a claim under section 346-37 against the estate of a recipient under any circumstances if the estate is admitted to probate at the instance of any interested party.

Whenever the department is satisfied that the collection of the amount of assistance paid a recipient will not be jeopardized or that the release or waiver of the priority of the liens against the recipient's property, in whole or in part, is necessary to provide for the maintenance or support of the recipient, the recipient's spouse, or any minor or incapacitated child, it may release or waive the priority of the liens with respect to all or any part of the real property.

The recipient, the recipient's heirs, personal representatives, or assigns may discharge the liens at any time

by paying the amount thereof to the department which shall execute a satisfaction thereof. The department may at its discretion compromise the collection of any such liens, but such compromise shall be made only when the recipient, the recipient's heirs, personal representatives, or assigns prove that the collection of the full amount of the liens or claim would cause undue hardship or the liens or claim are otherwise uncollectible.

The proceeds from the enforcement, payment, or compromise of the liens shall be paid into the treasury of the State. If the amount of assistance reflected by the proceeds was paid in part by federal funds, the proper portion of these funds shall be paid by the director of finance to the treasury of the United States. The director of finance shall thereupon report such payment to the department. If the federal funds are not paid directly into the treasury of the United States, these federal funds shall be credited by the director of finance to the department for expenditure for assistance without need for further appropriation.

If at any time the federal government, or any agency or instrumentality thereof, requires, as a condition to any grant of assistance, the performance of conditions inconsistent with this section, or desisting from actions provided by this section, the governor may suspend, upon a finding to that effect and to the extent of such requirement, any provisions of this section to the end that such federal assistance may be received.

The department shall submit an annual report to the legislature, which shall include a list of liens held by the department on real property. This report shall include but not be limited to a description of the value of the liens, the legal status of the liens, and when the liens were initiated.

The department shall adopt rules pursuant to chapter 91 necessary for the purposes of this section. [L 1980, c 16, §1; gen ch 1985; am L 1987, c 339, §4; am L 1988, c 82, §1; am L 1994, c 187, §2; am L 1997, c 65, §1; am L 2001, c 150, §2; am L 2011, c 220, §11; am L 2012, c 211, §3]

" **§346-30 Relief limited.** During the continuance of public assistance under this chapter, no recipient shall receive any other public assistance from the State or any county, except for necessary medical, dental, and surgical care, or in such amounts as are necessary to supplement the public assistance granted pursuant to this chapter, where the amounts of such other public assistance from the State or any county have been taken into consideration in deciding upon any application for public assistance. [L 1941, c 296, pt of §1; RL 1945, §4835; RL 1955, §108-16; HRS §346-30]

" **§346-31 Assignment of persons in need of public assistance to work on public projects.** The department of human services as far as permissible under the then existing federal laws, may assign persons in need of public assistance to work on state, county, or other public projects whether or not the projects are conducted in cooperation with any federal agency for the relief of unemployment.

The amount of assistance to be paid to such persons shall be fixed by the department, taking into consideration the work performed, and may exceed the amount or value of the grant of public assistance, which would have been made had no such assignment to a work project been made, but in no event shall such additional assistance, granted because of assignment to a work project, exceed the amount necessary to provide for extra expenses, incurred by the recipient for food, clothing, transportation, and incidentals. [L 1941, c 296, pt of §1; RL 1945, §4836; RL 1955, §108-17; HRS §346-31; am L 1970, c 105, §5; am L 1987, c 339, §4]

" **§346-32 Application of chapter 386 to persons in need of public assistance assigned to work projects.** Chapter 386 shall apply to recipients of public assistance assigned to work on public projects pursuant to section 346-31, who shall be deemed employees for the purposes of chapter 386, and an award may be made against the State or a county or other public body according to the project upon which the person injured was engaged at the time of the injury. [L 1941, c 296, pt of §1; RL 1945, §4837; RL 1955, §108-18; HRS §346-32]

" **§346-33 Assistance payments inalienable.** Assistance payments and compensation paid by the department of human services to blind persons and other persons for work performed in their homes or in workshops shall be inalienable by any assignment, sale, attachment, garnishment, execution, or otherwise. [L 1941, c 296, pt of §1; RL 1945, §4838; RL 1955, §108-19; HRS §346-33; am L 1970, c 105, §5; am L 1987, c 339, §4]

Case Notes

Money received as AFDC grant is exempt from execution by judgment creditors. 431 F. Supp. 1369 (1977).

Section does not prevent payment of portions of funds to attorneys for plaintiffs in class action. 64 H. 345, 641 P.2d 1321 (1982).

" **§346-34 Frauds, penalties.** (a) Any recipient who buys or disposes of real property or any person who knowingly aids or abets a recipient in the purchase or sale of real property without the consent of the department of human services shall be guilty of a petty misdemeanor.

(b) If, at any time while the recipient of public assistance is receiving public assistance, the recipient's living requirements are reduced and the recipient wilfully fails to report the reduction within thirty days from the date of the reduction to the department, or the recipient acquires from any source real property, funds, income, or other resources and wilfully fails to report the amount acquired together with the source of the resources to the department within thirty days of receipt of the resources, or prior to spending or otherwise disposing of all or any portion of the resources, the recipient shall be guilty of a petty misdemeanor.

(c) No person shall knowingly obtain or attempt to obtain, or aid or abet another person in obtaining or attempting to obtain, any food commodity under a food distribution program or any food stamp or coupon under a food stamp plan or an electronic benefits transfer card or similar debit card type device, to which the person or the other person is not entitled to receive or use under any law, or under any rule adopted pursuant to section 346-14(11) or chapter 91.

(d) No person shall knowingly give, sell, trade, or otherwise dispose of to another person not entitled to receive or use the same pursuant to any law, or pursuant to any rule adopted pursuant to section 346-14(11) or chapter 91:

- (1) Any food exceeding \$300 in value received under a food distribution program or any food of any value received under a food distribution program if that food is sold or traded by the recipient;
- (2) Any food stamp or coupon received under a food stamp plan;
- (3) Any food commodity received wholly or partially in exchange for a food stamp or coupon received under a food stamp plan; or
- (4) Any electronic benefits transfer card or similar debit card type device through which food stamp benefits may be obtained by the food stamp household.

(e) No person shall knowingly buy or give any other consideration in exchange for any food stamp or coupon issued under a food stamp plan or through any electronic benefits transfer card or similar debit card type device through which food stamp benefits may be obtained by the food stamp household except in compliance with any law or any rule adopted pursuant to section 346-14(11) or chapter 91.

(f) No person shall knowingly obtain or attempt to obtain emergency assistance under section 346-65 to which the person is not entitled. No person shall knowingly aid or abet another person in obtaining or attempting to obtain emergency assistance to which that other person is not entitled. No person shall expend emergency assistance granted to the person for other than the purpose approved by the department to eliminate or alleviate the emergency situation.

(g) No person shall knowingly transfer assets from that person's name to another person's or entity's name for the purpose of qualifying for public assistance under this chapter or chapter 346D. It shall be prima facie evidence of such a transfer if there was a transfer of assets for less than fair market value of the assets within the federally required time period, or "lookback" period, from the date of the application for public assistance.

(h) A person convicted under subsections (c), (d), (e), (f), or (g) shall be guilty of a misdemeanor; provided that:

(1) A person convicted under subsection (d)(2) or (e) for an offense involving food stamps or coupons with a value which exceeds \$300 shall be guilty of a class C felony; and

(2) A person convicted under subsection (d)(2) or (e) for an offense involving food stamps, coupons, an electronic benefits transfer card, or a debit card shall be guilty of a class B felony if the benefit to which the person is not entitled exceeds \$20,000.

Any portion of assistance obtained by any fraudulent device, and any assistance paid after receipt of resources which have not been reported to the department as required in this section shall be recoverable by the State for the use of the department as a debt due the State, or, restitution of the amount may be ordered by the court following conviction.

(i) The term "recipient" includes any person to whom a grant of public assistance is made by direct payment, and any person for whose use and benefit a grant of public assistance is made by payment to a relative or other person. Prosecution under this section shall not be considered an exclusive remedy but shall be in addition to any other criminal, civil, or administrative remedy or sanction authorized by law. [L 1941, c 296, pt of §1; RL 1945, §4839; am L 1949, c 308, §1; am L 1951, c 137, §1; am L 1953, c 52, §1; RL 1955, §108-20; am L 1957, c 174, §1; am L 1965, c 143, §1; HRS §346-34; am L 1970, c 105, §5; am L 1978, c 105, §5; gen ch 1985; am L 1986, c 160, §5; am L 1987, c 339, §4; am L 1994, c 187, §3; am L 1995, c 195, §1; am L 1997, c 198, §2]

Case Notes

Miranda warnings not applicable to investigatory interviews conducted in a noncustodial situation by personnel of department. 58 H. 94, 564 P.2d 1271 (1977).

Welfare fraud cases may be prosecuted under §708-831 despite existence of this section. 61 H. 79, 595 P.2d 291 (1979).

Under prior law, fraud was established with respect to failure to report income if defendant acted intentionally, knowingly, or recklessly. 62 H. 102, 612 P.2d 103 (1980).

History of this section and §708-831 reveals no legislative intent to limit welfare fraud prosecutions to this section. 62 H. 364, 616 P.2d 193 (1980).

" **§346-35 Cancellation or revision.** If, at any time during the currency or continuance of public assistance, the recipient, or any person legally liable for the support of the recipient becomes possessed of any property or income in addition to that available at the time the grant was made, the department of human services may, for such cause or for any other like cause, either cancel the assistance or change the amount thereof. [L 1941, c 296, pt of §1; RL 1945, §4840; RL 1955, §108-21; HRS §346-35; am L 1970, c 105, §5; am L 1987, c 339, §4]

Case Notes

Income tax refund is not "income". 396 F. Supp. 375 (1975).

State welfare manual regulations held to violate federal regulations regarding payment of benefits while termination of benefits hearing is pending. 434 F. Supp. 1173 (1977); 434 F. Supp. 1177 (1977).

" **§346-36 Assistance payments, subject to change or repeal.** All public assistance granted under this chapter shall be deemed to be granted and held subject to any amending or repealing act that may be passed and no recipient under this chapter shall have any claim for compensation or otherwise by reason of the recipient's assistance being affected in any way by any such amending or repealing act. [L 1941, c 296, pt of §1; RL 1945, §4841; RL 1955, §108-22; HRS §346-36; gen ch 1985]

" **§346-37 Recovery of payments and costs of medical assistance.** (a) If a recipient under this chapter dies leaving an estate and does not have a surviving spouse, child, father, mother, grandfather, grandmother, grandchild, stepfather, stepmother, or any designated heir, the department shall have a valid claim against the estate for the amount of social services

overpayments, financial assistance overpayments, or burial payments granted. The department shall file a claim against the estate of a deceased recipient of medical assistance for the amount of medical assistance granted, only if the recipient was age fifty-five or over when such medical assistance was received and there is no surviving spouse, or surviving child who is under twenty-one years of age, or blind, or disabled. The department shall file a claim against the estate of a recipient of medical assistance who was an inpatient in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution only if there is no surviving spouse or surviving child who is under twenty-one years of age, or blind, or disabled.

(b) If any portion of any public assistance, including medical assistance, food stamps, or burial payment, was obtained by any fraudulent device, including but not limited to those under section 346-34, or if any public assistance, including medical assistance, food stamps, or burial payment, was furnished or provided after receipt of income or resources which were not reported to the department as required by this chapter or by the department, the department may file a claim against the estate of the deceased recipient notwithstanding subsection (a).

(c) If the department has provided medical assistance or burial payment to a person who was injured, suffered a disease, or died under circumstances creating a tort or other liability or payment obligation against a third person, the department shall have a right to recover from the third person an amount not to exceed the full amount of the costs of medical assistance or burial payment furnished or to be furnished by the department.

(d) The department, as to this right of reimbursement, shall also be subrogated to all rights or claims that a claimant has against the third person for medical assistance and burial payments not to exceed the full extent of the costs of medical assistance or burial payment furnished or to be furnished by the department.

To enforce its rights, the department may intervene or join in any action or proceeding brought by a claimant against the third person. If the action or proceeding is not commenced within six months after the first day on which medical assistance or burial payment is furnished by the department in connection with the injury, disease, or death involved, the department may institute and prosecute legal proceedings against the third person for the injury, disease, or death, in a state court, either alone (in its own name or in the name of a claimant) or in conjunction with the claimant.

(e) An attorney representing a claimant or third person shall make reasonable inquiry as to whether the claimant has received or is receiving from the department medical assistance related to the incident involved in the action. If the claimant, claimant's attorney, or claimant's heirs, representatives, or beneficiaries, or any third person have received from the department actual notice of its right to reimbursement or if they have reason to know that the claimant has received or is receiving from the department medical assistance related to the incident, then the claimant, claimant's attorney, claimant's heirs, representatives, or beneficiaries, or third person or third person's attorney shall give to the department timely written notice of any claim or action against a third person. At any time during the pendency of any claim or action, the claimant, claimant's attorney if represented, claimant's heirs, representatives, or beneficiaries, or third person or third person's attorney may contact the department to ascertain the full amount of the costs of medical assistance or burial payment made, which information shall be provided in a reasonable time by the department. Upon obtaining a judgment or reaching a settlement through negotiation or legal proceedings, but before the release of any award or settlement proceeds to any person:

- (1) The claimant's attorney or third person or third person's attorney, if the attorney has received actual notice from the department of a lien or if the attorney or third person has reason to know that a lien exists; or
 - (2) The claimant or the claimant's heirs, representatives, or beneficiaries, if not represented by an attorney who has received actual notice of the lien,
- shall notify the department immediately in order to ascertain and satisfy the department's right to reimbursement for costs of medical assistance or burial payment made.

(f) If liability is found to exist, or if the issue of third-party liability is settled or compromised without a finding of liability, regardless of who institutes legal proceedings or seeks other means of recovering, the department shall have a right to recover up to the full amount of the costs of medical assistance or burial payment made from a settlement, award, or judgment. To aid in the recovery of the costs, the department shall have a first lien for up to the full amount of the costs of medical assistance or burial payment made against the proceeds from damages recovered in a settlement, award, or judgment. The lien shall attach as provided by subsection (g).

(g) The lien of the department for reimbursement of costs of medical assistance or burial payments under subsection (f),

shall attach by a written notice of lien served upon the claimant's attorney or upon the third person, the third person's agent, attorney, or insurance company. The method of service shall be by certified or registered mail, return receipt requested, or by delivery of the notice of lien personally to these individuals. Service by certified or registered mail is complete upon receipt. The notice of lien shall state the name of the injured, diseased, or deceased person, the amount of the lien, and the date of the accident or incident that caused the injuries, disease, or death that necessitated the department's medical assistance or burial payments. If the notice of lien is served upon the claimant's attorney, the notice of lien shall state that the claimant's attorney shall pay the lien from the proceeds of any judgment, settlement, or compromise based on the incident or accident as provided in this section. If the notice of lien is served upon the third person, or the third person's agent, attorney, or insurance company, the notice of lien shall state that the third person shall pay the lien as provided in this section prior to disbursing any of the proceeds to the claimant or to the claimant's attorney. A notice of lien may be amended from time to time until extinguished, each amendment taking effect upon proper service.

When restitution is sought in a criminal proceeding from a third person who has caused injury to a recipient of medical assistance, a written notice of lien and an itemized list of payments made by the department that identifies the provider of services, the dates of services, the amounts billed and paid, and the dates of payments, shall be provided to the court and to the person against whom restitution is sought. Absent a good faith basis contesting the amount or validity of a specific line item charge or charges in the lien, the entire lien amount shall be presumed valid by the court in determining the amount of restitution pursuant to section 706-646.

(h) The lien shall attach as provided by subsection (g). If a notice of lien is properly served upon the attorney representing the claimant as provided in subsection (g), that attorney shall pay the lien as provided in this section prior to disbursing any of the proceeds of the suit or settlement to the attorney's client. If a notice of lien is properly served upon the third person, the third person's agent or attorney, or the third person's insurance company, as provided in subsection (g), it shall be the responsibility of the person receiving the notices to pay the lien as provided in this section prior to disbursing any of the proceeds to the claimant's attorney. The lien shall be satisfied from that portion of the settlement, award, or judgment allocated or allocable to payments by the department for medical assistance and burial payments. Any

allocation by a judge, jury, arbitrator, or similar dispute resolution person or tribunal shall be binding; provided that the department's medical assistance and burial payments are included as part of the case or claims brought by the claimant in any action. Any allocation by the claimant or third party may be considered but is not binding on the department. If there is no allocation, a reasonable allocation shall be determined by agreement, administrative hearing under subsection (i), or a court of competent jurisdiction.

If, after having received timely written notice of any claim or action under subsection (e), the department did not intervene or join in the action or prosecute its own claims or actively participate with claimant or claimant's attorney in the prosecution of claims, or a distribution agreement was not entered into between the parties, reimbursement shall be as follows: If the lien is less than or equal to one-third of the settlement, award, or judgment, and there is no allocation by a judge, jury, arbitrator, or similar dispute resolution person or tribunal, then there shall be a rebuttable presumption that the amount of reimbursement due the department is the total payments for medical assistance or burial payments by the department or one-third of the settlement, award, or judgment, whichever is less. Any party challenging this rebuttable presumption shall bear the burden of proof. The department's fair share of claimant's reasonable attorney's fees and expenses shall be deducted from the department's lien recovery. There shall be a rebuttable presumption that one-third of the department's gross reimbursement amount plus a proportionate share of the general excise tax is a reasonable amount for the department's contribution towards claimant's attorney's fees and expenses. Any party challenging this rebuttable presumption shall bear the burden of proof.

If the department alone prosecutes claims that include its medical assistance or burial payments, it shall not be required to reduce its lien on account of attorney's fees or expenses, if any, incurred by the claimant or claimant's attorney.

If the claimant's attorney and the department contribute to the recovery of medical assistance or burial payments made by the department, then the department's fair contribution toward the claimant's attorney's fees and costs incurred shall be a reasonable amount based solely upon legitimate costs and services rendered by the claimant or claimant's attorney in recovering the lien amount. Any dispute regarding the department's determination of its contribution to claimant's attorney's fees and costs may be submitted to administrative hearing under subsection (i) or a court of competent jurisdiction. The value of services contributed by the claimant

and department may be considered in fairly allocating fees and costs between the claimant and department where both contribute to recovering the lien amount.

The department's lien, after reduction for its contribution to claimant's attorney's fees and expenses, shall not exceed one-third of the settlement, award, or judgment. Payment of one-third of the settlement, award, or judgment to the department and two-thirds to the claimant and claimant's attorney shall satisfy the entire lien if the department's lien, after reduction for its contribution to claimant's attorney's fees and expenses, exceeds one-third of the settlement, award, or judgment. Any claimant who asserts that reimbursement to the department should be less than one-third of the settlement, award, or judgment, under the circumstances of that claim, shall bear the burden of proof.

(i) If there is a dispute between the claimant, the claimant's agent or the claimant's attorney, and the department concerning the existence of the lien or the amount of the lien, or the amount to be reimbursed, the claimant, the claimant's agent, or the claimant's attorney may submit the dispute to a court of competent jurisdiction or request in writing an administrative hearing on the dispute. After receipt by the department of a written request, the department shall conduct an administrative hearing within a reasonable period of time. Chapter 91, including any provisions for judicial review or appeal, shall apply to the hearing. Funds sufficient to fully satisfy the reimbursement rights of the department shall be either retained by the person served with the notice of lien, shall be paid to the department, or otherwise reserved subject to agreement with the department pending a decision by the court or the department and any subsequent judicial review or appeal.

(j) Upon the recovery of any claim as provided in this section, the amount recovered shall be paid into the treasury of the State, and if the amount for which claim was paid was in part from federal funds, the proper portion thereof shall be paid by the director of finance into the treasury of the United States, and the director of finance shall report the payment to the department.

(k) Any person who is subject to the lien who fails to pay the full amount due under this section to the department for reimbursement of the costs of medical assistance, although able to do so from the proceeds of the suit or settlement, shall be personally liable to the department for any damage proximately caused to the department by the failure.

(l) No action taken by the department in connection with the rights under this section shall deny to the claimant the

recovery for that portion of the claimant's damages not covered under this section.

(m) For purposes of this section:

"Claimant" includes an injured or diseased person, the person's guardian, or the personal representative, estate, dependents, or survivors, of the deceased person.

"Costs of medical assistance" furnished or to be furnished by the department includes:

- (1) The value or cost of medical care services provided directly by the department;
- (2) The amount paid by the department to a provider for medical care services rendered or to be rendered; and
- (3) The value or cost of medical care services rendered or to be rendered by a provider that has received the equivalent of an insurance benefit, capitation rate, and other fee or like charge paid by the department or by a medical care insurer to provide for medical care services.

"Third person" includes any person, business, corporation, partnership, or entity of any kind or nature, including employers and insurance carriers, that is potentially liable to the claimant for any tort, liability, payment, reimbursement, or benefit of any kind or nature by reason of any injury, disease, or death.

(n) The department may agree with a provider or medical care insurer for the provision of medical care services or medical assistance to any claimant, and the agreement may provide for the department to be the exclusive entity authorized to recover all costs of medical assistance rendered to a claimant. The department may recover all costs through the use of the lien procedures established by this section.

(o) In third-party liability situations, the medical assistance program of the department shall be fully reimbursed the amount due under this section or funds sufficient to fully reimburse the department the amount due under this section shall be retained by the person served with the notice of lien or otherwise reserved in a manner agreeable to the department before the claimant receives any money from the settlement or award. This section is not intended to restrict or diminish the right of the department to settle or compromise its reimbursement rights under this section for less than the full amount due or enter into any agreement with claimant, claimant's attorney or representative, or other party for the distribution of proceeds from a suit or settlement. [L 1941, c 296, pt of §1; RL 1945, §4842; RL 1955, §108-23; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §346-37; am L 1972, c 32, §2; am L 1975, c 137, pt of §2; am L 1980, c 206, §1; am L 1982, c 147, §17;

gen ch 1985; am L 1994, c 187, §§4, 5; am L 1997, c 201, §1; am L 1999, c 52, §2; am L 2001, c 50, §2; am L 2011, c 220, §11; am L 2012, c 211, §4]

Cross References

Medicaid fraud unit, see §28-91.

Case Notes

State's lien cannot be evaded by settlement agreement between injured person and putative tortfeasor covering only special damages. Validity and amount of subrogated claim is for court to decide. 69 H. 21, 731 P.2d 157 (1987).

Subsection (j) (1997) grants the State recovery of its costs for medical assistance from special damages and does not limit the State to accepting a pro rata share of claimant's recovery; a settling claimant cannot waive recovery of special damages, but the State is entitled to and may recover its medical assistance expenses from the special damages obtained. 101 H. 466, 71 P.3d 417 (2003).

The clear and unambiguous language of this section (1997), establishes a priority that the medical assistance lien be paid to the department of human services before the recipient of the medical assistance is reimbursed; thus, trial court erred when it reduced the amount of the department's statutory lien. 101 H. 473 (App.), 71 P.3d 424 (2002).

Cited: 73 H. 403, 833 P.2d 890 (1992).

" **§346-37.1 Payment of public assistance for child requires payment of child support to department by natural or adoptive parents.** (a) Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing to the department by the natural or adoptive parent or parents who are responsible for support of such children except that debts under this section shall not be incurred by a parent or other person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status, and, provided that where there has been a family court order, the debt shall be limited to the amount provided for by the order.

(b) If there is no existing court order, the debt for a period during which public assistance was provided to the child or children may be established by agreement of the parties or application of the child support guidelines established pursuant to section 576D-7. [L 1975, c 137, pt of §1; am L 1983, c 41,

§1; ree L 1986, c 332, §7; am L 1998, c 83, §2; am L 2002, c 72, §1]

Case Notes

Public support of children is not an exceptional circumstance warranting departure from guidelines. 7 H. App. 345, 764 P.2d 1250 (1988).

In paternity proceedings, the child support enforcement agency may not obtain a judgment for an amount of money unless and until it proves payment by the department of human services of at least that amount to or for the benefit of the child. 105 H. 79 (App.), 93 P.3d 1186 (2004).

Notwithstanding subsection (b) and §584-15(e), when read together, the statutes do not create a "debt due and owing to the department of human services by the natural or adoptive parent or parents who are responsible for support of such children" in the amount calculated in accordance with the applicable child support guidelines. 105 H. 79 (App.), 93 P.3d 1186 (2004).

" **§346-37.2 Department subrogated to rights.** The department shall be subrogated to the right of such child or children or person having the care, custody, and control of such child or children to the debt created under section 346-37.1. Any judicial or administrative action to collect the debt for the department shall be undertaken by the child support enforcement agency under chapter 576D. [L 1975, c 137, pt of §1; am L 1986, c 332, §8]

" **§346-37.3 Notice of child support debt.** The department shall notify the child support enforcement agency of the amount of, and the periods during which, public assistance was provided to or for the benefit of any dependent child or children. [L 1975, c 137, pt of §1; am L 1986, c 332, §9; am L 2002, c 72, §2]

" **§§346-37.4 to 346-37.6 REPEALED.** L 1986, c 332, §23.

" **§346-38 Incompetency of recipient.** If the recipient is found incapable of taking care of the recipient's money or oneself, the department of human services may direct its assistance to be paid to a legal guardian or any other reputable person for the recipient's benefit or may suspend assistance for such period as it deems fit. [L 1941, c 296, pt of §1; RL 1945, §4844; RL 1955, §108-24; HRS §346-38; am L 1970, c 105, §5; gen ch 1985; am L 1987, c 339, §4]

" **§346-39 Legal representative.** The attorney general and the county attorneys and corporation counsel shall act as legal representatives of the department of human services when so requested. [L 1941, c 296, pt of §1; RL 1945, §4845; RL 1955, §108-25; HRS §346-39; am L 1970, c 105, §5; am L 1987, c 339, §4]

Revision Note

Reference to "corporation counsel" added to conform to county charters.

" **§346-39.5 Unclaimed financial assistance balances in electronic benefit transfer accounts.** If there is a balance of financial assistance benefits in an electronic benefit transfer account, that balance shall revert back to the program's appropriation from which the funds were expended upon the death of a client who has no surviving family member receiving assistance in the same financial assistance case or upon abandonment of the financial assistance account. Prior to the reversion to the program's appropriation from which the funds were expended, the department may use the balance of the household's electronic benefit transfer account to offset any outstanding overpayments still owed by the household.

For purposes of this section, financial assistance benefits refer to cash payments authorized by the department to be issued through the electronic benefit transfer system. A financial assistance account shall be considered abandoned when there is no debit transaction to the account for a period of ninety consecutive calendar days. [L 1997, c 199, §2; am L 1999, c 213, §2]

" **§346-40 Maintenance and availability of records; penalty.**

(a) To enable another provider to determine the proper course of treatment in emergencies and in order to determine whether a provider is genuinely entitled to reimbursement and to protect the medicaid program against fraud and abuse, each provider of health care, service or supplies under the state medicaid program shall maintain, and keep for a period of three years, such records as are necessary to disclose fully the type and extent of health care, service or supplies provided to medicaid recipients. The department may identify the types of records necessary to be kept by promulgation of appropriate rules.

(b) No provider shall refuse or fail to make available at the provider's place of business or appropriate location, during normal business hours, or, if the appropriate representative

agrees, at the mutual convenience of the parties, immediate access to all records required to be maintained under this section or rules promulgated hereunder and all diagnostic devices concerning or used for the provision of health care, service or supplies to a medicaid recipient to any duly authorized representative of the attorney general's office or the department of human services acting in the course and scope of the duly authorized representative's employment; such diagnostic devices may be examined and tested and such records may be retained by said duly authorized representative for a reasonable period of time for the purpose of examination, audit, copying, testing or photographing. This subsection shall supersede any other provision of the Hawaii Revised Statutes to the contrary notwithstanding.

(c) Whenever a provider without reasonable justification fails to keep adequate supporting records as required by this section or rules promulgated hereunder or fails to make them available as required by this section, the director of human services shall suspend the provider during the period of noncompliance with this section, and no payment may be made to such provider with respect to any item or service furnished by such provider during the period of suspension. A provider shall receive notice and be provided an opportunity for a hearing in compliance with regulations of the department of human services for such suspension.

(d) Wilful refusal or failure to make records available as provided in subsection (b) of this section is a misdemeanor. [L 1978, c 105, §6; gen ch 1985; am L 1987, c 339, §4]

Revision Note

Subsection designations "b", "c", and "d" substituted for "c", "d", and "e" pursuant to §23G-15.

Cross References

Medicaid fraud unit, see §28-91.

Case Notes

State has compelling interest in ensuring that medicaid program is not being defrauded. 481 F. Supp. 1028 (1979).

" **§346-41 Inspection of institutional facilities.** (a) The director of the department of health, department of human services and the attorney general of the State shall have the right to inspect all institutions and organizations in the

State, whether public or private, to which payments are made by the state medical assistance program, directly or indirectly, or on account of the board and maintenance of persons admitted or committed thereto. The authorized representatives of the director or the attorney general shall have the right of visitation and immediate access for inspection during business hours as often as may be necessary, to those portions of the facilities used or reasonably related to the board, care or treatment of such persons for the purpose of determining the conditions, circumstances and surroundings under which such persons admitted or committed are lodged, boarded, cared for and maintained.

(b) Wilful failure to permit authorized visitation or immediate access for inspection as provided by this section is a misdemeanor. [L 1978, c 105, §7; am L 1987, c 339, §4]

" **§346-41.5 Hawaii qualified health centers.** If the medicaid managed care program is implemented, the department shall provide a supplemental capitation program for the uninsured with enabling services based on an annual cost-based determination to all Hawaii qualified health centers and to any nonprofit entity having a majority of Hawaii qualified health centers as board members.

For the purposes of this section, "enabling services" includes enabling services as defined by federally qualified health center standards. The department shall have the administrative flexibility to expend funds through medicaid managed care contracts, through a modified voucher system, or through chapter 42F. Hawaii qualified health centers receiving these supplemental payments shall reconcile their costs on an annual basis. [L 1994, c 238, §3; am L 2015, c 20, §3]

Note

The amendment made by L 1997, c 190, §6 is not included in this section.

" **§346-42 Administrative inspections and warrants.** (a) Issuance and execution of administrative inspection warrants shall be as follows:

- (1) A judge of the circuit court, or any district judge within the judge's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of the property appropriate to the inspections. For purposes of the issuance of

administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building, conveyance or records in the circumstances specified in the application for the warrant;

- (2) A warrant shall issue only upon an affidavit of an individual having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the issuance exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building, conveyance or records to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
 - (A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
 - (B) Be directed to a person authorized by the attorney general or the director of human services to execute it;
 - (C) Command the person to whom it is directed to inspect the area, premises, building, conveyance or records identified for the purpose specified and, if appropriate, use reasonable force in conducting the inspection authorized by the warrant and direct the seizure of the property specified;
 - (D) Identify the item or types of property to be seized, if any;
 - (E) Direct that it be served during normal business hours and designate the judge to whom it shall be returned;
- (3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of

the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

- (4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the issuing court.

(b) The designated representative of the attorney general or the department may make administrative inspections of provider premises in accordance with the following provisions:

- (1) For purposes of this section only, "provider premises" means:
 - (A) Places where providers are required to keep records; and
 - (B) Places where providers conduct business related to their receipt of payments from the medicaid program for health care, service or supplies.
- (2) When authorized by an administrative inspection warrant issued pursuant to subsection (a) the representative upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter providers premises for the purpose of conducting an administrative inspection.
- (3) When authorized by an administrative inspection warrant, the representative may:
 - (A) Inspect and copy records required by this chapter to be kept;
 - (B) Retain records required by this chapter to be kept for a reasonable period of time, not to exceed forty-eight hours, for the purpose of examination, audit, copying, testing or photographing;
 - (C) Inspect, examine and test diagnostic devices used in the provision of health care, service or supplies to a medicaid recipient;
 - (D) Inventory any stock of any substance used in the provision of health care, service or supplies to a medicaid recipient and to obtain samples thereof;
 - (E) Inspect, examine and test, within reasonable limits and in a reasonable manner, provider premises and equipment as necessary to assure compliance with this chapter.

- (4) This section does not prevent the inspection without a warrant of property, books and records pursuant to an administrative subpoena issued in accordance with law, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:
- (A) If the owner, operator, or agent in charge of the provider premises consents;
 - (B) In situations presenting imminent danger to health or safety;
 - (C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
 - (D) In all other situations in which a warrant is not constitutionally required. [L 1978, c 105, §8; gen ch 1985; am L 1987, c 339, §4]

Case Notes

Probable cause as defined in section is not capable of measurement against some objective standard and is violative of the Fourth Amendment. 481 F. Supp. 1028 (1979).

Where warrants issued under section would authorize search and seizure of psychiatrist's office and records, the section violates constitutional provisions relating to unreasonable searches and seizures and right to privacy. 481 F. Supp. 1028 (1979).

" **[§346-43] Penalties under other laws.** Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [L 1978, c 105, §9]

" **§346-43.5 Medical assistance fraud; penalties.** (a) A person commits the offense of medical assistance fraud if:

- (1) The person knowingly makes or causes to be made to the medical assistance program any false statement or representation of a material fact in any application for any benefit or payment for furnishing services or supplies, or for the purpose of obtaining greater compensation than that to which the person is legally entitled, or for the purpose of obtaining authorization for furnishing services or supplies; or
- (2) The person knowingly makes or causes to be made any false statement or representation of a material fact in any application for any medical assistance benefit

or renewal of any medical assistance benefit, or in any statement, document, or record, in written, printed, or electronic form, in support of, or connected with, that application for or renewal of medical assistance benefits.

(b) A person convicted under subsection (a)(2) shall pay restitution equivalent to the amount of medical assistance benefits paid by the State on behalf of that person.

(c) For purposes of this section, the term "medical assistance benefit" means health care coverage or services, including medical, behavioral health, dental, or long-term care services, provided to or paid for on behalf of a person by the State, regardless of source of funding. Payment for medical assistance benefits may be made through capitated payments, insurance premiums, copayments, any payments made by the State to that person's health care providers, and any other payments made by the State on behalf of the person for health care coverage or services.

(d) The offense of medical assistance fraud is a class C felony.

(e) The remedies provided under this section are not exclusive and shall not preclude the use of any other criminal or civil remedy. [L 1980, c 210, §1; am L 2016, c 94, §1]

Cross References

Medicaid fraud unit, see §28-91.

Case Notes

State has compelling interest in ensuring that medicaid program is not being defrauded. 481 F. Supp. 1028 (1979).

Fatal variance between evidence proved and elements of the offense charged in the indictment. 68 H. 343, 713 P.2d 432 (1986).

" **§346-44 Recovery of public assistance overpayments.** All overpayments of public assistance funds, including but not limited to overissuances of financial assistance, food stamp bonuses under a food stamp plan, medicaid assistance, and incorrect vendor payments in behalf of a recipient, shall constitute a debt due and owing to the department by the recipient of such overpayments. In addition to the remedies elsewhere prescribed in this chapter for the recovery of assistance fraudulently obtained, recovery of all overpayments will be made to the extent allowable by federal regulations.

The department shall promulgate and enforce such rules and regulations as may be necessary to effect the maximum recovery of public assistance overpayments, including but not limited to the reduction of future public assistance grants. Departmental rules and regulations for the recovery of overpayments shall prescribe procedures for recourse to the civil courts when required, the filing of liens against the real property of overpaid recipients, and the filing of claims against the estate of a deceased recipient who has received overpayments which have not been recovered. Nothing in this section shall preclude the director of human services from promulgating procedures for waiving the recovery of overpayments in cases of bona fide hardship or where the costs of recovery would exceed the amount expected to be recovered. [L 1979, c 63, §1; am L 1987, c 339, §4]

" **§346-45 Confidentiality of court records.** (a) The court shall maintain records of all adult protective proceedings under this chapter. All court documents and records pertaining to the action or proceeding shall be subject to inspection only by the vulnerable adult, and the vulnerable adult's guardian, conservator, their respective attorneys, the guardian ad litem of the vulnerable adult, and the other parties and their respective attorneys or guardians ad litem.

(b) All other requests for information contained in the confidential record shall be made in writing and shall include the reasons for the request and how the information is to be used and may be granted by the court for good cause. [L 1989, c 381, §2; am L 1990, c 144, §1 and c 234, §9; am L 1992, c 62, §1; am L 2004, c 161, §36; am L 2008, c 154, §2]

" **§346-46 Certified nurse aides; training programs and recertification.** The director shall:

- (1) Approve training programs for nurse aides and ensure that the training programs comply with all applicable federal and state requirements;
- (2) Approve and arrange for the recertification process for nurse aides who work in medicare or medicaid certified nursing facilities;
- (3) Approve and arrange for the recertification process for nurse aides who work in state-licensed or state-certified health care settings; and
- (4) Require recertification not less than every two years. The number of continuing education hours required for recertification shall not exceed twenty-four hours, except as specified by federal law. [L 2007, c 226, pt of §3; am L 2009, c 108, §2]

Cross References

For related provisions, see §321-13.5 and chapter 457A.

" **§346-47 REPEALED.** L 2016, c 21, §5.

**"PART II. SPECIFIC PROVISIONS COVERING PUBLIC ASSISTANCE
AND CHILD WELFARE SERVICES**

§§346-51 to 346-62 [OLD] REPEALED. L 1975, c 145, §1(3).

§346-51 Public assistance and child welfare services administered by department. The department of human services shall administer public assistance and child welfare services in the several counties except for payments administered under the federal supplemental security income program or its successor agency. No person shall be denied the right to petition the department for additional assistance as established under section 346-53(f). [L 1975, c 145, pt of §1(3); am L 1980, c 120, §2; am L 1983, c 196, §1; am L 1987, c 339, §4 and c 344, §1; am L 2008, c 16, §15]

" **[[§346-51.5] Expenditure of temporary assistance for needy families funds.** (a) Funds received by the State under the temporary assistance for needy families program block grant shall be subject to appropriation by the legislature and shall not be expended by the department without a legislative appropriation.

(b) No later than thirty days before the convening of each regular session, the department shall submit to the legislature:

- (1) A plan, developed in consultation with temporary assistance for needy families program heads of households and other community members familiar with such families' situations and needs, that:
 - (A) Details how the funds received under the temporary assistance for needy families program shall be expended; and
 - (B) Describes the desired outcomes from the expenditure of the funds;
- (2) A report about the continuing strategic planning process, with the assistance of the financial assistance advisory council, to:
 - (A) Involve the community in planning for the future use of temporary assistance for needy families funds; and

- (B) Set annual goals and outcomes for existing and new programs receiving temporary assistance for needy families funds, pursuant to section 346-14.5; and
- (3) A report on the effectiveness and level of success in reaching the desired outcomes under:
 - (A) Paragraphs (1) and (2); and
 - (B) Programs from the previous two fiscal years using temporary assistance for needy families funds.

(c) During the interim following the regular session of 2006 and thereafter when the legislature is not in session, the department may receive and expend federal funds related to the temporary assistance for needy families program pursuant to [section] 346-8, subject to approval by the governor, which are supplemental to the temporary assistance for needy families block grant or are obtained competitively under the temporary assistance for needy families program. The department shall submit to the legislature a report no later than twenty days before the convening of each regular session regarding:

- (1) Any funds received and expended;
- (2) The purposes for which the funds were expended; and
- (3) Outcomes achieved,

pursuant to this section. [L 2006, c 302, §1]

" **[§346-52] Aged, blind, and permanently and totally disabled persons; eligibility for assistance.** A person shall be eligible for public assistance who meets the requirements established by the federal supplemental security income program or its successor agency, provided the person is also determined needy in accordance with state standards. [L 1975, c 145, pt of §1(3); gen ch 1985]

" **§346-53 Determination of amount of assistance.** (a) This subsection does not apply to general assistance to households without minor dependents. The standard of need shall equal the poverty level established by the federal government in 2006, prorated over a twelve-month period based on family size.

The assistance allowance provided shall be based on a percentage of the standard of need. For other work eligible households and non-work eligible households and households in which all caretaker relatives are minors, living independently with minor dependents and attending school, the assistance allowance shall be set no higher than sixty-two and one-half per cent and no lower than forty-four per cent of the standard of need. For all other households, the assistance allowance shall be set no higher than sixty-two and one-half per cent of the standard of need and set no lower than thirty-four per cent of

the standard of need. The standard of need shall be determined by dividing the 2006 federal poverty level by twelve and rounding down the quotient. The remaining quotient shall be multiplied by the per cent as set by the director by rules pursuant to chapter 91, and the final product shall be rounded down to determine the assistance allowance; provided that:

- (1) The department may increase or reduce the assistance allowance as determined in this subsection for work eligible households for the purpose of providing work incentives or services under part XI;
- (2) No reduction shall be allowed that jeopardizes eligibility for or receipt of federal funds;
- (3) Reductions in the assistance allowance shall be limited to no more than one per year; and
- (4) No work eligible household, which includes an adult who has received sixty cumulative months of temporary assistance to needy families with minor dependents, shall be eligible for an assistance allowance, unless authorized by federal regulations.

(b) The director shall determine the allowance for general assistance to households without minor dependents based upon the total amount appropriated for general assistance to households without minor dependents, among other relevant factors.

(c) The director, pursuant to chapter 91, shall determine the rate of payment for domiciliary care, including care provided in licensed developmental disabilities domiciliary homes, community care foster family homes, and certified adult foster homes, to be provided to recipients who are eligible for federal supplementary security income or public assistance, or both. The director shall provide for level of care payment as follows:

- (1) Beginning on July 1, 2008, for adult residential care homes classified as facility type I, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, community care foster family homes as defined under section 321-481, and certified adult foster homes as defined under section 321-11.2, the state supplemental payment shall not exceed \$651.90; and
- (2) Beginning on July 1, 2008, for adult residential care homes classified as facility type II, the state supplemental payment shall not exceed \$759.90.

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

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

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

(d) On July 1, 2006, and thereafter, as the department determines a need, the department shall authorize a payment, as allowed by federal law, for resident clients receiving supplemental security income in adult residential care home type I and type II facilities, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, community care foster family homes as defined under section 321-481, and certified adult foster homes as defined under section 321-11.2, when state funds appropriated for the purpose of providing payments under subsection (c) for a specific fiscal year are not expended fully within a period that meets the requirements of the department's maintenance of effort agreement with the Social Security Administration.

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

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

(e) The department shall pay rental and utility (to include gas, electricity, and water only) deposits once only for any person eligible for financial assistance by the department. However, under extraordinary circumstances as determined by the department, an additional rental deposit, utility deposit, or both, may be granted.

(f) Any recipient may petition the department for additional assistance when the recipient's need is due to emergencies caused by seismic wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, flood, or fire determined by the director to have caused losses as to require and justify additional assistance from the State. In addition, any recipient may petition the department for additional assistance for the replacement or repair of household appliances. The additional assistance shall be paid on an emergency basis, as determined by the department, to meet the cost of replacing or repairing household appliances. If the cost of repairs of household appliances is less than one-half the unit cost of the item, the department shall pay for the cost of repairs. If the cost of repairs of household appliances is one-half the unit

cost of the item or more, the department shall replace the household appliance; provided that the replacement cost shall not exceed \$350. For the purposes of this subsection, "household appliances" means a refrigerator or a range.

The department shall establish an emergency fund, not to exceed one per cent of total financial assistance from state funds required by this chapter in the previous fiscal year. The director shall adopt rules pursuant to chapter 91 for determining in which cases to grant lump sum payments to recipients petitioning for additional assistance.

(g) The department shall include protective child care payment as a special needs item in the financial assistance standard for cases of child neglect or abuse requiring placement of a child in child care. The referral for protective child care payment shall be from the department's child welfare program and the rate of payment shall be set by the department.

(h) The director shall adopt rules pursuant to chapter 91 to implement this section. [L 1975, c 145, pt of §1(3); am L 1976, c 73, §3; am L 1978, c 104, §1 and c 107, §6; am L 1979, c 52, §§3, 5; am L 1980, c 120, §3; am L 1983, c 196, §2; am L 1985, c 272, §9; gen ch 1985; am L 1987, c 25, §1 and c 344, §2; am L 1988, c 213, §1 and c 327, §2; am L 1989, c 154, §2, c 233, §1, and c 379, §1; am L 1990, c 321, §2; am L 1993, c 356, §2; am L 1995, c 70, §1 and c 166, §1; am L 1996, c 300, §§4, 6; am L 1997, c 200, §§5, 9, 11 and c 340, §2; am L 1998, c 127, §§4, 5; am L 2000, c 80, §1; am L 2005, c 168, §3; am L 2006, c 265, §§1, 2 and c 287, §2; am L 2007, c 237, §4; am L 2008, c 220, §12 as superseded by L Sp 2008, c 11, §12; am L 2009, c 101, §2; am L 2012, c 93, §3]

Case Notes

An unborn child is entitled to separate payment. 62 H. 626, 618 P.2d 295 (1980).

"Lump sum" rule, disqualifying assistance units for period based on total net monthly income, modified. 69 H. 187, 737 P.2d 867 (1987).

" **[\$346-53.2] Temporary assistance for needy families; funding and programs; public comment.** (a) The department, to the extent allowed under section 346-10, shall make all data relating to temporary assistance for needy families funds available to the senate and house of representatives committees having primary jurisdiction over fiscal, health, and human services issues, upon request. The committees shall jointly evaluate the implementation of the state temporary assistance

for needy [families] program and program expenditures and make annual recommendations for appropriations.

(b) The legislature may conduct hearings to receive public comment relating to the implementation of the state temporary assistance for needy families program and the optimal expenditure of program funds. The legislature shall determine the number and timing of hearings to be held; provided that if hearings are held, no fewer than one hearing on each island of the State shall be held annually; provided further that the senate and house of representatives committees having primary jurisdiction over fiscal, health, and human services matters shall jointly conduct the public hearings. [L 2005, c 165, §2]

" **[\$346-53.3] Temporary assistance for needy families and food stamps for individuals with a felony conviction which has as an element the possession, use, or distribution of a controlled substance.** Section 115(a) of Public Law 104-193 shall not apply in Hawaii to persons who are complying with treatment or who have not refused or failed to comply with treatment. [L 1997, c 128, §2; am L 1999, c 27, §1]

" **[\$346-53.4] Reimbursement to expanded adult residential care home operators.** Qualified expanded adult residential care home operators under section 321-15.62 who accept residents certified by the department as requiring skilled nursing facility level care shall be reimbursed based on the severity of the resident's disability. [L 1998, c 132, §2]

" **§346-53.5 REPEALED.** L 1993, c 148, §2.

" **[\$346-53.6] Federally qualified health centers; rural health clinics; reimbursement.** (a) Notwithstanding any law or waiver to the contrary, federally qualified health centers and rural health clinics, as defined in section 1905(1) of the Social Security Act (42 U.S.C. 1396 et seq.), shall be reimbursed in accordance with section 1902(bb) of the Social Security Act, as that section was originally added in 2000 by section 702(b) of Public Law 106-554 and as amended in 2001 by section 2(b)(1) of Public Law 107-121, and services of federally qualified health centers and rural health clinics shall remain mandatory services as provided in sections 1902(a)(10)(A) and 1905(a)(2)(B) and (C) of the Social Security Act.

(b) Reimbursement rates paid to federally qualified health centers may be adjusted if costs exceed 1.75 per cent for changes related to the intensity, duration, or amount of service provided, facilities, regulatory requirements, or other extraordinary circumstances; provided that the federally

qualified health center shall submit to the department an adjusted cost report covering a period of the previous two years. The director shall review the filing within a period of sixty days. The period may be extended by the director for an additional period not to exceed thirty days upon written notice to the filer. A filing shall be deemed to be approved unless disapproved by the director within the initial filing period or any extension thereof.

(c) The State may terminate the reimbursement methodology set forth in this section only in the event that changes in the relevant sections of the Social Security Act prohibit this reimbursement methodology. [L 2006, c 297, §2]

Note

L 2006, c 297, §3 provides:

"SECTION 3. The department of health shall provide resources to nonprofit, community-based health care providers for direct medical care for the uninsured, including primary medical, dental, behavioral health care, and ancillary services, including education, follow-up, and outreach, and pharmacy services. Distribution of funds may be on a "per visit" basis, taking into consideration need on all islands."

" **[§346-53.61] Centers for Medicare and Medicaid Services approval.** The department shall implement sections 346-53.62, 346-53.63, and 346-53.64, subject to approval of the Hawaii medicaid state plan by the Centers for Medicare and Medicaid Services. [L Sp 2008, c 8, pt of §2]

Note

Section effective upon approval of the Hawaii medicaid state plan by the Centers for Medicare and Medicaid Services. L Sp 2008, c 8, §9.

" **[§346-53.62] Federally qualified health centers and rural health clinics; reconciliation of managed care supplemental payments.** (a) Federally qualified health centers or rural health clinics that provide services under a contract with a medicaid managed care organization shall receive estimated quarterly state supplemental payments for the cost of furnishing such services that are an estimate of the difference between the payments the federally qualified health center or rural health clinic receives from medicaid managed care organizations and payments the federally qualified health center or rural health clinic would have received under the Benefits Improvement and

Protection Act of 2000 prospective payment system methodology. Not more than one month following the beginning of each calendar quarter and based on the receipt of federally qualified health center or rural health clinic submitted claims during the prior calendar quarter, federally qualified health centers or rural health clinics shall receive the difference between the combination of payments the federally qualified health center or rural health clinic receives from estimated supplemental quarterly payments and payments received from medicaid managed care organizations and payments the federally qualified health center or rural health clinic would have received under the Benefits Improvement and Protection Act of 2000 prospective payment system methodology. Balances due from the federally qualified health center shall be recouped from the next quarter's estimated supplemental payment.

(b) The federally qualified health center or rural health clinic shall file an annual settlement report summarizing patient encounters within one hundred fifty days following the end of a calendar year in which supplemental payments are received from the department. The total amount of supplemental and medicaid managed care organization payments received by the federally qualified health center or rural health clinic shall be reviewed against the amount that the actual number of visits provided under the federally qualified health center's or rural health clinic's contract with the medicaid managed care organization would have yielded under the prospective payment system. The department shall also receive financial records from the medicaid managed care organization. As part of this review, the department may request additional documentation from the federally qualified health center or rural health clinic and the medicaid managed care organization to resolve differences between medicaid managed care organization and provider records. Upon conclusion of the review, the department shall calculate a final payment that is due to or from the participating federally qualified health center or rural health clinic. The department shall notify the participating federally qualified health center or rural health clinic of the balance due to or from the federally qualified health center or rural health clinic. The notice of program reimbursement shall include the department's calculation of the balance due to or from the federally qualified health center or rural health clinic.

(c) For the purposes of this section, the payments received from medicaid managed care organizations exclude payments for non-prospective payment system services, managed care risk pool accruals, distributions, or losses, or any pay-for-performance bonuses or other forms of incentive payments such as quality improvement recognition grants and awards.

(d) An alternative supplemental managed care payment methodology other than the one set forth herein may be implemented as long as the alternative payment methodology is consented to in writing by the federally qualified health center or rural health clinic to which the methodology applies. [L Sp 2008, c 8, pt of §2]

Note

Section effective upon approval of the Hawaii medicaid state plan by the Centers for Medicare and Medicaid Services. L Sp 2008, c 8, §9.

L Sp 2008, c 8, §3 provides:

"SECTION 3. (a) Notwithstanding any law to the contrary, reports for final payment under section [346-53.62], Hawaii Revised Statutes, for each calendar year shall be filed within one hundred fifty days from the date the department of human services adopts forms and issues written instructions for requesting a final payment under that section.

(b) All payments owed by the department of human services shall be made on a timely basis."

" **[§346-53.63] Federally qualified health center or rural health clinic; adjustment for changes to scope of services.** (a) Prospective payment system rates may be adjusted for any increases or decreases in the scope of services furnished by a participating federally qualified health center or rural health clinic, provided that:

- (1) The federally qualified health center or rural health clinic notifies the department in writing of any changes to the scope of services and the reasons for those changes within sixty days of the effective date of the changes;
- (2) The federally qualified health center or rural health clinic submits data, documentation, and schedules that substantiate any changes in services and the related adjustment of reasonable costs following medicare principles of reimbursement; and
- (3) The federally qualified health center or rural health clinic proposes a projected adjusted rate within one hundred fifty days of the changes to the scope of services.

(b) This proposed projected adjusted rate is subject to departmental approval. The proposed projected adjusted rate shall be calculated based on a consolidated basis where the federally qualified health center or rural health clinic takes all costs for the center that would include both the costs

included in the base rate, as well as the additional costs, provided that the federally qualified health center or rural health clinic calculated the baseline prospective payment system rate based on total consolidated costs. A net change in the federally qualified health center's or rural health clinic's rate shall be calculated by subtracting the federally qualified health center's or rural health clinic's previously assigned prospective payment system rate from its projected adjusted rate.

(c) Within one hundred twenty days of its receipt of the projected adjusted rate and all additional documentation requested by the department, the department shall notify the federally qualified health center or rural health clinic of its acceptance or rejection of the projected adjusted rate. Upon approval by the department, the federally qualified health center or rural health clinic shall be paid the projected rate, which shall be effective from the date of the change in scope of services through the date that a rate is calculated based upon the first full fiscal year that includes the change in scope of services.

(d) The department shall review the calculated rate of the first full fiscal year cost report if the change of scope of service is reflected in more than six months of the report. For those federally qualified health centers or rural health clinics in which the change of scope of services is in effect for six months or less of the cost report fiscal year, review of the next full fiscal year cost report also is required. The department shall review the calculated inflated weighted average rate of these two cost reports. The total costs of the first year report shall be adjusted to the Medical Economic Index of the second year report. Each report shall be weighted based upon number of patient encounters.

(e) Upon receipt of the cost reports, the prospective payment system rate shall be adjusted following a review by the fiscal agent of the cost reports and documentation. Adjustments shall be made for payments for the period from the effective date of the change in scope of services through the date of the final adjustment of the prospective payment system rate.

(f) For the purposes of prospective payment system rate adjustment, a change in scope of services provided by a federally qualified health center or rural health clinic means the following:

- (1) The addition of a new service, such as adding dental services or any other medicaid covered service, that is not incorporated in the baseline prospective payment system rate or a deletion of a service that is

incorporated in the baseline prospective payment system rate;

- (2) A change in service resulting from amended regulatory requirements or rules;
- (3) A change in service resulting from relocation;
- (4) A change in type, intensity, duration, or amount of service resulting from a change in applicable technology and medical practice used;
- (5) An increase in service intensity, duration, or amount of service resulting from changes in the types of patients served, including but not limited to populations with human immunodeficiency virus, acquired immunodeficiency syndrome, or other chronic diseases, or homeless, elderly, migrant, or other special populations;
- (6) A change in service resulting from a change in the provider mix of a federally qualified health center or a rural health clinic or one of its sites;
- (7) Any changes in the scope of a project approved by the federal Health Resources and Services Administration where the change affects a covered service; or
- (8) Changes in operating costs due to capital expenditures associated with a modification of the scope of any of the services, including new or expanded service facilities, regulatory compliance, or changes in technology or medical practices at the federally qualified health center or rural health clinic.

(g) No change in costs, in and of itself, shall be considered a scope of service change unless the cost is allowable under medicaid principles of reimbursement and the net change in the federally qualified health center's or rural health clinic's per visit rate equals or exceeds three per cent for the affected federally qualified health center or rural health clinic site. For federally qualified health centers or rural health clinics that filed consolidated cost reports for multiple sites to establish their baseline prospective payment system rates, the net change of three per cent shall be applied to the average per visit rate of all the sites of the federally qualified health center or rural health clinic for purposes of calculating the costs associated with a scope of service change. For the purposes of this section, "net change" means the per visit change attributable to the cumulative effect of all increases or decreases for a particular fiscal year.

(h) All references in this section to "fiscal year" shall be construed to be references to the fiscal year of the individual federally qualified health center or rural health clinic, as the case may be. [L Sp 2008, c 8, pt of §2]

Note

Section effective upon approval of the Hawaii medicaid state plan by the Centers for Medicare and Medicaid Services. L Sp 2008, c 8, §9.

L Sp 2008, c 8, §4 provides:

"SECTION 4. A federally qualified health center or rural health clinic shall submit a prospective payment system rate adjustment request under section [346-53.63], Hawaii Revised Statutes, within one hundred fifty days of the beginning of the calendar year occurring after the department of human services first adopts forms and issues written instructions for applying for a prospective payment system rate adjustment under section [346-53.63], Hawaii Revised Statutes, if, during the prior fiscal year, the federally qualified health center or rural health clinic experienced a decrease in the scope of services; provided that the federally qualified health center or rural health clinic either knew or should have known the rate adjustment would result in a significantly lower per-visit rate. As used in this paragraph, "significantly lower" means an average rate decrease in excess of three per cent.

Notwithstanding any law to the contrary, the first full fiscal year's cost reports shall be deemed to have been submitted in a timely manner if filed within one hundred fifty days after the department of human services adopts forms and issues written instructions for applying for a prospective payment system rate adjustment for changes to scope of service under section [346-53.63], Hawaii Revised Statutes."

" **§346-53.64 Federally qualified health center or rural health clinic visit.** (a) Services eligible for prospective payment system reimbursement are those services that are furnished by a federally qualified health center or rural health clinic that are:

- (1) Within the legal authority of a federally qualified health center to deliver, as defined in section 1905 of the Social Security Act;
- (2) Actually provided by the federally qualified health center, either directly or under arrangements;
- (3) Covered benefits under the medicaid program, as defined in section 4231 of the State Medicaid Manual and the Hawaii medicaid state plan;
- (4) Provided to a recipient eligible for medicaid benefits;
- (5) Delivered exclusively by health care professionals, including physicians, physician's assistants, nurse

practitioners, nurse midwives, clinical social workers, clinical psychologists, and other persons acting within the lawful scope of their license or certificate to provide services;

- (6) Provided at the federally qualified health center's practice site, a hospital emergency room, in an inpatient setting, at the patient's place of residence, including long term care facilities, or at another medical facility; and
- (7) Within the scope of services provided by the State under its fee-for-service medicaid program and its medicaid managed care program, on and after August 1994, and as amended from time to time.

(b) Contacts with one or more health professionals and multiple contacts with the same health professional that take place on the same day and at a single location constitute a single encounter, except when one of the following conditions exists:

- (1) After the first encounter, the patient suffers illness or injury requiring additional diagnosis or treatment; or
- (2) The patient makes one or more visits for other services such as dental or behavioral health. Medicaid may pay for a maximum of one visit per day for each of these services in addition to one medical visit.

(c) A federally qualified health center or rural health clinic that provides prenatal services, delivery services, and postnatal services may elect to bill the managed care organization for all such services on a global payment basis. Alternatively, it may bill for prenatal and postnatal services separately from delivery services and be paid the per visit prospective payment system reimbursement for prenatal and postnatal visits. In this case, it may bill the managed care organization separately for inpatient delivery services that are not eligible for prospective payment system reimbursement. [L Sp 2008, c 8, pt of §2; am L 2015, c 20, §4]

Note

Section effective upon approval of the Hawaii medicaid state plan by the Centers for Medicare and Medicaid Services. L Sp 2008, c 8, §9.

L Sp 2008, c 8, §5 provides:

"SECTION 5. The department of health may provide resources to nonprofit, community-based health care providers for direct medical care for the uninsured, including:

- (1) Primary medical;
- (2) Dental;
- (3) Behavioral health care; and
- (4) Ancillary services, including:
 - (A) Education;
 - (B) Follow-up;
 - (C) Outreach; and
 - (D) Pharmacy services.

Distribution of funds may be on a "per-visit" basis, taking into consideration need on all islands."

" **[\$346-53.65] Appeal.** A federally qualified health center or rural health clinic may appeal a decision made by the department if the medicaid impact is \$10,000 or more, whereupon the opportunity for an administrative hearing under chapter 91 shall be afforded. Any federally qualified health center or rural health clinic aggrieved by the final decision and order shall be entitled to judicial review in accordance with chapter 92 or may submit the matter to binding arbitration pursuant to chapter 658A. [L Sp 2008, c 8, pt of §2]

Note

Section effective upon approval of the Hawaii medicaid state plan by the Centers for Medicare and Medicaid Services. L Sp 2008, c 8, §9.

" **[\$346-53.8] Kahuku medical center.** *[Section repealed June 30, 2023. L 2013, c 143, §4.]* The Kahuku medical center is designated as a rural hospital for the purpose of qualifying as a critical access hospital. [L 2013, c 143, §2]

" **§346-54 Report to the legislature.** On or before January 1 of odd-numbered years the director shall submit a report to the legislature concerning the adequacy of the assistance allowance established by this chapter.

In addition, should general fund expenditures for financial assistance and medical payment increase at a rate greater than the rate of increase in general fund tax revenues in any fiscal year, the director shall report such increases to the legislature and make cost control recommendations that will control increases in general fund public assistance expenditures. Cost control recommendations shall include, but not be limited to, the following:

- (1) Changes in eligibility standards;
- (2) Adjustments to the assistance allowance;

- (3) Alternatives to financial assistance for meeting the needs essential to maintaining an adequate standard of living; and
- (4) Adjustments to medical payment fees and levels of service. [L 1975, c 145, pt of §1(3); am L 1978, c 104, §2; am L 1979, c 52, §4; am L 1987, c 344, §3; am L 1988, c 327, §3]

Revision Note

In the second paragraph, (1) to (4) reformatted as paragraphs (1) to (4) and punctuation changed pursuant to §23G-15.

" **§346-55 REPEALED.** L 1983, c 196, §3.

" **[§346-55.1] Visitation, custody, and support when public assistance paid.** Whenever public assistance is paid to or for the benefit of any dependent child, the existence or enforcement of a duty of support owed by a noncustodial parent to such child shall not be affected by a failure or refusal by the custodial parent to implement any right as to custody or visitation granted by a court to the noncustodial parent. [L 1983, c 66, §1]

" **§346-55.5 REPEALED.** L 1986, c 332, §24.

" **§346-56 State reimbursement.** The department of human services shall comply with all federal requirements pertaining to methods and standards of administration and shall make such rules and regulations and follow such procedures as may be required for the receipt from the federal government of grants or grants-in-aid for public assistance and such administrative costs as are provided in connection therewith. [L 1975, c 145, pt of §1(3); am L 1987, c 339, §4]

Case Notes

Under federal regulations, income tax refund is not "income" for determining need for benefits. 396 F. Supp. 375 (1975).

" **§346-57 Loans to applicants for federal supplemental security income.** Notwithstanding any laws to the contrary, the department of human services may, out of its operating funds, make loans to any person eligible for public assistance as provided in this chapter who is an applicant for benefits under the federal supplemental security income program or its successor agency subject to the following conditions:

- (1) The Federal Bureau of Supplemental Security Income has denied applicant's request for advance payment or finding of presumptive eligibility for supplemental security income;
- (2) The loan or loans shall be for a period not to exceed the action of the Federal Bureau of Supplemental Security Income approving or disapproving assistance under its program;
- (3) The loan or loans shall bear no interest;
- (4) The loan or loans shall not exceed the amount of assistance otherwise available to the applicant under this chapter;
- (5) The loan or loans shall be repaid by the applicant out of the retroactive supplemental security income payments, provided that nothing herein shall restrict the federal government from making direct payments to the State for such loan or loans, and provided further that the loan or loans shall be discharged and no repayment shall be required from an applicant whose application for federal supplemental security income assistance has been disapproved;
- (6) The applicant shall not be eligible for financial assistance by the department, provided that the applicant shall become eligible for such assistance upon disapproval of the application for federal supplemental security income assistance. [L 1975, c 145, pt of §1(3); am L 1979, c 52, §5; gen ch 1985; am L 1987, c 339, §4]

" **[§346-57.5] Interim assistance reimbursement special fund.**

(a) There is established in the state treasury the interim assistance reimbursement special fund, to be administered by the department, into which shall be deposited:

- (1) Moneys received from the federal government pursuant to section 346-57;
- (2) Appropriations made by the legislature to the fund;
- (3) Any interest that accrues upon the balance in the fund; and
- (4) Any other revenues designated for the fund.

(b) Moneys in the interim assistance reimbursement special fund shall be used for:

- (1) State-funded financial assistance payments; and
- (2) Programs that support and assist recipients to qualify for supplemental security income.

(c) All unencumbered and unexpended moneys in excess of \$3,000,000 in the interim assistance reimbursement special fund shall lapse to the credit of the general fund. Upon dissolution

of the special fund, any unencumbered and unexpended moneys remaining on balance in the fund shall lapse to the credit of the general fund.

(d) Moneys in the interim assistance reimbursement special fund may be used for general assistance to households without minor dependents; provided that these moneys shall not be considered by the director in determining the general assistance allowance as set forth in section 346-53(b).

(e) The department shall submit a report to the legislature detailing the amount of, and reason for, any expenditure from the interim assistance reimbursement special fund within ten business days of the expenditure. [L 2015, c 196, §2]

" **§346-58 REPEALED.** L 1976, c 150, §3.

" **§346-59 Medical care payments.** (a) The department shall adopt rules under chapter 91 concerning payment to providers of medical care. The department shall determine the rates of payment due to all providers of medical care, and pay such amounts in accordance with the requirements of the appropriations act and the Social Security Act, as amended. Payments to critical access hospitals for services rendered to medicaid beneficiaries shall be calculated on a cost basis using medicare reasonable cost principles.

(b) Rates of payment to providers of medical care who are individual practitioners, including doctors of medicine, dentists, podiatrists, psychologists, osteopaths, optometrists, and other individuals providing services, shall be based upon the Hawaii medicaid fee schedule. The amounts paid shall not exceed the maximum permitted to be paid individual practitioners or other individuals under federal law and regulation, the medicare fee schedule for the current year, the state limits as provided in the appropriation act, or the provider's billed amount.

The appropriation act shall indicate the percentage of the medicare fee schedule for the year 2000 to be used as the basis for establishing the Hawaii medicaid fee schedule. For any subsequent adjustments to the fee schedule, the legislature shall specify the extent of the adjustment in the appropriation act.

(c) In establishing the payment rates for other noninstitutional items and services, the rates shall not exceed the current medicare payment, the state limits as provided in the appropriation act, the rate determined by the department, or the provider's billed amount.

(d) Payments to health maintenance organizations and prepaid health plans with which the department executes risk contracts for the provision of medical care to eligible public assistance recipients may be made on a prepaid basis. The rate of payment per participating recipient shall be fixed by contract, as determined by the department and the health maintenance organization or the prepaid health plan, but shall not exceed the maximum permitted by federal rules and shall be less than the federal maximum when funds appropriated by the legislature for such contracts require a lesser rate. For purposes of this subsection, "health maintenance organizations" are entities approved as such, and "prepaid health plans" are entities designated as such by the Department of Health and Human Services; and "risk" means the possibility that the health maintenance organization or the prepaid health plan may incur a loss because the cost of providing services may exceed the payments made by the department for services covered under the contract.

(e) The department shall prepare each biennial budget request for a medical care appropriation based upon the most current Hawaii medicaid fee schedule available at the time the request is prepared.

The director shall submit a report to the legislature on or before January 1 of each year indicating an estimate of the amount of money required to be appropriated to pay providers at the maximum rates permitted by federal and state rules in the upcoming fiscal year. [L 1976, c 150, §2; am L 1979, c 220, §1; am L 1983, c 252, §1; am L 1986, c 107, §1; am L 1987, c 290, §2; am L 1988, c 308, §1; am L 1990, c 263, §§2, 3; am L 2000, c 226, §§4, 9; am L 2001, c 29, §§2, 4; am L 2002, c 16, §28; am L 2004, c 148, §2]

Cross References

Medicaid fraud unit, see §28-91.

Medical assistance application information; annual report; public disclosure, see §346-29.3.

Medical assistance frauds, penalties, see §346-43.5.

" **[§346-59.1] Coverage for telehealth.** [*Section effective January 1, 2017.*] (a) The State's medicaid managed care and fee-for-service programs shall not deny coverage for any service provided through telehealth that would be covered if the service were provided through in-person consultation between a patient and a health care provider.

(b) Reimbursement for services provided through telehealth shall be equivalent to reimbursement for the same services

provided via face-to-face contact between a health care provider and a patient. Nothing in this section shall require a health care provider to be physically present with the patient at an originating site unless a health care provider at the distant site deems it necessary.

(c) There shall be no geographic restrictions or requirements for telehealth coverage or reimbursement under this section.

(d) There shall be no restrictions on originating site requirements for telehealth coverage or reimbursement under this section.

(e) Services provided by telehealth pursuant to this section shall be consistent with all federal and state privacy, security, and confidentiality laws.

(f) Notwithstanding any other law to the contrary, the provisions of this section shall comply with the applicable federal requirements related to utilization, coverage, and reimbursement for telehealth services.

(g) For the purposes of this section:

"Distant site" means the location of the health care provider delivering services through telehealth at the time the services are provided.

"Health care provider" means a provider of services, as defined in title 42 United States Code section 1395x(u), a provider of medical and other health services, as defined in title 42 United States Code section 1395x(s), other practitioners licensed by the State and working within their scope of practice, and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business, including but not limited to primary care providers, mental health providers, oral health providers, physicians and osteopathic physicians licensed under chapter 453, advanced practice registered nurses licensed under chapter 457, psychologists licensed under chapter 465, and dentists licensed under chapter 448.

"Originating site" means the location where the patient is located, whether accompanied or not by a health care provider, at the time services are provided by a health care provider through telehealth, including but not limited to a health care provider's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other non-medical environments such as school-based health centers, university-based health centers, or the work location of a patient.

"Telehealth" means the use of telecommunications services, as defined in section 269-1, to encompass four modalities: store and forward technologies, remote monitoring, live

consultation, and mobile health; and which shall include but not be limited to real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, for the purpose of delivering enhanced health care services and information while a patient is at an originating site and the health care provider is at a distant site. Standard telephone contacts, facsimile transmissions, or e-mail text, in combination or by itself, does not constitute a telehealth service for the purposes of this section. [L 2016, c 226, §2]

" **§346-59.2 Comprehensive breast and cervical cancer control program.**

(a) There is established the comprehensive breast and cervical cancer control program, to be administered by the department of human services in collaboration with the department of health, to assist women who have been diagnosed with breast or cervical cancer by the Hawaii comprehensive breast and cervical cancer control program, but who are not eligible for federally-funded medicaid coverage as provided by the Breast and Cervical Cancer Prevention and Treatment Act of 2000.

(b) Under the comprehensive breast and cervical cancer control program, the department of human services shall provide state-funded medical assistance, as appropriated by the legislature, to women who are diagnosed with breast or cervical cancer through the Hawaii comprehensive breast and cervical cancer control program, but who are not eligible for federal medicaid coverage; provided that the person either:

- (1) Is a resident alien of Hawaii who is not eligible for medicaid; or
- (2) Would be eligible under medicaid except that the person has health care coverage that specifically does not provide coverage for cancer treatment.

(c) The department of health shall work collaboratively with the department of human services to assist in and support the screening, education, and outreach process regardless of a woman's eligibility for medicaid coverage.

(d) Under the comprehensive breast and cervical cancer control program, the department of health shall provide state-funded medical assistance, as funded by the legislature, to:

- (1) Screen women for breast and cervical cancer;
- (2) Educate women regarding the risks associated with breast and cervical cancer; and

- (3) Provide outreach to women who are at risk for breast and cervical cancer.

[(e)] The department of health and the department of human services shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session on the expenditure of all funds for the comprehensive breast and cervical cancer control program. [L 2001, c 278, §2; am L 2008, c 52, §§2, 4]

Revision Note

Subsection (e) was codified to this section pursuant to §23G-15.

" **§346-59.4 Medical assistance to other children.** The department shall provide state-funded medical assistance, of up to two hundred per cent of the federal poverty level for Hawaii, to persons less than nineteen years of age who are:

- (1) Legal permanent residents who arrived after August 22, 1996;
- (2) Persons who are permanently residing under color of law; and
- (3) Nonimmigrants from the Trust Territories of the Pacific Islands who are citizens of:
 - (A) The Marshall Islands;
 - (B) The Federated States of Micronesia; or
 - (C) Palau,as defined by the Compact of Free Association Act of 1985, P.L. 99-239, or the Compact of Free Association between the United States and the Government of Palau, P.L. 99-658,

who are otherwise eligible for benefits under the State's medicaid program and the State's children health insurance program, but are ineligible due to restricted eligibility rules imposed by title XXI of the Social Security Act, the Personal Responsibility and Work [Opportunity] Reconciliation Act of 1996, the Compact of Free Association Act of 1985, P.L. 99-239, the Compact of Free Association between the United States and the Government of Palau, P.L. 99-658, or any other provision of federal law denying medical assistance to nonimmigrants who are citizens of the Marshall Islands, the Federated States of Micronesia, or Palau. [L 2000, c 224, §2; am L 2007, c 236, §§4, 14; am L Sp 2009, c 8, §2; am L 2015, c 20, §5]

" **[\$346-59.5] Enforcement of contracts.** (a) The director may monitor a health plan's performance during any contract period.

(b) In addition to any other administrative or judicial remedy, the director may impose civil or administrative monetary penalties not to exceed the maximum amount established by federal statutes and regulations if the health plan:

- (1) Fails to provide medically necessary items and services that are required under law or under contract;
- (2) Imposes upon beneficiaries excess premiums and charges;
- (3) Acts to discriminate among enrollees;
- (4) Misrepresents or falsifies information;
- (5) Violates marketing guidelines; or
- (6) Violates other contract provisions and requirements.

(c) The director may appoint temporary management to oversee compliance efforts if a health plan continues to engage in violations of contract, law or rules, or if there is a substantial risk to the health of enrollees.

(d) Pursuant to chapter 91, the director may adopt and enforce such rules as may be necessary to carry out the purposes of this section.

(e) The director shall notify the insurance commissioner whenever a sanction under this section is contemplated. [L 1998, c 94, §1]

" **§346-59.6 Medicaid overpayment recovery.** The director shall recover medicaid overpayments made to providers. Medicaid overpayments shall be recovered due to a provider's ineligibility, noncovered service, noncovered drug, lack of prior authorization when a service requires one, incorrect payment allowance identified through any post payment review, or claims processing error. The director may recover overpayments through recoupment, tax offset under sections 231-51 to 231-59, and circuit court judgment. Nothing in this section shall limit the director's authority to recover overpayments through all other lawful means. [L 1998, c 293, §1; am L 2001, c 55, §16]

" **[§346-59.7] Enforcement of decisions regarding medicaid overpayment recovery; judgment rendered thereon.** (a) The director may file in the circuit court in the jurisdiction in which the medicaid overpayment occurred a certified copy of:

- (1) A decision of the director assessing a medicaid overpayment against a provider from which no appeal has been taken within the time allowed therefor;
- (2) A decision of the director assessing a medicaid overpayment against a provider from which an appeal has been taken but in which no order has been made by the director, the administrative appeals officer, or

the court that the appeal shall operate as a supersedeas or stay;

- (3) A decision of the administrative appeals officer assessing a medicaid overpayment against a provider from which no appeal has been taken within the time allowed therefor; or
- (4) A decision of the administrative appeals officer assessing a medicaid overpayment against a provider from which an appeal has been taken but in which no order has been made by the administrative appeals officer or the court that the appeal shall operate as a supersedeas or stay.

The court shall render a judgment in accordance with the decision and notify the parties thereof. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by the court, except that there shall be no appeal therefrom.

(b) In all cases in which an appeal from the decision has been taken within the time provided, but in which the director, the administrative appeals officer, or the court has not issued an order that the appeal shall operate as a supersedeas or stay, the decree or judgment of the circuit court shall provide that the decree or judgment shall become void if the decision or award of the director or administrative appeals officer, as the case may be is later set aside.

(c) As used in this section, the term "administrative appeals officer" means the director's designated subordinate appointed to contested case hearings pursuant to chapter 91, and this chapter. [L 1998, c 293, §2]

" **§346-59.8 REPEALED.** L 2003, c 191, §4.

" **§346-59.9 Psychotropic medication.** (a) This section shall apply only to the medicaid managed care and fee-for-service programs administered by the department when the department or the department's contracted health plan is the primary insurer. When the department is the secondary insurer, the department and its contracted health plans shall be responsible only for the secondary insurer's share of any psychotropic medication covered by the primary insurer.

(b) The department and its contracted health plans shall not impose any restriction or limitation on the coverage for, or a recipient's access to, antipsychotic medication.

(c) The department and its contracted health plans shall not impose any restriction or limitation on the coverage for, or a recipient's access to, antidepressant medication other than:

- (1) Requiring that an individual must have two failed attempts on a generic antidepressant medication to receive coverage for a new brand-name antidepressant prescription; and
- (2) Requiring that if an individual does not have two failed attempts on a generic antidepressant medication, that individual shall receive coverage for a brand-name antidepressant medication with prior authorization by the contracted health plan; provided that while a prior authorization request for a brand-name antidepressant medication submitted by the prescriber is pending, a supply of the prescribed medication sufficient to last until the request is resolved shall be covered if requested by the prescriber.

For purposes of this subsection, a "failed attempt" means that the prescribed generic antidepressant medication up to the maximum FDA-approved dosage is not effective in treating the individual, or the individual's compliance is compromised due to the side effects caused by the medication.

(d) The department and its contracted health plans shall not impose any restriction or limitation on the coverage for, or a recipient's access to, anti-anxiety medication other than:

- (1) Requiring that an individual must have two failed attempts on a generic anti-anxiety medication to receive coverage for a new brand-name anti-anxiety prescription; and
- (2) Requiring that if an individual does not have two failed attempts on a generic anti-anxiety medication, that individual shall receive coverage for a brand-name anti-anxiety medication with prior authorization by the contracted health plan; provided that while a prior authorization request for a brand-name anti-anxiety medication submitted by the prescriber is pending, a supply of the prescribed medication sufficient to last until the request is resolved shall be covered if requested by the prescriber.

For purposes of this subsection, a "failed attempt" means that the prescribed generic anti-anxiety medication up to the maximum FDA-approved dosage is not effective in treating the individual, or the individual's compliance is compromised due to the side effects caused by the medication.

(e) The department and its contracted health plans shall not require any individual stable on a brand-name antidepressant medication on or before July 1, 2010, to transfer to a different antidepressant medication, generic or brand-name, unless the

individual's condition becomes unstable and requires the medication to be replaced.

(f) The department and its contracted health plans shall not require any individual stable on a brand-name anti-anxiety medication on or before July 1, 2010, to transfer to a different anti-anxiety medication, generic or brand-name, unless the individual's condition becomes unstable and requires the medication to be replaced.

(g) The department and its medicaid managed care contracted health plans shall have the authority to investigate fraud, abuse, or misconduct.

(h) The department shall report to the legislature no later than twenty days before the convening of each regular session on:

(1) The number of brand-name and generic prescriptions written to which this section applies; and

(2) The amount expended on brand-name prescriptions and the amount expended on generic prescriptions written each fiscal year to which this section applies.

(i) All psychotropic medications covered by this section shall be prescribed by a psychiatrist, a physician, or an advanced practice registered nurse with prescriptive authority under chapter 457 and duly licensed in the State.

(j) As used in this section:

"Anti-anxiety medication" means those medications included in the United States Pharmacopeia's anxiolytic therapeutic category.

"Antidepressant medication" means those medications included in the United States Pharmacopeia's antidepressant therapeutic category.

"Antipsychotic medication" means those medications included in the United States Pharmacopeia's antipsychotic therapeutic category.

"Psychotropic medication" means only antipsychotic, antidepressant, or anti-anxiety medications approved by the United States Food and Drug Administration for the treatment of mental or emotional disorders. [L 2005, c 239, pt of §2, §5; am L 2006, c 311, pt of §2, §3; am L 2007, c 39, §§1, 2; am L 2010, c 205, §§2, 9; am L 2012, c 120, §2; am L 2015, c 20, §§6, 7]

" **[§346-60] Group therapy; reimbursement for services.** (a) The department shall establish rules pursuant to chapter 91 to permit payment to providers of group therapy services to recipients under this chapter.

(b) For the purposes of this section, "group therapy" shall be defined as psychotherapeutic treatment delivery in which a patient receives treatment as a member of a group of

patients receiving similar treatment, involving interaction both between the patient and the practitioner and among patients, and which is supervised by a practitioner licensed under chapters 453 or 465. [L 1976, c 236, §2]

" **[§346-61] Optometric services, choice.** Whenever visual or optometric services within the lawful scope of practice of a duly licensed optometrist are included in any program, financed with public funds or administered by any public agency, for aid to the indigent, the aged, the legally blind, or any other group or class, the recipient of the aid shall be entitled to choose whether the services are to be performed by a duly licensed physician or by a duly licensed optometrist. Visual or optometric services as used herein include eye and/or visual examination or a correction of any vision or muscular anomaly and the supplying of ophthalmic materials, including contact lenses and subnormal vision aids. [L 1977, c 36, pt of §1]

" **§346-62 Examination of blind.** The department of human services shall not approve an application for public assistance to a blind person until the applicant has been examined by an ophthalmologist, optometrist, or a qualified physician designated by it to make such examinations. The examining person shall certify to the department the diagnosis, prognosis, and visual acuity of the applicant. Certification shall be in forms prescribed by the department. [L 1977, c 36, pt of §1; am L 1987, c 339, §4]

" **[§346-63] Social services.** (a) The department shall adopt rules to provide social services pursuant to the Social Security Act, as amended, to eligible persons who are residents of the State. Such rules shall include provisions to permit payment for social services received by recipients from individuals, organizations, or other public or private agencies, and to enable the recipients to satisfy statutory requirements of state and federal tax and employment insurance programs.

(b) The department may contract for the purchase of social services to be performed for the benefit of eligible recipients from individuals, organizations, and private or public agencies, or to reimburse an eligible recipient for department authorized social services obtained directly from individuals. Persons performing authorized social services obtained directly by the recipient shall not be considered employees of the State. The rate of payment for social services obtained directly by the recipient from an individual who is not self-employed shall reflect the recipient's obligation under state and federal tax and employment insurance laws. [L 1978, c 110, §3]

" **§346-64 REPEALED.** L 1999, c 51, §1.

" **[§346-64.5] Eligibility for chore services.** (a) An applicant for chore services shall be eligible when the applicant meets program requirements for chore services and income eligibility standards as established by the department of human services. Income eligibility standards shall include individuals who have been found eligible for medical assistance under the department's medicaid program.

(b) For the purposes of this section, "chore services" means essential housecleaning and related activities such as marketing, cooking, and cleaning. [L 1988, c 208, §1]

Cross References

Medicaid home and community-based waiver programs, see chapter 346D.

" **§346-65 Child abuse and neglect discretionary emergency assistance.** (a) The department may grant funds to a family for child abuse and neglect discretionary emergency assistance in accordance with this section. The purpose of these grants is to assist children and families when an emergency situation arises or is imminent which may cause child abuse or neglect or has caused children and families to need assistance from the department pursuant to chapter 587A, and the financial assistance may prevent the abuse or neglect, prevent the removal of a child from a family, or would meet the immediate needs of a child who has been removed from a family.

(b) Emergency assistance shall be authorized when:

- (1) A situation arises or is imminent which presents an immediate or imminent threat of child abuse or neglect or has caused children and families to need assistance from the department pursuant to chapter 587A;
- (2) The family is eligible for public assistance or has no available financial resources;
- (3) Financial assistance may eliminate or alleviate the situation and remove the immediate or imminent threat of child abuse or neglect; and
- (4) No other financial resources are available from within the family or from other public or private source which could be used to eliminate or alleviate the situation.

(c) Emergency assistance may be used for shelter, respite child care, clothing, transportation, medical costs, utilities, food, repairs, essential equipment, and other goods or services

which in the discretion of the department are necessary to eliminate or alleviate the emergency situation.

(d) A family shall not be granted more than \$1,000 in emergency assistance during one fiscal year; except that under an exceptional situation as determined by the director, a family may be granted not more than \$2,000 during one fiscal year.

(e) For the purposes of this chapter only, emergency assistance shall not be considered income to the head of household or family nor as part of the family's assistance allowance. [L 1986, c 160, §1; am L 1988, c 327, §4; am L 2010, c 135, §7]

" **[§346-66] Psychological services.** When the health care or rehabilitative services authorized under this chapter are services which a psychologist is licensed to render under chapter 465, the department shall not require referral, direction, or prescription of services by another health care practitioner. [L 1987, c 290, §1]

" **§346-67 Medical foods and low-protein modified food products; treatment of inborn error of metabolism; notice.** (a) Public assistance recipients in this State who receive medical assistance pursuant to this chapter shall be allowed coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician or osteopathic physician licensed under chapter 453.

The department shall adopt rules pursuant to chapter 91 to effectuate this subsection.

(b) All health maintenance organizations and prepaid health plans with which the department executes risk contracts for the provision of medical care to eligible public assistance recipients shall provide notice to their members regarding the coverage required by this section. The notice shall be in writing and prominently placed in any literature or correspondence sent to members and shall be transmitted to members within calendar year 2000 when annual information is made available to members, or in any other mailing to members, but in no case later than December 31, 2000.

(c) For the purposes of this section:

"Inborn error of metabolism" means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from

congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

"Low-protein modified food product" means a food product that:

- (1) Is specially formulated to have less than one gram of protein per serving;
- (2) Is prescribed or ordered by a physician or osteopathic physician as medically necessary for the dietary treatment of an inborn error of metabolism; and
- (3) Does not include a food that is naturally low in protein.

"Medical food" means a food that is formulated to be consumed or administered enterally under the supervision of a physician or osteopathic physician and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation. [L 1999, c 86, §1; am L 2009, c 11, §45]

" **§346-68 Bridge to hope program; transitional benefits.**

(a) There is created within the department a post-secondary education benefits program, to be known as the bridge to hope program, for heads of households in the first-to-work program.

(b) To receive assistance under this program, the participant shall:

- (1) Be enrolled as a student each term in an approved course of study including, but not limited to, vocational education;
- (2) Maintain passing grades or better throughout the course of study; and
- (3) Meet work activity requirements as defined by the department.

(c) Internships, externships, practicums, or any other work training required by the course of study shall count toward the recipient's work requirement.

(d) The department shall adopt rules in accordance with chapter 91 to carry out the purpose of this section. [L 2000, c 276, §2; am L 2008, c 82, §2]

" **[§346-69] Welfare safety net program; department of human services.** The department of human services may create a welfare safety net program entitled "Keeping Hope Alive" to assist working families that will be disqualified from receiving further public assistance as a consequence of reaching the five-year time limit set by the federal Personal Responsibility and Work Opportunity [Reconciliation] Act of 1996. [L 2001, c 150, §4]

" **[§346-70] Medical assistance for other pregnant women.**

(a) The department may provide state-funded medical assistance to a pregnant woman age nineteen years of age or older whose countable family income does not exceed one hundred and eighty-five per cent of the federal poverty level for a family of applicable size, including the expected unborn children. The pregnant woman shall be:

- (1) A legal immigrant who entered the United States on or after August 22, 1996; and
- (2) Otherwise eligible for benefits under the State's medicaid program but is prohibited from participating in any medical assistance program under title XIX of the Social Security Act for a period of five years beginning on the date of her entry into the United States, due to restricted eligibility rules imposed by title XIX of the Social Security Act and the Personal Responsibility and Work [Opportunity] Reconciliation Act of 1996.

(b) Once determined eligible for medical assistance under this section, the pregnant woman shall continue to be eligible throughout her pregnancy and through the last day of the calendar month in which the sixty-day period following childbirth ends.

(c) Assets shall not be evaluated for eligibility purposes.

(d) The director shall adopt rules pursuant to chapter 91 to determine eligibility for medical assistance. [L 2004, c 160, §2]

**"PART III. GENERAL ASSISTANCE
TO HOUSEHOLDS WITHOUT MINOR DEPENDENTS**

Note

Part heading amended by L 1997, c 200, §§6, 11; L 1998, c 127, §5.

§346-71 General assistance to households without minor dependents. (a) The department of human services is authorized to administer and provide public assistance to eligible persons who are disabled, who are not otherwise provided for under this chapter, and who are unable to provide sufficient support for themselves or those dependent upon them; provided that such persons:

- (1) Have first been determined ineligible for a comparable federally funded financial assistance program;

- (2) Are bona fide residents of this State; and
- (3) Have furnished to the department a social security account number for each member of the assistance unit or verification that an application was made with the Social Security Administration for a social security account number for each member of the assistance unit.

Persons who meet the categorical criteria for eligibility, but fail to satisfy income and resource criteria adopted by the department shall not be eligible for general assistance to household without minor dependents. The failure of any adult member of the assistance unit to comply with the requirements or conditions of general assistance to households without minor dependents shall exclude the entire assistance unit from receiving financial assistance. However, when the adult member is disqualified for not meeting the work requirement, the assistance unit shall not be disqualified if the assistance unit was formed after the failure to meet the work requirement occurred. "Assistance unit" as the term is used in this section means persons whose needs, income, and assets are considered in the financial assistance payment and their dependents.

For purposes of determining whether persons seeking assistance are bona fide residents of this State, the department of human services shall consider, but is not limited to considering, the following factors:

- (1) Enrollment and receipt of welfare benefits from another jurisdiction;
 - (2) Physical presence in the State;
 - (3) Maintenance of a place of residence in the State;
 - (4) The availability of furnishings and household and personal effects sufficient to lead a reasonable person to conclude that the place of residence is more than a public accommodation;
 - (5) Qualification as to residence for purposes of voting in the State;
 - (6) Change in vehicle operation license;
 - (7) Vehicle registration;
 - (8) Enrollment of children in local schools; and
 - (9) Bank accounts in this State or any other jurisdiction.
- (b) A person between eighteen and sixty-five years of age with a disability shall be eligible for general assistance to households without minor dependents if the person:
- (1) Is determined to be needy in accordance with standards established by this chapter and the rules adopted under subsection (e);
 - (2) Is unable to meet the disability requirements established by the federal supplemental security income program or its successor agency; and

- (3) Is unable to engage in any substantial gainful employment because of a determined and certified physical, mental, or combination of physical and mental disability. Upon application, the department shall ask the person whether the person has a physical or mental disability, or both. If the person claims to have both a physical and mental disability, the department shall ask the person to choose whether the person's primary disability is physical or mental. Determination and certification of the disability shall be as follows:
- (A) A determination and certification of physical disability shall be made by a board of licensed physicians designated and paid by the department. Meetings of this board shall not be subject to part I of chapter 92;
 - (B) A determination and certification of mental disability shall be made by a board of licensed psychologists or licensed physicians whose specialty is in psychiatry. This board shall be designated and paid by the department. Meetings of this board shall not be subject to part I of chapter 92;
 - (C) If a determination and certification is made that the applicant does not have a physical, mental, or combination of a physical and mental disability, prior to a denial of any claim, the department shall provide the applicant with an initial denial notice that gives the applicant at least ten calendar days to provide additional medical evidence. The notice shall refer the applicant to free legal services for assistance and permit the applicant to request extensions of time, if necessary;
 - (D) If a determination of physical, mental, or combination of a physical and mental disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person's choice. The department shall promptly provide the person with a complete and legible copy of the recommended appropriate treatment;
 - (E) Any person, to continue to be certified as mentally disabled, physically disabled, or both mentally and physically disabled, shall be reevaluated annually, as provided by this

section, and more frequently, as required by the department; and

- (F) Failure to pursue appropriate medical treatment shall result in a loss of eligibility, unless the failure is due to good cause. Good cause shall include but not be limited to:
 - (i) Treatment is unavailable;
 - (ii) Personal emergencies; and
 - (iii) Circumstances that threaten the safety of the patient.

The department shall adopt rules in accordance with chapter 91 to define "good cause", as used in subparagraph (F), in order to determine when treatment is unavailable, what constitutes a personal emergency, what circumstances may threaten the safety of a patient, and other factors that may constitute good cause.

As used in this subsection:

"Substantial gainful employment" means at least thirty hours of work per week.

"With a disability" or "having a disability" means a disability that extends for a period of over sixty days.

Any person determined to be eligible under this subsection may be referred to any appropriate state agency for vocational rehabilitation services and shall be required to accept the services as a further condition of eligibility for the receipt of general assistance to households without minor dependents under this section. An assistance unit shall be determined ineligible for general assistance to households without minor dependents if any adult member of the assistance unit fails to cooperate with any appropriate state agency for vocational rehabilitation services after being referred for services. Any person found eligible under this subsection may also be required to seek employment and participate in public work projects, as described in section 346-31, and in public employment projects, as described in section 346-102.

(c) Applicants and recipients shall be required to satisfy all applicable provisions of this section. Recipients disqualified for failure to comply with any of the requirements under this section shall be excluded from general assistance to households without minor dependents for a period not to exceed twelve months.

(d) The allowance for general assistance to households without minor dependents shall not exceed sixty-two and one-half per cent of the standard of need.

(e) Within the limitations of this section, the department shall by rules adopted pursuant to chapter 91, determine:

- (1) The allowance for general assistance to households without minor dependents based upon the total amount

- appropriated for general assistance to households without minor dependents;
- (2) A method for determining assistance amounts; and
 - (3) Other necessary provisions to implement general assistance to households without minor dependents. [L 1941, c 296, pt of §1; RL 1945, §4863; am L 1951, c 291, §1; am L 1953, c 153, §15; RL 1955, §108-41; am L Sp 1959 2d, c 1, §12; HRS §346-71; am L 1970, c 105, §5; am L 1971, c 203, §1; am L 1973, c 177, §3; am L Sp 1974, c 1, §1; am L 1978, c 103, §2; am L 1979, c 175, §§1 to 3; am L 1981, c 119, §1; am L 1982, c 99, §1; am L 1985, c 24, §1; gen ch 1985; am L 1987, c 290, §3 and c 339, §4; am L 1989, c 12, §1 and c 234, §1; am L 1995, c 166, §2; am L 1996, c 289, §2; am L 1997, c 200, §7 and c 354, §3; am L 1998, c 127, §2; am L 2003, c 105, §1; am L 2004, c 208, §1]

Case Notes

Section, as amended by Act 166 [L 1995], violated neither Title II of Americans with Disabilities Act, nor the equal protection and due process clauses of the U.S. Constitution. 83 F.3d 1150 (1996).

Under federal regulations, income tax refund is not "income" for determining need for benefits. 396 F. Supp. 375 (1975).

Inability to engage in substantial gainful employment. 67 H. 560, 698 P.2d 280 (1985).

Where administrative rules failed to set forth the method by which department determined general assistance amounts, and the method used by department to determine amounts was adopted without compliance with chapter 91, administrative rules contravened statutory mandate of subsection (f) (1996) and were thus void and unenforceable. 88 H. 307, 966 P.2d 619 (1998).

Authorizes suit by eligible recipients to recover benefits wrongfully denied. 6 H. App. 160, 715 P.2d 813 (1986).

" **§346-72 Applications.** Applications for general assistance to households without minor dependents shall be made by the applicant or by someone acting in the applicant's behalf in the manner, place, and form prescribed by the department of human services. [L 1941, c 296, pt of §1; RL 1945, §4864; RL 1955, §108-42; HRS §346-72; am L 1970, c 105, §5; gen ch 1985; am L 1987, c 339, §4; am L 1997, c 200, §§8, 11; am L 1998, c 127, §5]

Case Notes

Regulations providing that applications be processed within a stated period require good faith compliance that is reasonable in view of the resources available to the department to carry out welfare functions. 54 H. 125, 504 P.2d 1217 (1972).

" **§346-73 REPEALED.** L 1975, c 145, §2.

" **[[§346-74] Representative payee.** (a) Persons determined to be eligible under section 346-71 because they have a primary diagnosis of substance abuse shall have their benefits issued through a representative payee. The representative payee shall be designated by the department of health.

(b) Persons whose eligibility is not determined until after December 1, 1995, shall have their benefits issued through a representative payee. Persons whose eligibility has been determined prior to December 1, 1995, shall have their benefits issued through a representative payee when recertified.

[(c)] The department of health shall submit annual reports to the legislature no later than twenty days prior to the convening of each regular session, detailing the money expended during the year on the representative payee program and providing general demographic data, such as age, ethnicity, gender, and geographic residence, of the people served by the program. [L 1995, c 207, §§2, 5]

" **§346-75 REPEALED.** L 1998, c 127, §3.

Cross References

For similar provision, see §346-14.5.

"PART IV. SERVICES TO ADULTS

Cross References

Medicaid home and community-based waiver programs, see chapter 346D.

A. Day Care Center--Repealed

§§346-81 to 346-85 REPEALED. L 2012, c 93, §7.

Cross References

For present provisions, see chapter 321, part XXXIX.

"B. Family Boarding Homes--Repealed

§346-90 REPEALED. L 1978, c 107, §7.

" **§§346-91 to 346-96 REPEALED.** L 1985, c 272, §11.

"[C. General Provisions]

§346-97 Criminal history record checks. (a) For the purposes of this section:

"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 search by name, and other identifying information, using the state computerized criminal history record information system.

"Department" means the department of human services.

"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.

"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 establishing standards regarding the reputable and responsible character of service providers who have direct contact with individuals receiving services under this part, including:

- (1) Purchase of service contracted and subcontracted service providers and their employees serving clients of the adult protective and community services branch;
- (2) The foster grandparent program, senior companion program, and respite companion program participants; and
- (3) Contracted and subcontracted service providers and their employees and new employees who provide home and community-based services under section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)), or under any other applicable section or sections of the Social

Security Act for the purposes of providing home and community-based services.

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

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

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

(e) The department may take appropriate action if it finds that the criminal history of the individual identified under subsection (b) may pose a risk to the health, welfare, and safety of service recipients. An action may include refusing to use an individual as a service provider.

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

(g) The costs of processing fingerprints and the state criminal history record checks may be borne by the employer or by the employee or individual who is being screened.

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

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

(j) The criminal history record information obtained under this section shall be used exclusively by the department for the purpose of establishing the reputable and responsible character of the individuals identified in subsection (b) such that the health, welfare, and safety of service recipients will not be at risk. [L 2006, c 220, §3; am L 2008, c 136, §3; am L 2012, c 93, §4; am L 2015, c 35, §8]

Note

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."

"[PART V.] PUBLIC SERVICE EMPLOYMENT

§346-101 Findings and purpose. The legislature finds that:

- (1) The magnitude of Hawaii's welfare situation, either in terms of people or in terms of dollar costs, is staggering;
- (2) The present welfare environment can be attributed to many variables such as, the change in society's attitude toward welfare, poverty, and public assistance to a greater acceptance and assuming of greater responsibility and the ever-increasing rate in the population of the State;
- (3) While the State must do what it can, viable solutions to the State's welfare crisis must be found;
- (4) In view of the aforementioned factors, perhaps one solution lies in the establishment of a public service employment program;

- (5) There is a supply of unemployed or underemployed persons receiving general assistance payments from the State who are available for public service employment;
- (6) There also exists a substantial number of unmet public needs, including environmental concerns such as, development, landscaping and beautification of highways, parks, hiking trails, botanical gardens, beaches and restoration of historic sites; and
- (7) A meaningful program of public service employment could serve persons receiving general assistance payments as well as the residential population of the State and at the same time alleviate some of the burden on the present welfare rolls.

The purpose of this part is to establish public service employment to assist in alleviating the unemployment of general assistance recipients as well as meeting some of the urgent public service needs that exist by having these individuals perform meaningful and productive services of the State which cannot otherwise be met. Public service employment will also assist the department of human services in determining whether a general assistance recipient should be eligible for public assistance for refusal to participate without a justifiable reason. [L 1973, c 177, pt of §2; am L 1987, c 339, §4]

" **§346-102 Public service employment; established.** (a) The department of human services shall be responsible for providing employment on public works projects as defined in section 346-71, for persons:

- (1) Receiving full or partial public assistance from the State;
- (2) Receiving unemployment compensation benefits from the State whose benefits thereunder are within the last two weeks of eligibility and who upon termination of unemployment compensation benefits will be eligible for full or partial public assistance from the State; or
- (3) Who reside on an island where the primary economic base providing employment for such persons is lost or is in danger of being lost.

Public assistance recipients participating in public service employment shall be considered to be employees of the department; provided however that except for coverage under the workers' compensation law, laws relating to civil service, classification, retirement, vacation, sick leave, and other matters relating to regular public employees shall not apply to such persons.

(b) The department shall promulgate rules under chapter 91 necessary to carry out the purposes of public service employment, including but not limited to the following:

- (1) The employment of public assistance recipients shall not displace any state or county employee or any individual performing work for the State or county on a contractual basis;
- (2) The minimum period of employment shall not be less than four calendar weeks; and
- (3) There shall be no discrimination based on race, color, creed, sex, age, religion, or national origin. [L 1973, c 177, pt of §2; am L Sp 1974, c 1, §2; am L 1975, c 41, §1; am L 1987, c 339, §4]

Revision Note

In subsection (a)(1), "or" deleted pursuant to §23G-15.

" **§346-103 Wages or salaries of public service employment.** Any person in occupations of public service employment shall receive the prevailing rate of compensation for persons employed in similar public employment. If no prevailing rate exists, the director of human services shall determine the wage or salary; provided that no wage or salary for occupations of public service employment shall be less than the minimum wage as provided in section 387-2. [L 1973, c 177, pt of §2; am L 1987, c 339, §4]

" **[§346-104] Refusal to work; ineligibility for public assistance.** The department shall adopt rules pursuant to chapter 91 rendering any person ineligible for public assistance if the person refuses to accept suitable work as provided by public service employment without justifiable reason. [L 1973, c 177, pt of §2; gen ch 1985]

"PART VI. LICENSURE OF INDEPENDENT GROUP RESIDENCES--REPEALED

§§346-121 to 346-124 REPEALED. L 1985, c 272, §12.

"[PART VII.] RESIDENT ALIEN AND NATURALIZED CITIZEN PROGRAM

[§346-141] Purpose. The purpose of this part is to assist a qualified person to return to the person's homeland. [L 1980, c 276, pt of §2]

" **[§346-142] Definitions.** As used in this part:

"Alien" means any person not a citizen or national of the United States but who is allowed, under federal law, to reside in the United States.

"Homeland" means the country in which a person was born.

"Naturalized citizen" means a person who was not born in the United States, but who has the rights and privileges of a citizen bestowed upon the person by law.

"Qualified person" means an alien or naturalized citizen of the United States who:

- (1) Is a resident of the State of Hawaii;
- (2) Is sixty years of age or older;
- (3) Is eligible to receive or receives financial assistance under this chapter on the date of the application for transportation assistance under this part.

"Transportation assistance" means the amount determined by the director under section 346-145. [L 1980, c 276, pt of §2]

Revision Note

Pursuant to §23G-15:

- (1) Numeric designations deleted and punctuation changed; and
- (2) In the definition of "qualified person", paragraphs redesignated and in paragraph (3), "and" deleted.

" **[§346-143] Administration.** The director may enter into contracts with private, nonprofit organizations for the purpose of providing transportation assistance to a qualified person who desires to return to the qualified person's homeland in order to establish and maintain a permanent residence there. [L 1980, c 276, pt of §2]

" **[§346-144] Application; approval; statement; return.** (a) A person desiring to return to the person's homeland may make application to the director. The application shall include evidence from a recognized agency or other acceptable means to ensure that the person's health and welfare will be protected upon return to the person's homeland. The director shall examine the application and determine whether the person is a qualified person and the person's health and welfare will be protected. If the director determines that the person is a qualified person, the person's health and welfare will be protected, and funds are available, the director shall approve the application. Upon approval, the qualified person shall be required to sign a statement of intent to take up permanent residence in the qualified person's homeland. Upon signing the statement, the director shall enter into a contract as provided

under section 346-143 to provide transportation assistance for the qualified person.

(b) A person who has used the transportation assistance under this part and returns to and reestablishes residency in Hawaii shall repay to the State the amount of the transportation assistance used in returning to the person's homeland with interest. The rate of interest shall be established by the director by rule under chapter 91.

(c) The statement of intent under subsection (a) shall explain the requirements for reestablishing residency in Hawaii and indicate that the qualified person understands these requirements.

(d) A person shall not be eligible to use the transportation assistance under this chapter more than once in the person's lifetime. [L 1980, c 276, pt of §2]

" **[§346-145] Transportation assistance.** The director shall adopt rules under chapter 91 to determine the transportation and administrative costs which are required for the return of a qualified person to the qualified person's homeland. The amount of such costs shall be considered the transportation assistance. [L 1980, c 276, pt of §2]

" **[§346-146] Penalty.** Any person who uses the transportation assistance under this chapter for any purpose other than that for which approved by the director shall be guilty of a misdemeanor and required to return the full amount of the transportation assistance used. [L 1980, c 276, pt of §2]

"PART VIII. CHILD CARE

Note

Part heading amended by L 2001, c 201, §3.

Cross References

Early intervention services for infants and toddlers, see §§321-351 to 321-354.

Attorney General Opinions

Licensing of church-sponsored day care programs constitutional. Att. Gen. Op. 85-25.

A. General

§346-151 Definitions. For the purposes of this part:

"Care" refers to those situations where a person or organization has agreed to assume and has been entrusted with the responsibility for the child's supervision, development, safety, and protection apart from the parent or guardian.

"Child abuse record check" means an examination of an individual's child abuse confirmation history through:

- (1) An initial name inquiry into the state child welfare record files;
- (2) Subsequent child abuse confirmation history checks for new hires, rehires, and household members;
- (3) A name inquiry into state child welfare record files; and
- (4) A name inquiry into other states' child abuse and neglect registries in states where the individual has resided during the past five years.

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Child care subsidy" means a payment made to low-income parents, guardians, or other responsible parties to pay for the care of a child under the age of thirteen years, or age thirteen years or older if the child has qualifying special needs as defined under federal law.

"Family child care home" means a private residence, including a home, apartment, unit, or townhouse, as those terms are defined in section 502C-1, at which care may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption, at any given time.

"Group child care center" means a facility, other than a private home, at which care is provided.

"Group child care home" means a facility, which may be an extended or modified private home, at which care is provided for seven to twelve children.

"Provider" means the person who is issued the license or certificate of registration, as the case may be, by the department to provide care in a child care facility. [L 1985, c 208, pt of §2; am L 1986, c 297, §2; am L 1988, c 125, §1; am L 1998, c 5, §1; am L 1999, c 242, §§4, 8(2); am L 2001, c 201, §2 and c 225, §3; am L 2003, c 95, §9(5); am L 2005, c 20, §1; am L 2016, c 88, §1]

Program providing care and supervision of children and religious instruction provides "care". Att. Gen. Op. 85-25.

" **§346-152 Exclusions; exemptions.** (a) Nothing in this part shall be construed to include:

- (1) A person caring for children related to the caregiver by blood, marriage, or adoption;
- (2) A person, group of persons, or facility caring for a child less than six hours a week;
- (3) A kindergarten, school, or child care program licensed or certified by the department of education or the United States Department of Defense and located on federal property;
- (4) A program that provides exclusively for a specialized training or skill development for children, including but not limited to programs providing activities such as athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;
- (5) A multiservice organization or community association, duly incorporated under the laws of the State, that operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through seventeen years of age;
- (6) Programs for children four years of age and older that operate for no more than two consecutive calendar weeks in a three-month period;
- (7) A provider agency operating or managing a homeless facility or any other program for homeless persons authorized under part XVII;
- (8) After-school, weekend, and summer recess programs conducted by the department of education pursuant to section 302A-408;
- (9) Child care programs conducted by counties pursuant to section 302A-408; provided that each county adopts rules for its programs;
- (10) Any person who enters a home in a child caring capacity and only cares for children who are of that household;
- (11) A person caring for two or fewer children unrelated to the caregiver by blood, marriage, or adoption; and
- (12) A child care program licensed by the Hawaii council of private schools. A child care program claiming an exemption under this paragraph shall submit an application for the exemption on a form provided by the department and shall provide to the department evidence that the licensing standards of the Hawaii

council of private schools meet or exceed the department's standards for a comparable program, including a monitoring component. Upon application of a child care program for the exemption under this paragraph, the department shall have the discretion to determine whether the licensing standards of the Hawaii council of private schools meet or exceed the department's standards.

(b) Staff members of programs taught solely in Hawaiian that promote fluency in the Hawaiian language shall be exempt from any rules requiring academic training or certification.

(c) Minimum health and safety requirements or standards as required by federal law may be imposed on any of the groups listed in this section that provide child care services and are reimbursed with federal funds.

(d) Any person asserting an exemption under this section shall cooperate with the department in investigations relating to unlicensed child care. [L 1985, c 208, pt of §2; am L 1986, c 79, §1; am L 1988, c 125, §2; am L 1991, c 212, §5; am L 1992, c 114, §1; am L 1997, c 250, §1 and c 350, §17; am L 1998, c 212, §3; am L 2002, c 33, §2; am L 2007, c 249, §21; am L 2010, c 89, §5; am L 2012, c 163, §1; am L 2013, c 140, §1]

Attorney General Opinions

No exemption for child care program connected with religious organization or offering some religious instruction. Att. Gen. Op. 85-25.

" **[§346-152.3 Investigations.]** Upon receiving a report that a person may be caring for more than two children unrelated to the caregiver by blood, marriage, or adoption, or providing care for a child for more than six hours per week, without a child care license issued by the department, the department may conduct an investigation for the limited purpose of determining the number of children in care who are unrelated to the caregiver by blood, marriage, or adoption, and the number of hours of care provided per week, in accordance with the following provisions:

- (1) The department may request access to the location indicated in the report; or
- (2) The department may file a complaint with the district court in the circuit where the location indicated in the report is; and the district court, upon probable cause, may issue a search warrant, directed to the department and the appropriate county police department, if necessary, to conduct an investigation

pursuant to this section between the hours of sunrise and sunset. [L 2002, c 33, §1]

" **§346-152.5 Requirements for persons exempt pursuant to section 346-152.** (a) To be eligible to provide child care for a child whose family receives a child care subsidy from the department, persons exempt pursuant to section 346-152 shall be required to agree to:

- (1) A criminal history record check, a sex offender registry check, a child abuse record check, and an adult abuse perpetrator check in the same manner as a prospective applicant or licensed provider in accordance with section 346-154; provided that the criminal history record check shall be limited to a criminal history record check conducted through files maintained by the Hawaii criminal justice data center for the following relatives of the child who requires care: grandparents, great-grandparents, aunts, uncles, and siblings aged eighteen or older living in a separate residence;
- (2) Completion of a pre-service or orientation training and ongoing training in health and safety topics; and
- (3) Any monitoring inspection visits by the department or its designee to determine compliance with minimum health and safety standards at the location where child care is being provided for a child whose family receives a child care subsidy from the department, including investigations by the department when the department has received a report of health and safety concerns.

(b) For the purposes of this section, "adult abuse perpetrator check" means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual's name and birth date in the department's adult protective services file. [L 2001, c 201, §1; am L 2012, c 41, §1; am L 2016, c 88, §2]

" **[§346-152.7] Safe sleep policy.** (a) All child care facilities, which include family child care homes, group child care centers, and group child care homes, as those terms are defined in section 346-151, and infant and toddler child care centers, that are registered or licensed by the department to provide care for children less than one year of age shall implement and maintain a written safe sleep policy in accordance with any rules that may be adopted by the department to implement the provisions of this section. The purpose of the

safe sleep policy shall be to maintain a safe sleep environment that prevents the occurrence of sudden infant death syndrome and sudden unexpected infant deaths in children less than one year of age.

(b) As used in this section:

"Sudden infant death syndrome" means the sudden death of an infant less than one year of age that cannot be explained after a thorough investigation has been conducted, including a complete autopsy, an examination of the death scene, and a review of the clinical history.

"Sudden unexpected infant death" means the sudden and unexpected death of an infant less than one year of age in which the manner and cause of death are not immediately obvious prior to investigation. Causes of sudden unexpected infant death include but are not limited to metabolic disorders, hypothermia or hyperthermia, neglect or homicide, poisoning, and accidental suffocation. [L 2013, c 71, §2]

" **§346-153 Records of deficiencies and complaints; release to public.** For every child care facility, the department shall maintain records for the current and previous two years of: results of its inspections; notifications to providers of deficiencies; corrective action taken; complaints of violations of rules adopted under this part; results of its investigations; resolution of complaints; and suspensions, revocations, reinstatements, restorations, and reissuances of licenses, temporary permits, and registrations issued under this part. Notwithstanding any other law to the contrary, the records described in this section shall be available for inspection in the manner set forth in chapter 92F and may be posted by the department on a public website; provided that with respect to records of family child care homes and group child care homes, sensitive personal information, including home addresses, or information provided to the department with the understanding that it would not be publicly divulged shall be deleted or obliterated prior to making the records available to the public. Nothing in this section shall authorize the department to release the names of or any other identifying information on complainants. The department may withhold information on a complaint for which an investigation is being conducted for not more than ten working days following the date of filing of the complaint; provided that if an investigation relates to an alleged criminal offense, no information shall be released until the investigation has been completed and the director has determined that no legal proceeding will be jeopardized by its release. [L 1985, c 208, pt of §2; am L 2016, c 88, §3]

Note

Section 92-51 referred to in text is repealed.

" **§346-154 Background checks.** (a) The department shall develop standards to ensure the reputable and responsible character of an applicant to operate a child care facility, prospective employees of the applicant, household members, and new employees or household members of the provider after registration or licensure, which shall include criminal history record checks in accordance with section 846-2.7, sex offender registry checks, child abuse record checks, and adult abuse perpetrator checks.

For the purposes of this section, "adult abuse perpetrator check" means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual's name and birth date in the department's adult protective services file.

- (b) An applicant to operate a child care facility shall:
 - (1) Be subject to criminal history record checks in accordance with section 846-2.7;
 - (2) Submit to the department or its designee, under penalty of law, statements signed by the applicant, prospective employees of the applicant, and household members of the applicant indicating whether the applicant, any of the prospective employees, or any of the household members has ever been confirmed to have abused or neglected a child or vulnerable adult, including threatened harm; and
 - (3) Provide consent to the department or its designee to conduct a criminal history record check in accordance with section 846-2.7, a sex offender registry check, a child abuse record check, and an adult abuse perpetrator check, and to obtain criminal history information, sex offender registry information, child abuse record information, and adult abuse perpetrator information for verification.
- (c) A provider shall:
 - (1) Be subject to criminal history record checks in accordance with section 846-2.7 and sex offender registry checks;
 - (2) Submit to the department or its designee a statement signed by any household member or any employee hired after the initial licensure or registration that requires the household member or employee to indicate, under penalty of law, whether the household member or

employee has ever been confirmed to have abused or neglected a child or vulnerable adult, including threatened harm; and

- (3) Provide consent to the department or its designee to conduct a criminal history record check in accordance with section 846-2.7, a sex offender registry check, a child abuse record check, and an adult abuse perpetrator check, and to obtain criminal history information, sex offender registry information, child abuse record information, and adult abuse perpetrator check information for verification.

(d) The department or its designee shall obtain information on the applicant, any household member, and any prospective employee of the applicant, including any household member or new employee retained after the applicant is issued a registration or license under this part, from the following sources:

- (1) Criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7;
- (2) National and state sex offender registries; and
- (3) Child abuse record information and adult abuse perpetrator check information from the department in accordance with departmental procedures.

(e) The department may deny an application for or revoke a license or registration to operate a child care facility if:

- (1) The applicant, a household member, or any prospective employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child or vulnerable adult; or
- (2) The department finds that the criminal history, history of registration as a sex offender, or child abuse record or adult abuse perpetrator check record of that applicant, household member, or prospective employee indicates that the applicant, household member, or prospective employee may pose a risk to the health, safety, or well-being of children.

(f) The department may request the provider to terminate the employment or residency of a new employee or household member or may suspend or revoke the license or registration of the provider who employs a new employee or who allows continued residency of a household member if:

- (1) The employee or household member has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child or vulnerable adult; or

(2) The department finds that the criminal history, history of registration as a sex offender, or child abuse record or adult abuse perpetrator check record of the new employee or household member indicates that the new employee or household member may pose a risk to the health, safety, or well-being of children.

(g) The department shall deny an application for a license or registration, shall request the provider to terminate the employment or residency of a new employee or household member, or shall suspend or revoke the license or registration of the provider who employs a new employee or who allows continued residency of a household member if the applicant, employee, or household member:

- (1) Refuses to consent to the background checks;
- (2) Knowingly makes a materially false statement in connection with the background checks; or
- (3) Is registered, or required to be registered, on the national sex offender registry or any state sex offender registry.

(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. [L 1985, c 208, pt of §2; am L 1986, c 297, §3; am L 2001, c 201, §4; am L 2003, c 95, §9(6); am L 2008, c 136, §4; am L 2012, c 41, §2; am L 2016, c 88, §4]

Cross References

Child placing organizations, child caring institutions, and foster boarding homes, standards, see §346-17.

" **[§346-155] Rules.** Rules adopted pursuant to this part shall be adopted in accordance with chapter 91. [L 1985, c 208, pt of §2]

" **§346-156 Penalty.** Any person violating any provision of this chapter or any rule made pursuant thereto shall be fined as follows:

- (1) Up to \$1,000 for the first violation; and

- (2) Up to \$3,000 for the second violation and each succeeding violation. [L 1985, c 208, pt of §2; am L 2001, c 201, §5]

" **[§346-157] Liability insurance coverage; no requirement.**

(a) For the purpose of this section, "liability insurance coverage" means a general casualty insurance policy issued to a provider insuring against legal liability for injury resulting from negligence to a child during the time the child is under the care of the child care provider.

(b) The department shall not require a provider to obtain or maintain liability insurance coverage as a condition of licensure, temporary permission, or registration to operate a child care facility.

(c) The department, as a condition of continued licensure, temporary permission, or registration, shall require a provider who does not have liability insurance coverage to disclose in writing that the provider does not have coverage to each parent or guardian:

- (1) Applying to have a child cared for at the provider's facility, if the provider has no liability insurance coverage at the time of application; or
- (2) Within seven working days of cancellation or termination of liability insurance coverage if the coverage is canceled or terminated while the parent's or guardian's child is cared for at the provider's facility.

(d) The department may suspend or revoke a license, temporary permit, or certificate of registration of a provider in accordance with section 346-164 or 346-175, if the provider or any employee of the provider knowingly makes a false statement to any person concerning the provider's liability insurance coverage. [L 1986, c 298, §1]

" **[§346-158] No smoking in child care facilities.** Smoking shall be prohibited in all group child care homes, group child care centers, and family child care homes during their hours of operation. [L 1993, c 68, §1]

" **§346-159 REPEALED.** L 2016, c 42, §3.

"B. Group Child Care Home and Group Child
Care Center Licensure

Note

Source notes for §§346-161 to 346-166 do not include reference to L 1988, c 125, §3, which purports to amend these sections with identical amendments made by L 1987, c 339, §4.

§346-161 License for group child care home, group child care center required. No person shall operate, maintain, or conduct a group child care home or group child care center unless licensed to do so by the department of human services under this subpart. [L 1985, c 208, pt of §2; am L 1987, c 339, §4]

" **§346-162 Rules; minimum standards.** The department of human services, after consultation with the department of health, the department of education, and the fire chiefs of the respective counties, shall make, prescribe, and publish such rules as are deemed necessary to protect the best interests of minor children who are provided care in a group child care home or group child care center and to carry out the purposes of this subpart. [L 1985, c 208, pt of §2; am L 1987, c 339, §4]

" **§346-163 Licenses and temporary permits.** (a) If satisfied that the applicant meets the minimum standards established pursuant to section 346-162 and subject to the criminal history record checks and child abuse record checks of section 346-154, the department shall grant the applicant a license for the operation of a group child care home or group child care center, as the case may be. The license shall be valid for:

- (1) One year for new applicants and for those who have been licensed for less than four years; and
- (2) Two years for those who have been licensed for four years or more,

unless sooner revoked. Where the activities of the applicant fall within the licensing requirements of the department of education and this subpart, a license shall be required from both the department of education and the department of human services.

A temporary permit may be issued for a period of six months at the department's discretion to any applicant who is temporarily unable to conform to all of the minimum standards. Renewal of the temporary permit shall be left to the department's discretion; provided that the combined period of the initial and subsequently renewed permits shall not exceed twenty-four months. Licenses and permits shall be conspicuously posted on the licensed premises.

(b) The department may establish reasonable fees for the issuance or renewal of licenses and permits according to rules

adopted pursuant to chapter 91. [L 1985, c 208, pt of §2; am L 1987, c 339, §4; am L 1998, c 5, §2; am L 2001, c 201, §6; am L 2012, c 161, §2]

Cross References

Criminal history record checks: child caring institutions, etc., see §846-2.7.

" **§346-164 Suspension and revocation of licenses and permits; reissuance.** Any license or temporary permit issued under this subpart may be suspended or revoked by the department of human services after due notice and hearing, the provisions for which shall be made in the rules. However, upon a determination by the department that conditions exist which constitute an imminent danger to the health, welfare, or safety of the children cared for, a license or temporary permit may be immediately suspended pending a hearing by the department as herein provided. The department, in its discretion, may reissue a license or temporary permit which has been suspended or revoked upon satisfying itself that minimum standards have been or will be met. [L 1985, c 208, pt of §2; am L 1987, c 339, §4]

" **§346-165 Visitation and inspection of group child care home, group child care center.** The department of human services shall visit and inspect each group child care home and group child care center as frequently as it deems necessary for the proper operation, sanitation, and safety of the home or center, as the case may be. The visits and inspections shall be made at least once annually. Every group child care home and group child care center licensed under this subpart shall be open to visitation and inspection by representatives of the department of human services, the department of education, and the department of health, and by designated representatives of the respective county fire departments at all times. [L 1985, c 208, pt of §2; am L 1987, c 339, §4; am L 1998, c 5, §3]

" **§346-166 Records.** Every group child care home and group child care center shall keep such records and shall file with the department of human services such reports as required by rules adopted by the department. All records and all information obtained concerning children or their parents or relatives shall be kept confidential by the provider and by members of any department herein named. [L 1985, c 208, pt of §2; am L 1987, c 339, §4]

"C. Family Child Care Home Registration

§346-171 Registration for family child care home required.

No person shall operate or maintain a family child care home unless registered to do so by the department of human services under this subpart. The registration shall be valid for:

- (1) One year for new applicants and for those who have been registered for less than four years; and
- (2) Two years for those who have been registered for four years or more,

unless sooner revoked. [L 1985, c 208, pt of §2; am L 1987, c 339, §4; am L 1998, c 5, §4]

Note

Source note does not include reference to L 1988, c 125, §3 which purports to amend §346-171 with identical amendments made by L 1987, c 339, §4.

" **[§346-172] Rules for registration.** (a) The department shall adopt rules establishing minimum requirements to ensure the health and safety of children provided care in a family child care home. The rules may specify, but shall not be limited to, minimum requirements concerning:

- (1) The number of children which may be cared for at one time and the ratio of adult to children;
 - (2) The health of the provider and children;
 - (3) Fire and sanitation standards;
 - (4) The supervision and allowable types of discipline of children; and
 - (5) Protection of children who are provided care from abuse.
- (b) It is the intent of the legislature that the:
- (1) Minimum requirements established under this section be less strict than the minimum standards established under section 346-162 for group child care homes and group child care centers;
 - (2) Minimum requirements be as simple and clear as possible;
 - (3) Minimum requirements be germane to the provision of care to children in a private home as opposed to a nonresidential facility or institution, require as little recordkeeping by the provider as possible, and require information and reports if deemed necessary, from the provider which the department intends to scrutinize carefully and not cursorily; and
 - (4) Department establish minimum requirements, the compliance with which can be assessed easily and

objectively by officers and employees of the department, providers, and parents and legal guardians of children. [L 1985, c 208, pt of §2]

" **§346-173 Procedure for registration.** (a) A person desiring to have the person's home registered as a family child care home shall make application to the department. Upon receipt of the application, the department shall conduct a study of the applicant's qualifications, home, and proposed operation. The department shall issue a certificate of registration to the applicant which authorizes the applicant to operate a family child care home if the department is satisfied that the premises and proposed operation will be in compliance with the minimum requirements established under section 346-172 and subject to the criminal history record checks under section 346-154.

The provider shall operate and maintain the premises of the family child care home in accordance with the minimum requirements established under section 346-172 so long as registered.

(b) The department may establish reasonable fees for the issuance or renewal of certificates of registration according to rules adopted pursuant to chapter 91. [L 1985, c 208, pt of §2; am L 2012, c 161, §3]

" **[§346-174] Informing parent and legal guardian of children and general public.** (a) The department shall maintain a registry of registered family child care homes and make the information in the registry available to the general public upon request. The department may also provide for the publication and dissemination of the registry through the news media or other means.

(b) The provider of child care in a family child care home shall give to each parent or legal guardian of a child a copy of the provider's certificate of registration upon request. [L 1985, c 208, pt of §2]

" **[§346-175] Visitation and inspection of family child care home; revocation of registration.** (a) The department shall visit and inspect the premises and operation of a family child care home to determine compliance with the minimum requirements established under section 346-172:

- (1) At least once in each calendar year; and
- (2) Upon receipt of a complaint that the premises or operation of the home is in violation of the minimum requirements established under section 346-172.

(b) If the visitation and inspection reveal that the premises or operation of the home is in violation of a minimum

requirement, the department shall immediately suspend or revoke the registration. Upon suspension or revocation, the home shall no longer be a registered family child care home and the department shall notify the parents or legal guardian of each child who is provided care in the home of the revocation.

A person whose registration has been suspended or revoked may appeal the suspension or revocation in accordance with chapter 91, but the appeal shall not stay the suspension or revocation. If an appeal is made under chapter 91, the appeal of the suspension or revocation, and not the suspension or revocation itself, shall be deemed the contested case.

The department shall suspend the registration if the violation of the minimum requirement is the first violation of the provider and the violation does not warrant a revocation of the registration. The department shall revoke the registration if the provider has violated any minimum requirement or requirements to such an extent or of a nature that the provider is unfit to be trusted with the care of children or operation of a family child care home or if the provider has had the provider's registration suspended at least once previously.

(c) The department may reinstate a suspended registration or restore a revoked registration if it deems that the person is willing and able to comply with the rules adopted under section 346-172. A suspended registration may be reinstated upon the department's satisfaction that the violation has been or will be corrected. A revoked registration shall be restored only after new application is made and reviewed under this subpart. [L 1985, c 208, pt of §2]

" **[§346-176] Family child care system.** The department shall authorize the establishment and operation of a family child care system under which a sponsoring agency contracts family child care homes to provide care and assumes administrative tasks for the homes and providers; provided that the department shall register each of the family child care homes individually in accordance with this subpart and establish no rule or requirement which jeopardizes the status of the providers of care in family child care homes as independent contractors of the sponsoring agency. The department may establish rules defining the administrative tasks which may be performed and minimum requirements, including provision of training to providers which must be complied with by the sponsoring agency, but shall not require the sponsoring agency to register or obtain a license or registration as a child care facility unless the sponsoring agency provides care to children on the sponsoring agency's premises. [L 1985, c 208, pt of §2]

" **[§346-177] Program of incentive for registration.** Subject to the limits of legislative appropriations, the department may establish a program to encourage the registration of persons who provide care in private homes in violation of section 346-171. The program may include:

- (1) Training of providers of care;
- (2) Assistance to applicants in obtaining registration and complying with the minimum requirements;
- (3) Counseling in providing quality care;
- (4) Referrals of parents to providers;
- (5) Assistance in obtaining benefits under or participation in federal and state child care programs; and
- (6) Assistance in complying with business and tax regulations and requirements. [L 1985, c 208, pt of §2]

"[D. Miscellaneous Provisions]

Revision Note

Subpart heading added by revisor pursuant to §23G-15.

[§346-181] Preschool open doors program. (a) There is established within the department a school readiness program to be known as the preschool open doors program within the department's child care assistance program. The program shall:

- (1) Provide access to school readiness services that address children's physical, cognitive, linguistic, social, and emotional development;
 - (2) Require each provider to conduct school readiness assessments;
 - (3) Give priority to children from low- and moderate-income families; and
 - (4) Prepare children for school through either of the State's two official languages.
- (b) Subject to the availability of funds, the program shall serve four-year-old children, with priority extended to:
- (1) Children who are not eligible to attend public school kindergarten in the calendar year in which they turn five years of age because their birth date occurs after the kindergarten eligibility date pursuant to section 302A-411; and
 - (2) Underserved or at-risk children.
- (c) Enrollment in the program shall be voluntary. A parent or guardian of a child enrolled in the program shall share in the costs of the program through a copayment according

to a sliding fee scale that is based on need pursuant to rules adopted by the department.

(d) The department may adopt interim rules to carry out the purposes of this section without regard to chapter 91 or 201M; provided that:

- (1) The department shall hold at least one public hearing prior to the adoption of interim rules;
- (2) The interim rules shall comply with all applicable state and federal laws; and
- (3) The interim rules shall be effective for no more than one year after their adoption. [L 2013, c 169, §2]

"PART IX. WORKFARE--REPEALED

§§346-201 to 346-215 REPEALED. L 1991, c 313, §1.

"PART X. ADULT PROTECTIVE SERVICES

Note

Part heading amended by L 2008, c 154, §1.

Cross References

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

Maximum fee for appointed counsel and guardian ad litem, see §571-87.

Law Journals and Reviews

Elder Law Hawaii. 13 HBJ, no. 13, at 85 (2009).

Holding Hawai'i Nursing Facilities Accountable for the Inadequate Pain Management of Elderly Residents. 27 UH L. Rev. 233 (2004).

§346-221 Purpose; construction. The legislature recognizes that citizens of the State who are vulnerable to abuse constitute a significant and identifiable segment of the population and are particularly subject to risks of abuse, neglect, and exploitation.

The legislature recognizes that it is a person's vulnerability, not necessarily age, which is often encountered in cases of abuse, neglect, and exploitation. While advanced age alone is not sufficient reason to intervene in a person's life, the legislature finds that many elders have become subjects of abuse, neglect, and exploitation. Substantial

public interest exists to ensure that this segment of the population receives protection.

The legislature declares that the State shall develop and promote community services for the economic, social, and personal well-being and protection of its citizens who may be vulnerable to abuse.

In taking this action, the legislature intends to protect vulnerable adults and place the fewest possible restrictions on personal liberty and to permit the exercise of constitutional rights by adults consistent with protection from abuse. [L 1989, c 381, pt of §1; am L 1990, c 67, §8, c 144, §1, and c 234, §9; am L 2008, c 154, §3]

" **§346-222 Definitions.** For the purposes of this part:

"Abuse" means any of the following, separately or in combination:

- (1) Physical abuse;
- (2) Psychological abuse;
- (3) Sexual abuse;
- (4) Financial exploitation;
- (5) Caregiver neglect; or
- (6) Self-neglect;

each as further defined in this chapter. Abuse does not include, and a determination of abuse shall not be based solely on, physical, psychological, or financial conditions that result when a vulnerable adult seeks, or when a caregiver provides or permits to be provided, treatment with the express consent of the vulnerable adult or in accordance with the vulnerable adult's religious or spiritual practices.

"Capacity" means the ability to understand and appreciate the nature and consequences of making decisions concerning one's person or to communicate these decisions.

"Caregiver" means any person who has knowingly and willingly assumed, on a part-time or full-time basis, the care, supervision, or physical control of, or who has a legal or contractual duty to care for the health, safety, and welfare of a vulnerable adult.

"Caregiver neglect" means the failure of a caregiver to exercise that degree of care for a vulnerable adult that a reasonable person with the responsibility of a caregiver would exercise within the scope of the caregiver's assumed, legal or contractual duties, including but not limited to the failure to:

- (1) Assist with personal hygiene;
- (2) Protect the vulnerable adult from abandonment;
- (3) Provide, in a timely manner, necessary food, shelter, or clothing;

- (4) Provide, in a timely manner, necessary health care, access to health care, prescribed medication, psychological care, physical care, or supervision;
- (5) Protect the vulnerable adult from dangerous, harmful, or detrimental drugs, as defined in section 712-1240; provided that this paragraph shall not apply to drugs that are provided to the vulnerable adult pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;
- (6) Protect the vulnerable adult from health and safety hazards; or
- (7) Protect the vulnerable adult from abuse by third parties.

"Court" means the family court.

"Department" means the department of human services and its authorized representatives.

"Director" means the director of human services.

"Emergency medical treatment" means any service necessary to maintain a person's physical health and without which there is a reasonable belief that the person will suffer irreparable harm or death.

"Financial exploitation" means the wrongful taking, withholding, appropriation, or use of a vulnerable adult's money, real property, or personal property, including but not limited to:

- (1) The breach of a fiduciary duty, such as the misuse of a power of attorney or the misuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
- (2) The unauthorized taking of personal assets;
- (3) The misappropriation or misuse of moneys belonging to the vulnerable adult from a personal or joint account; or
- (4) The failure to effectively use a vulnerable adult's income and assets for the necessities required for the vulnerable adult's support and maintenance, by a person with a duty to expend income and assets on behalf of the vulnerable adult for such purposes.

Financial exploitation may be accomplished through coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.

"Party" means those persons, care organizations, or care facilities entitled to notice of proceedings under sections 346-237 and 346-238, including any state department or agency that is providing services and treatment to a vulnerable adult in accordance with a protective services plan.

"Physical abuse" means:

- (1) The nonaccidental infliction of physical or bodily injury, pain, or impairment, including but not limited to hitting, slapping, causing burns or bruises, poisoning, or improper physical restraint; or
- (2) Causing physical injuries that are not justifiably explained or where the history given for an injury is at variance with the degree or type of injury.

"Protective services plan" means a specific written plan, prepared by the department, that sets forth the specific services and treatment to be provided to a vulnerable adult.

"Psychological abuse" means the infliction of mental or emotional distress by use of threats, insults, harassment, humiliation, provocation, intimidation, or other means that profoundly confuse or frighten a vulnerable adult.

"Self-neglect" means:

- (1) A vulnerable adult's inability or failure, due to physical or mental impairment, or both, to perform tasks essential to caring for oneself, including but not limited to:
 - (A) Obtaining essential food, clothing, shelter, and medical care;
 - (B) Obtaining goods and services reasonably necessary to maintain minimum standards of physical health, mental health, emotional well-being, and general safety; or
 - (C) Management of one's financial assets and obligations to accomplish the activities in subparagraphs (A) and (B); and
- (2) The vulnerable adult appears to lack sufficient understanding or capacity to make or communicate responsible decisions and appears to be exposed to a situation or condition that poses an immediate risk of death or serious physical harm.

"Sexual abuse" means nonconsensual sexual contact or conduct caused by another person, including but not limited to:

- (1) Sexual assault, molestation, sexual fondling, incest, or prostitution; or
- (2) Pornographic photographing, filming, or depiction.

"Vulnerable adult" means a person eighteen years of age or older who, because of mental, developmental, or physical impairment, is unable to:

- (1) Communicate or make responsible decisions to manage the person's own care or resources;
- (2) Carry out or arrange for essential activities of daily living; or

- (3) Protect oneself from abuse, as defined in this part.
[L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §1; am L 2008, c 154, §4]

" **§346-223 Jurisdiction; venue.** The family court shall have jurisdiction over protective proceedings under this part that concern a vulnerable adult who was or is found within the judicial circuit at the time the facts and circumstances occurred, were discovered, or were reported to the department, which constitute the basis for a finding that the vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken; provided that the protective proceedings under this part shall not be considered exclusive and shall not preclude any other criminal, civil, or administrative remedy. The protective proceedings under this part shall be held in the judicial circuit in which the vulnerable adult resides at the time of the filing of the petition or in which the vulnerable adult has assets. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §5]

" **§346-224 Reports.** (a) The following persons who, in the performance of their professional or official duties, know or have reason to believe that a vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken shall promptly report the matter orally to the department:

- (1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, treats, or provides other professional or specialized services to a vulnerable adult, including physicians, physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private agency or institution providing social, medical, hospital, or mental health services, including financial assistance;
- (3) Employees or officers of any law enforcement agency, including the courts, police departments, correctional institutions, and parole or probation offices;
- (4) Employees or officers of any adult residential care home, adult day care center, or similar institution;
- (5) Medical examiners or coroners; and
- (6) Social workers licensed pursuant to chapter 467E and non-licensed persons employed in a social worker position pursuant to section 467E-6(2).

(b) The initial oral report required by subsection (a) shall be followed as soon as possible by a written report to the department; provided that if a police department is the initiating agency, a written report shall not be required unless the police department declines to take further action and the department informs the police department that the department intends to investigate the oral report of abuse. A written report shall contain:

- (1) The name and address of the vulnerable adult, if known;
- (2) The name and address of the party who is alleged to have committed or been responsible for the abuse, if known;
- (3) The nature and extent of the vulnerable adult's injury or harm; and
- (4) Any other information the reporter believes may be helpful in establishing the cause of the abuse.

(c) This section shall not prohibit any person from reporting an incident that the person has reason to believe involves abuse that came to the person's attention in a private or nonprofessional capacity.

(d) Any person not enumerated in subsection (a) who has reason to believe that a vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken may report the matter orally to the department.

(e) Any person who knowingly fails to report as required by this section or who wilfully prevents another person from reporting pursuant to this section shall be guilty of a petty misdemeanor.

(f) The department shall maintain a central registry of reported cases.

(g) Nothing in this section shall require a member of the clergy to report communications that are protected under rule 506 of the Hawaii rules of evidence. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §2; am L 2008, c 154, §6; am L 2015, c 35, §9]

Law Journals and Reviews

Holding Hawai'i Nursing Facilities Accountable for the Inadequate Pain Management of Elderly Residents. 27 UH L. Rev. 233 (2004).

" **§346-225 Confidentiality of reports.** A report made pursuant to this part, including the identity of the reporting person and all records of the report, shall be confidential and any person who makes an unauthorized disclosure of a report or

records of a report shall be guilty of a misdemeanor. The director may adopt, amend, or repeal rules, pursuant to chapter 91, to provide for the confidentiality of reports and records, and for the authorized disclosure of reports and records. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §3; am L 2008, c 154, §7]

" **§346-226 Access to records.** Records of a vulnerable adult shall be obtained by the department or the vulnerable adult's court-appointed guardian ad litem with the written consent of the vulnerable adult or the vulnerable adult's representative, or by court order. Any person who reports to the department under section 346-224, upon demand of the department, shall provide all information related to the alleged incident of abuse, including financial records and medical reports, which were not included in the written report submitted pursuant to section 346-224(b). [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §8]

" **§346-227 Investigation.** Upon receiving a report that abuse of a vulnerable adult has occurred or is in danger of occurring if immediate action is not taken, the department shall cause an investigation to be commenced in accordance with this part as the department deems appropriate. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §9]

" **§346-228 Action upon investigation.** Upon investigation the department shall take action to prevent abuse and shall have the authority to do any or all of the following:

- (1) Resolve the matter in an informal fashion as is appropriate under the circumstances;
- (2) Exercise its right of entry under section 346-229;
- (3) Seek an order for immediate protection;
- (4) Seek a temporary restraining order;
- (5) File a petition with the court under this part; and
- (6) Seek any protective or remedial actions authorized by law. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §10]

" **§346-229 Right of entry.** (a) An employee of the department engaged in an investigation under this part shall be authorized to visit and communicate with the vulnerable adult who is the subject of the report. Any person intentionally or knowingly obstructing or interfering with the department's access to or communication with the vulnerable adult shall be guilty of a misdemeanor.

(b) Any employee of the department engaged in an investigation under this part, having probable cause to believe that a vulnerable adult will be physically injured through abuse before a court order for entry can be obtained, without a warrant, may enter upon the premises where the vulnerable adult may be found for the purpose of ascertaining that person's welfare. Where a warrantless entry is authorized under this section, the employee of the department may request the assistance of a police officer to gain entrance. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §11]

" **§346-230 Termination of services.** (a) The department shall act only with the consent of the vulnerable adult, unless the department obtains court authorization to provide necessary services, as provided in section 346-231. Investigation and services provided under this part shall be immediately terminated if:

- (1) The vulnerable adult has the capacity to consent and either does not consent or withdraws consent to the receipt of protective services;
- (2) The department determines that protection is no longer needed under this part; or
- (3) The court so orders.

(b) Upon the department's determination that protective services are no longer needed, the vulnerable adult shall be referred to the agency responsible for follow-up services. For the mentally ill or adults with developmental or intellectual disabilities, the state agency designated to provide services shall be the department of health. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 1992, c 62, §2; am L 2008, c 154, §12; am L 2011, c 220, §4]

" **§346-231 Order for immediate protection.** (a) If the department believes that a person is a vulnerable adult and it appears probable that the vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken and the vulnerable adult consents, or if the vulnerable adult does not consent and there is probable cause to believe that the vulnerable adult lacks the capacity to make decisions concerning the vulnerable adult's person, the department may seek an order for immediate protection in accordance with this section.

(b) A finding of probable cause may be based in whole or in part upon hearsay evidence when direct testimony is unavailable or when it is demonstrably inconvenient to summon witnesses who will be able to testify to facts from personal knowledge.

(c) Upon finding that the person is a vulnerable adult and that there is probable cause to believe that the vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken and the vulnerable adult consents, or if the vulnerable adult does not consent and there is probable cause to believe that the vulnerable adult lacks the capacity to make decisions concerning the vulnerable adult's person, the court shall issue an order for immediate protection. This order may include:

- (1) An authorization for the department to transport the person to an appropriate medical or care facility;
- (2) An authorization for medical examinations;
- (3) An authorization for emergency medical treatment; and
- (4) Any other matters as may prevent immediate abuse, pending a hearing under section 346-232.

(d) The court may also make orders as may be appropriate to third persons, including temporary restraining orders, enjoining them from:

- (1) Removing the vulnerable adult from the care or custody of another;
- (2) Actions that would result in abuse of the vulnerable adult;
- (3) Living at the vulnerable adult's residence;
- (4) Contacting the vulnerable adult in person or by telephone;
- (5) Selling, removing, or otherwise disposing of the vulnerable adult's personal property;
- (6) Withdrawing funds from any bank, savings and loan association, credit union, or other financial institution, or from a stock account in which the vulnerable adult has an interest;
- (7) Negotiating any instruments payable to the vulnerable adult;
- (8) Selling, mortgaging, or otherwise encumbering any interest that the vulnerable adult has in real property;
- (9) Exercising any powers on behalf of the vulnerable adult by representatives of the department, any court-appointed guardian or guardian ad litem, or any official acting on the vulnerable adult's behalf; and
- (10) Engaging in any other specified act that, based upon the facts alleged, would constitute harm or present a danger of immediate harm to the vulnerable adult or would cause the loss of the vulnerable adult's property.

(e) Court orders under section 346-232 and this section may be obtained upon oral or written application by the

department, without notice and without a hearing. Any oral application shall be reduced to writing within twenty-four hours. The court may issue its order orally; provided that it shall reduce the order to writing as soon as possible thereafter and in any case not later than twenty-four hours after the court received the written application. Certified copies of the application and order shall be personally served upon the vulnerable adult and any other person or entity affected by the order together with the notice of the order to show cause hearing in section 346-232.

(f) If a written order for immediate protection is issued, the department shall file a petition invoking the jurisdiction of the court under this part within twenty-four hours. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §4; am L 2008, c 154, §13; am L 2016, c 22, §1]

Case Notes

This section did not provide a jurisdictional basis for an order to void a will in another action sought by a party other than the department of human services where this chapter makes clear that this statute is for the benefit of the department and does not create a right to proceed for private litigants. 110 H. 8, 129 P.3d 511 (2006).

" **§346-232 Order to show cause hearing.** (a) When a written order for immediate protection is issued, the court shall hold a hearing on the application for immediate protection, no later than seventy-two hours after issuance of the written order, excluding any Saturday or Sunday, requiring cause to be shown why the order or orders should not continue. The department shall make arrangements to have the vulnerable adult attend the hearing or show cause why the vulnerable adult cannot attend.

(b) When the court finds that there is probable cause to believe that a vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken, and the vulnerable adult consents, or if the vulnerable adult does not consent and the court finds that there is probable cause to believe that the vulnerable adult lacks the capacity to make decisions concerning the vulnerable adult's person, the court may continue or modify any order pending an adjudicatory hearing on the petition. These orders may include orders for the vulnerable adult's temporary placement and ordinary medical care.

(c) The parties personally or through counsel may stipulate to the entry or continuance of such orders as the court deems to be in the best interest of the vulnerable adult,

and the court shall set the case for an adjudicatory hearing as soon as it is practical. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §5; am L 2008, c 154, §14]

" **§346-233 Petition.** (a) A petition invoking the jurisdiction of the court under this part shall be entitled "In the matter of the protection of _____," and shall be verified.

- (b) The petition shall set forth with specificity the:
 - (1) Reasons the person is considered to be a vulnerable adult;
 - (2) Facts that bring the vulnerable adult within this part;
 - (3) Name, birth date, sex, and residence address of the vulnerable adult;
 - (4) Names and addresses of any living persons, or entities required to be notified pursuant to section 346-237; and
 - (5) If appropriate, allegations describing any lack of capacity of the vulnerable adult. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §15]

" **§346-234 Guardian ad litem; counsel.** (a) In any case where the court has reason to believe that a vulnerable adult or any other party lacks the capacity to effectively make decisions concerning the party's person, it may appoint a guardian ad litem to represent the interests of that party throughout the pendency of proceedings under this part. The court shall appoint counsel for the vulnerable adult at any time where it finds that the vulnerable adult requires a separate legal advocate and is unable to afford private counsel.

(b) The court may order reasonable costs and fees of the guardian ad litem to be paid by the party for whom the guardian ad litem is appointed, if that party has sufficient financial resources to pay the costs and fees. The court may also order the appropriate parties to pay or reimburse reasonable costs and fees of the guardian ad litem and counsel appointed for the vulnerable adult. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §16]

Cross References

Maximum fees for appointed counsel and guardian ad litem, see §571-87.

" **§346-235 Consolidation with guardianship proceedings.** A proceeding for the appointment of a guardian or conservator under article V of chapter 560 may be consolidated with the proceedings under this part as the applicable circuit court and the family court, in the exercise of their discretion, shall permit. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §6; am L 2004, c 161, §9]

" **§346-236 Permanent changes.** Permanent changes in the living situation of a vulnerable adult who has incurred abuse shall not ordinarily be made under authority of this part. If permanent changes in the living situation or nonemergency medical treatment are necessary, the appropriate guardianship, or civil commitment action shall be initiated pursuant to applicable state law. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §17]

" **§346-237 Notice of proceedings.** (a) After a petition has been filed, the matter shall be set for hearing and a notice of hearing shall be issued to all parties to the proceeding. The parties to the proceeding shall include:

- (1) The vulnerable adult;
- (2) Any caregiver of the vulnerable adult;
- (3) A representative of the facility in which the vulnerable adult resides or is a patient;
- (4) The spouse and adult children of the vulnerable adult;
- (5) The parents of the vulnerable adult, unless waived by the court for good cause;
- (6) Any guardian or conservator who may have been appointed; and
- (7) Any other person or entity affected by the order for immediate protection.

(b) Where the name or whereabouts of a potential party is unknown, the court may require the petitioner to set forth the reasonable efforts the petitioner made to ascertain the party's name or whereabouts and why the petitioner has been unable to determine those facts. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §7; am L 2004, c 161, §10; am L 2008, c 154, §18]

Note

L 2004, c 161, §36 purports to amend this section.

" **§346-238 Service.** (a) Service of the notice shall be made by delivery of a copy thereof together with a certified copy of the petition to each person or entity to be given notice

either by personal service, by certified mail, return receipt requested and addressed to the last known address, by publication, or by other means authorized by the court. Upon a showing of good cause, the court may waive notice to any party except the vulnerable adult.

(b) Service shall be effected at least forty-eight hours prior to the time fixed in the notice for hearing when held pursuant to section 346-232(a), or at least fifteen days prior to the time fixed in the notice for an adjudicatory, disposition, or review hearing, unless the party otherwise was ordered by the court to appear at those hearings. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §19]

" **§346-239 Required findings concerning postponed hearings.** Except as otherwise provided, no hearing shall be delayed upon the grounds that a party other than the vulnerable adult is not present at the hearing or has not been served with a copy of the order for immediate protection or the petition, where reasonable efforts have been made to effect service and it would be detrimental to the vulnerable adult to postpone the proceedings until service can be made. Whenever a hearing is delayed or postponed under this section, the court shall enter a finding that it will not be detrimental to the vulnerable adult and shall also specify what additional measures shall be undertaken to effect service. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §20]

" **§346-240 Adjudicatory hearing.** (a) When a petition has been filed, the court shall set a return date hearing to be held within thirty days of the filing of the petition. On the return date, the parties personally or through counsel may stipulate to the entry or continuance of the orders as the court deems to be in the best interests of the vulnerable adult, and the court shall set the case for an adjudicatory hearing as soon as is practical.

(b) In an adjudicatory hearing, the court shall determine whether the person is a vulnerable adult, and whether the vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken, based upon a preponderance of the evidence. Evidence that is contained in a written report, study, or examination shall be admissible; provided that the maker of the written report, study, or examination be subject to direct and cross-examination upon demand when the maker is reasonably available. A social worker employed by the department in the area of adult protective services shall be

presumed to be qualified to testify as an expert in the field of protective services.

(c) If facts sufficient to sustain the petition are established in court, or are stipulated to by all parties, the court shall enter an order finding that the vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken and shall state the grounds for the finding. The court shall also make a finding concerning the capacity of the vulnerable adult to effectively make decisions concerning personal needs or property. If the capacity of the vulnerable adult is at issue, the court shall require that the vulnerable adult be examined by a psychiatrist or other physician who is skilled in evaluating the particular area in which the vulnerable adult is alleged to lack capacity before making any finding that the vulnerable adult lacks capacity. If there is no finding that the vulnerable adult lacks capacity to make decisions regarding personal needs or property and if the vulnerable adult does not give consent, the court shall not have authority to proceed further and the court shall dismiss the case.

(d) Upon the completion of the adjudicatory hearing, the disposition hearing may commence immediately after the required findings are made, provided the requirements of section 346-241(a) have been met, or the court may set the disposition hearing for such time as it deems appropriate.

(e) If facts sufficient to sustain the petition under this part are not established, the court shall dismiss the petition and shall state the grounds for dismissal.

(f) If the court sustains the petition and does not commence immediately to the disposition hearing, it shall determine, based upon the facts adduced during the adjudicatory hearing and any additional facts presented to it, whether any temporary orders should be issued pending final disposition. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §21]

" **§346-241 Disposition.** (a) The department shall prepare a proposed protective order and a written protective services plan and submit copies to the court and each of the parties or their counsel at least seven days prior to the disposition hearing.

(b) The proposed protective order may include any of the provisions set forth in section 346-231, and, in addition may include an order that:

- (1) The person inflicting abuse on the vulnerable adult participate in counseling or therapy as the court deems appropriate;

- (2) Any party report to the department any violation of the protective order or protective services plan;
 - (3) The department make periodic home visits to the vulnerable adult; and
 - (4) The department monitor compliance with the order.
- (c) The proposed protective services plan shall set forth the following:
- (1) Specific services or treatment to be provided to the vulnerable adult and the specific actions the parties shall take;
 - (2) Specific responsibilities that the parties shall assume;
 - (3) Period during which the services shall be provided;
 - (4) Dates by which the actions shall be completed;
 - (5) Specific consequences that may be reasonably anticipated to result from a party's failure to comply with any terms and conditions of the plan; and
 - (6) Steps that shall be necessary to terminate the court's jurisdiction.
- (d) In preparing such a proposed protective order, the department shall seek to impose the least restrictive limitation on the freedom and liberties of the vulnerable adult. To the greatest extent possible, the vulnerable adult should be permitted to participate in decisions concerning the vulnerable adult's person, or property, or both.
- (e) The court shall conduct a disposition hearing concerning the terms and conditions set forth in the proposed protective order and proposed protective services plan unless each of the appropriate parties accepts the order and plan, in which event, the court may approve the order and plan without a hearing. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 1992, c 62, §§3, 4; am L 2008, c 154, §22]

" **§346-242 Review hearings.** Except for good cause shown, the court shall set each case for a review hearing not later than six months after the date that a protective order and protective services plan are ordered by the court. Thereafter, the court shall review the matter at intervals of not longer than six months until the court's jurisdiction has been terminated. The department and the guardian ad litem, if any, shall submit a written report, with copies to the parties or their counsel, at least fifteen days prior to the date set for each review. The report shall evaluate whether the parties have complied with the terms and conditions of the protective order and protective services plan; shall recommend any modification to the order or plan; and shall recommend whether the court shall retain jurisdiction or terminate the case. At each review, the court

shall determine whether the parties have complied with the terms and conditions of the order and plan; enforce sanctions for noncompliance as may be appropriate; and order revisions to the existing order or plan as are in the best interests of the vulnerable adult. At each review, the court shall make an express finding as to whether it shall retain jurisdiction or terminate the case, and, in each instance, shall state the basis for its action. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 1992, c 62, §5; am L 2008, c 154, §23]

" **[§346-243] Appeal.** Any party aggrieved by an order or decree of the court may appeal as provided by section 571-54. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9]

" **§346-244 Admissibility of evidence.** The physician-patient privilege, the psychologist-client privilege, the spousal privilege, and the victim-counselor privilege shall not be grounds for excluding evidence in any judicial proceeding resulting from a report pursuant to this part. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 1992, c 217, §2]

Cross References

Physician-patient privilege, see §626-1, rule 504.

Psychologist-client privilege, see §626-1, rule 504.1.

Spousal privilege, see §626-1, rule 505.

Victim-counselor privilege, see §626-1, rule 505.5.

" **[§346-245] Hearings.** The protective proceedings shall be heard without a jury. The hearing may be adjourned from time to time. The general public shall be excluded, and only such persons as are found by the court to have a direct interest in the case shall be admitted. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9]

" **[§346-246] Failure to comply with court orders.** The court may apply contempt of court provisions and all other provisions available under the law if a party fails to comply with the terms and conditions of any order issued under this part. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9]

" **§346-247 Payment for service or treatment provided to a party.** Whenever service, treatment, care, or support of a vulnerable adult is provided under this part, the persons or legal entities who may be legally obligated to pay for the service, treatment, care, or support of the vulnerable adult,

may be ordered by the court to pay the cost of the service, care, support, or treatment provided to the vulnerable adult in whole or in part, after notice and hearing. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §24]

" **[§346-248] Fiscal and service responsibility.** The department or other authorized agencies shall provide only the care, service, treatment, support, or payment authorized by law. The department or authorized agencies shall have the authority to establish priorities and limitations of services based on their resources. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9]

" **§346-249 Cooperation.** Every public official or department shall render all assistance and cooperation within the official's or department's power and that may further the purpose and objectives of this part. The department and the court may seek the cooperation of organizations whose objectives are to protect or aid vulnerable adults. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9; am L 2008, c 154, §25]

" **[§346-250] Immunity from liability.** (a) Anyone participating in good faith in the making of a report pursuant to this part shall have immunity from any liability, civil or criminal, that might be otherwise incurred or imposed by or as a result of the making of such a report. Any participant shall have the same immunity with respect to participation in any judicial proceeding resulting from that report.

(b) Any individual who assumes a duty or responsibility pursuant to this part shall have immunity from civil liability for acts or omissions performed within the scope of the individual's duty or responsibility. Nothing in this part shall limit the liability of the department, any other state agency, or any private organization for the conduct of individuals acting within the scope of their duties provided immunity under this section. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9]

" **[§346-251] Presumption of capacity.** An individual shall be presumed capable of making decisions concerning the individual's person. A determination that an individual lacks capacity under this part shall not be construed as a finding that the individual lacks capacity for any other purpose. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9]

" **[§346-252] Advanced age.** An individual shall not be involuntarily subjected to the provisions of this part solely based on advanced age. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9]

" **[§346-253] Rules.** The department shall adopt rules pursuant to chapter 91 necessary for the purposes of this part. [L 1989, c 381, pt of §1; am L 1990, c 144, §1 and c 234, §9]

"PART XI. FIRST-TO-WORK PROGRAM

Note

Part heading amended by L 2008, c 88, pt of §1.

§346-261 First-To-Work; establishment; purpose. There is established a mandatory work program for certain applicants and recipients of temporary assistance for needy families and temporary assistance for other needy families consistent with federal regulations and requirements under title IV-A of the Social Security Act, 42 United States Code section 601 et seq. The purposes of the first-to-work program shall be to encourage, assist, and require temporary assistance for needy families and temporary assistance for other needy families applicants and recipients to fulfill their responsibilities to support their children by preparing for, accepting, and retaining employment. The department shall adopt rules consistent with the requirements of title IV-A of the Social Security Act, 42 United States Code section 601 et seq., and in accordance with chapter 91 for the purposes of this part. [L 1990, c 321, pt of §1; am L 2008, c 88, pt of §1]

" **§§346-262 to 346-276 REPEALED.** L 2008, c 88, pt of §1.

"[PART XII.] ADOPTION ASSISTANCE

[§346-301] Adoption assistance program established. The department of human services shall maintain an adoption assistance program to facilitate the adoption of children with special needs. [L 1992, c 190, pt of §1]

Cross References

Adoption assistance compact, see chapter 350C.

Interstate compact on placement of children, see chapter 350E.

" **[§346-302] Equal benefits.** The adoption assistance program referred to in section 346-301 shall provide equal benefits for children regardless of whether federal matching funds for adoption assistance are received by the State. [L 1992, c 190, pt of §1]

" **[§346-303] Rules.** The department of human services shall maintain rules describing eligibility criteria for adoption assistance and describing the types, duration, and amounts of adoption assistance benefits that may be received. [L 1992, c 190, pt of §1]

" **[§346-304] Eligibility.** Eligibility for adoption assistance shall not depend upon the amount of income or property of the adoptive family. [L 1992, c 190, pt of §1]

" **[§346-305] Effect on prior adoption assistance agreements.** Nothing in this part shall invalidate any adoption assistance agreement already entered into or benefits previously provided by the department of human services nor shall require a reduction of benefits already being provided. [L 1992, c 190, pt of §1]

Revision Note

"Part" substituted for "act" pursuant to §23G-15.

"PART XIII. RX PLUS PROGRAM--REPEALED

§§346-311 to 346-319 REPEALED. L 2011, c 124, §§52, 56.

Note

L 2011, c 124, §44 purports to amend §346-311.

"PART XIV. HOME AND COMMUNITY-BASED CASE MANAGEMENT AGENCIES AND COMMUNITY CARE FOSTER FAMILY HOMES--REPEALED

§§346-331 to 346-336 REPEALED. L 2012, c 93, §8.

"PART XV. STATE PHARMACY ASSISTANCE PROGRAM--REPEALED

§§346-341 to 346-347 REPEALED. L 2011, c 124, §§53, 57.

Note

L 2011, c 124, §45 purports to amend §346-344.

"[PART XVI.] MEDICAID PREAUTHORIZATION EXEMPTION

[§346-351] Findings. The legislature finds that:

- (1) Patients who are medicaid recipients and who suffer from the human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, or who are in need of immunosuppressives as a result of organ transplants, have the least means available to obtain proper medications required to control their illnesses;
- (2) These medicaid recipients, if not promptly treated and maintained on effective medications, will, by the very nature of their illnesses, suffer greatly and may require increased medical care, including prolonged hospitalization, resulting in increased costs to these patients and society as a whole;
- (3) Failure to promptly treat a patient with the human immunodeficiency virus, acquired immune deficiency syndrome, or hepatitis C, and failure to use effective immunosuppressives during and after organ transplants, may result in increased suffering by the patients, the early or unnecessary loss of the patients' lives, increased cost of medical care, and increased emotional, physical, financial, and societal costs;
- (4) It is ethically imperative that the physicians who treat medicaid recipient patients with human immunodeficiency virus, acquired immune deficiency syndrome, or hepatitis C, or patients who are in need of immunosuppressives before, during, and after transplant operations, have the unfettered ability to promptly medically intervene in treating these patients and to continue proven medications for those patients;
- (5) The procedure of requiring preauthorization of medicaid recipients before dispensing medications for the treatment of human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, and immunosuppressives needed for transplant patients, is unduly arduous, difficult, and too time-consuming for practitioners with large numbers of these patients who require immediate treatment to avoid permanent injury and other undesirable consequences; and
- (6) The imposition of a "first fail" plan before a physician can adjust or change a medication not on the approved list of medications is medically unsound. The condition of a seriously ill patient suffering

from the human immunodeficiency virus, acquired immune deficiency syndrome, or hepatitis C, or who is in need of transplant immunosuppressives, will generally not remain stable for long without prompt treatment. If these persons are not more promptly and effectively treated, a significant probability exists that there will be a substantial increase in health care costs and hospitalizations, thereby increasing medical costs to the State. [L 2005, c 241, pt of §1]

" **§346-352 Preauthorization exemption for certain physicians and physician assistants.** Any physician or physician assistant licensed in this State who treats a medicaid recipient patient suffering from the human immunodeficiency virus, acquired immune deficiency syndrome, or hepatitis C, or who is a patient in need of transplant immunosuppressives, may prescribe any medications approved by the United States Food and Drug Administration and that are eligible for Omnibus Budget Reconciliation Rebates Act (OBRA), that are necessary to treat the condition, without having to comply with the requirements of any preauthorization procedure established by any other provision of this chapter. This section shall not apply to medicaid managed care medical plans. [L 2005, c 241, pt of §1; am L 2007, c 92, §§2, 5; am L 2009, c 151, §16; am L 2015, c 20, §8]

"PART XVII. HOMELESS PROGRAMS

Note

Contracts that take effect after June 30, 2017, between the department of human services and a provider agency for the operation or management of an emergency or transitional shelter to comply with L 2016, c 234. L 2016, c 234, §6.

Homeless assistance working group (repealed June 30, 2016). L 2013, c 222, §§15 to 17; L 2014, c 134, §7.

Return-to-home pilot program for eligible homeless individuals (terminated on December 31, 2016). L 2013, c 222, §§12 to 14.

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

§346-361 Definitions. As used in this part, unless the context otherwise requires:

"Donor" means any individual, partnership, corporation, joint-stock company, unincorporated organization, foundation, estate, trust, or any other person or firm that donates money, real property, goods, or services to a homeless facility or any

other program for the homeless authorized by this part, including members of any governing body, trustees, officers, partners, principals, stockholders, members, managers, employees, contractors, agents of these entities, or any person who was involved with the donation.

"Emergency shelter" [*Definition effective until June 30, 2017. For definition effective July 1, 2017, see below.*] means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for a specified period of time.

"Emergency shelter" [*Definition effective July 1, 2017. For definition effective until June 30, 2017, see above.*] means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for a specified period of time who are not able to stay in a transitional shelter or reside in a dwelling unit.

"Homeless" means:

- (1) An individual or family who lacks a fixed, regular, and adequate night-time residence; or
- (2) An individual or family who has a primary night-time residence that is:
 - (A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - (B) An institution that provides temporary residence for individuals intended to be institutionalized; or
 - (C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings.

This term does not include any individual imprisoned or otherwise detained under an act of Congress or a state law.

"Homeless facility" means a development designed to provide shelter for homeless families or individuals pursuant to this part, or to facilitate any other homeless program authorized by this part, and may include emergency or transitional shelters.

"Homeless shelter stipend" [*Definition effective until June 30, 2017. For definition effective July 1, 2017, see below.*] means a payment to a provider agency or to the department on behalf of a homeless family or individual to assist with the costs of operating a homeless facility and providing appropriate services.

"Homeless shelter stipend" [*Definition effective July 1, 2017. For definition effective until June 30, 2017, see above.*] means a payment to a provider agency from the department to provide temporary shelter and appropriate services for a

homeless family or individual at a homeless facility operated or managed by the provider agency.

"Provider agency" means an organization, including its governing board, officers, employees, contractors, or agents, contracted by the department to provide labor and services to any homeless facility or any other program for the homeless authorized by this part that is:

- (1) A for-profit organization incorporated under the laws of the State; or
- (2) A nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax; that has a governing board whose members have no material conflict of interest and who serve without compensation, and that has adopted bylaws or policies that describe the manner in which business is conducted, including policies that relate to nepotism and management of potential conflict of interest situations.

"Transitional shelter" [*Definition effective until June 30, 2017. For definition effective July 1, 2017, see below.*] means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for up to twenty-four months, pursuant to rule.

"Transitional shelter" [*Definition effective July 1, 2017. For definition effective until June 30, 2017, see above.*] means a homeless facility designed to provide temporary shelter and appropriate and available services for a maximum of twenty-four months to homeless families or individuals qualified by the pertinent provider agency or department to stay in the transitional shelter. [L 2010, c 89, pt of §2; am L 2016, c 234, §3]

" **[§346-362] Duties.** (a) The department of human services shall administer and operate homeless facilities and any other program for the homeless authorized by this part; establish programs for the homeless; and take any other actions necessary to effectuate the purposes of this part.

(b) The department shall adopt rules pursuant to chapter 91 for the purposes of this part; provided that these rules, or any rules relating directly to homelessness authorized by any statute, shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91 and shall take effect immediately upon filing with the office of the lieutenant governor. [L 2010, c 89, pt of §2]

" **[§346-363] Exception to liability for donors.** (a) Any donor who gives money to a provider agency, to a homeless

facility to or through the department, or for any other program for the homeless authorized by this part shall not be liable for any civil damages resulting from the donation.

(b) Any donor who gives land and improvements, or who leases land and improvements at a nominal consideration, to a provider agency, to a homeless facility to or through the department, or for any other program for the homeless authorized by this part shall not be liable for any civil damages resulting from the donation, except as may result from the donor's gross negligence or wanton acts or omissions; provided that if the donor at the time of donation gave the department a full disclosure of all the dangers concerning the land and improvements known to the donor, the donor shall not be liable for any civil damages resulting from the donation.

(c) Any donor who, in good faith and without remuneration or expectation of remuneration, provides services or materials used to build and construct a facility for the homeless, or who renovates, repairs, or maintains an existing or acquired facility for the homeless, or who provides shelter to homeless persons, shall not be liable for any civil damages resulting from the donor's acts or omissions, except for damages resulting from the donor's gross negligence relating to the donation.

(d) The department shall be responsible for inspecting, reviewing, analyzing, qualifying, and determining that the land, structures, materials, or services donated to the department for use by the department in facilities for the homeless are reasonably safe for public use. [L 2010, c 89, pt of §2]

" **[§346-364] Contract or conveyance to the department.** Notwithstanding any other law to the contrary, the board of land and natural resources or other state agency holding lands and improvements may contract or otherwise convey at a nominal consideration, by direct negotiation and without recourse to public auction, the land and improvements, or the management, operation, and administrative responsibility over the land and improvements, to the department or its designee. The land and improvements shall be used by the department or its designee for homeless facilities or for any other program for the homeless authorized by this part. [L 2010, c 89, pt of §2]

" **[§346-365] Program administration.** To the extent that appropriations are made available, the department may contract with a provider agency to administer homeless facilities or any other program for the homeless created by this part. The selection of provider agencies to administer homeless facilities or any other program for the homeless authorized by this part shall not be subject to chapters 42F, 102, and 103. The

selection of provider agencies shall be subject to qualifying standards and criteria established by rule.

The provider agency shall be qualified by the department to operate and manage a homeless facility or any other program for the homeless authorized by this part pursuant to standards and criteria established by rules for eligibility. [L 2010, c 89, pt of §2]

" **[§346-366] Time limits.** To the extent that appropriations are made available, a provider agency shall provide shelter or any other program assistance authorized by this part to eligible homeless families and homeless individuals not later than three days after a vacancy occurs, or such time as is set by rule, which shall not be later than seven days after they apply and qualify for the shelter or other program assistance. These time limits may be waived at the discretion of the department for a maximum period of fourteen days for the purpose of implementing repairs to the subject shelter that the department deems major or extensive. [L 2010, c 89, pt of §2]

" **[§346-367] Determination of eligibility and need.** (a) The provider agency operating and managing a homeless facility or any other program for the homeless authorized by this part, or the department operating and managing its own homeless facility, shall be responsible for determining if an applicant is eligible for shelter or other services at the homeless facility or through any other program for the homeless, pursuant to standards and criteria established by rule.

(b) The provider agency or the department operating and managing its own homeless facility shall determine the degree of need for each homeless family or individual and, in its determination, shall consider the resources available and the number of potential eligible applicants in the area served by the homeless facility or other program for the homeless authorized by this part.

(c) The department may establish by rule standards and criteria for eligibility, need, and priority for each program; provided that the department may establish by rule exceptions to these eligibility requirements based on special circumstances. [L 2010, c 89, pt of §2]

" **[§346-368] Abuse of assistance.** (a) The provider agency operating and managing a homeless facility or any other program for the homeless authorized by this part, or the department operating and managing its own homeless facility, shall be responsible for determining whether a participant is no longer eligible for shelter or other services at the homeless facility

or for any other program for the homeless, pursuant to standards and criteria established by rule.

(b) Pursuant to rule and the right of due process, the department or its designee, or provider agencies together with the department, may act to bar homeless families or individuals from participating further in any homeless facility or services, may issue a writ of possession, and take other actions as provided by rule.

The enforcement of a writ of possession shall be effected either by an officer appointed by the department, who shall have all of the powers of a police officer for all action in connection with the enforcement of the writ, or any other law enforcement officer of the State or any county, whose duty it shall be to enforce the writ. The person enforcing the writ shall remove all persons from the premises and put the department or its designee, or the provider agency designated by the department, in full possession thereof.

Upon eviction, the household goods and personal effects of the person against whom the writ is entered, and those of any persons using the premises incident to the person's holding, may be removed from the premises immediately and sold or otherwise disposed of by the department or its designee or the provider agency. The department or its designee or the provider agency shall have a lien on the property so removed for the expenses incurred in moving the property.

(c) Any person who enters or remains unlawfully in or upon the premises or living quarters of any homeless facility or any other program for the homeless authorized by this part, after reasonable warning or request to leave by that provider agency's agents, the department or its designee, or a police officer, shall be guilty of a misdemeanor; provided that the offense in this subsection shall be in addition to any other applicable offense in the Hawaii Penal Code. A warning or request shall only be issued if the person has engaged in unlawful conduct or has violated house rules and regulations. The house rules shall be reasonable and a copy shall be provided to each tenant or participant. The warning or request shall supersede any invitation by a tenant or participant at the shelter, facility, or program to that person to visit the premises or living quarters. [L 2010, c 89, pt of §2]

" **[§346-369] Exemptions.** (a) Any compensation received by a provider agency for services rendered to homeless families or individuals, or in operating or managing a homeless facility authorized by this part, is exempt from taxation under chapter 237.

(b) Any county mayor may exempt, by executive order, donors and provider agencies from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate the exemptions granted by this subsection.

(c) Any provider agency operating or managing a homeless facility or any other program for the homeless authorized by this part is exempt, for purposes of those facilities or programs, from any requirements contained in part VIII of chapter 346 and chapters 467 and 521. [L 2010, c 89, pt of §2]


" **[§346-370] Emergency or transitional shelter volunteers.**

(a) For the purposes of this section, "emergency or transitional shelter volunteer" means an individual who:

- (1) Is a tenant at an emergency or transitional shelter administered pursuant to this part;
- (2) Is not an employee of the provider agency operating or managing the shelter;
- (3) Is under the direction of the provider agency operating or managing the shelter and not the department or the State; and
- (4) Provides up to eighty hours of volunteer labor or services per month to the provider agency operating or managing the shelter, notwithstanding payment of stipends or credits for the labor and services.

(b) Provider agencies may accept labor and services from emergency or transitional shelter volunteers.

(c) In addition to any exemptions granted to nonpaid labor, emergency or transitional shelter volunteers who acknowledge in writing that they are emergency or transitional shelter volunteers shall not be construed to be in the employ of the provider agency operating or managing the shelter. The volunteers' labor and services provided to the provider agency operating or managing the shelter shall not be construed to constitute employment, and the volunteers shall not be construed to be employees of the provider agency operating or managing the shelter, under any labor law. [L 2010, c 89, pt of §2]


 " **[§346-371] Annual performance audits.** [Section effective until June 30, 2017. For section effective July 1, 2017, see below.]

(a) The department shall require any provider agency that dispensed shelter or assistance for any homeless facility or any other program for the homeless authorized by this part to submit to the department a financial audit and report when requested, but no later than every three years. The audit shall be conducted by a certified public accounting firm. This audit

and report shall contain information specific to the funds received under state homeless program contracts. The audit shall include recommendations to address any problems found.

(b) Continuing contracts with provider agencies to participate in any program for the homeless authorized by this part shall require that the provider agency address the recommendations made by the auditing agency, subject to exceptions as set by the department.

(c) Failure to carry out the recommendations made by the auditing agency may be grounds for the department to bar a provider agency from further contracts for programs authorized by this part until the barred provider has addressed all deficiencies. [L 2010, c 89, pt of §2]

 **§346-371 Annual financial audit.** [Section effective July 1, 2017. For section effective until June 30, 2017, see above.]

(a) The department shall require any provider agency that dispensed shelter or assistance for any homeless facility or any other program for the homeless authorized by this part to submit to the department a financial audit when requested, but at least annually. The audit shall be conducted by a certified public accounting firm. This audit shall contain information specific to the funds received under state homeless program contracts. The audit shall include recommendations to address any problems found.

(b) Continuing contracts with provider agencies to participate in any program for the homeless authorized by this part shall require that the provider agency address the recommendations made by the audit, subject to exceptions as set by the department.

(c) Failure to carry out the recommendations made by the audit may be grounds for the department to bar a provider agency from further contracts for programs authorized by this part until the barred provider has addressed all deficiencies. [L 2010, c 89, pt of §2; am L 2016, c 234; §4]

" **[\$346-372] Provider agency and donor cooperation are not in restraint of trade.** No provider agency or any other agency, or donor or donors, or method or act thereof that complies with this part shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily, or the creation of a combination or pool, or to accomplish any improper or illegal purpose. Any cooperation or agreement established pursuant to rule shall not be considered as illegal, in restraint of trade, or as part of a conspiracy or combination to accomplish an illegal purpose or act. [L 2010, c 89, pt of §2]

" **[§346-373 Construction of part.** If there is any conflict between this part and any other law, this part shall control. [L 2010, c 89, pt of §2]



" **[§346-374 Homeless shelter stipends.** [Section effective until June 30, 2017. For section effective July 1, 2017, see below.] (a) The stipend limits per shelter unit of zero bedrooms shall be adjusted by the department annually on the first day of July pursuant to standards established by rule, which may consider changes in the cost of operating homeless facilities, the fair market rents, the consumer price index, or other relevant factors. A "shelter unit of zero bedrooms" means a living unit that is a studio unit or a single-room occupancy unit. The homeless shelter stipend at transitional shelters for larger shelter units shall be proportional to the difference in unit size.

(b) The department may make or may contract to make homeless shelter stipend payments on behalf of one or more homeless families or individuals to a provider agency operating or managing an emergency or transitional shelter or, if the department itself operates and manages a homeless facility, to the department in amounts and under circumstances as provided by rule. The contract may specify a minimum total amount of homeless shelter stipends to be received by a provider agency for making its shelter and services available to eligible homeless families or individuals.

(c) In making homeless shelter stipend payments to a provider agency, the department may establish minimum services to be provided by the provider agency to homeless families or individuals at the provider agency's shelter. The department may also direct provider agencies to establish and manage a savings account program as described in subsection (d). Additionally, the department may direct provider agencies to subcontract for outreach services from other private agencies specializing in programs for the unsheltered homeless.

(d) Provider agencies and the department may establish and collect shelter and services payments from homeless families or individuals in addition to the amount received in homeless shelter stipend payments pursuant to rule. Provider agencies and the department may also set aside a portion of the payments in a savings account to be made available to homeless families or individuals when these families and individuals vacate the shelter. [L 2010, c 89, pt of §2]



§346-374 Homeless shelter stipends. [Section effective July 1, 2017. For section effective until June 30, 2017, see

above.] (a) The department may make or may contract to make homeless shelter stipend payments to a provider agency operating or managing an emergency or transitional shelter. Under each contract, the department shall pay homeless shelter stipends only for performance measures actually achieved by the provider agency, such as the number of homeless families or individuals actually provided with shelter and appropriate services at the emergency or transitional shelter. The contract also may include provisions for the automatic adjustment of the homeless shelter stipend amounts, depending on factors agreed to by the department and provider agency.

(b) In making homeless shelter stipend payments to a provider agency, the department may establish minimum services to be provided by the provider agency to homeless families or individuals at the provider agency's shelter. The department may also direct provider agencies to establish and manage a savings account program as described in subsection (c). Additionally, the department may direct provider agencies to subcontract for outreach services from other private agencies specializing in programs for the unsheltered homeless.

(c) When authorized under a contract with the department, a provider agency may establish and collect shelter and services payments from homeless families or individuals in addition to the amount received in homeless shelter stipend payments. To the extent possible, the shelter and service payment amounts established and collected by a homeless facility, other than an emergency shelter, shall be based on the homeless families' and individuals' ability to pay. If collection of payments based on ability to pay is too difficult, costly, or inefficient for the provider agency, the payment amounts may be based on other criteria authorized under the contract or waived partially or entirely.

Provider agencies and the department may also set aside a portion of the payments in a savings account to be made available to homeless families or individuals when these families and individuals vacate the shelter.

(d) Any state funding assistance provided to a provider agency for compliance with the minimum requirements under section 346-374.5(b) shall be in addition to homeless shelter stipends paid to the provider agency. [L 2010, c 89, pt of §2; am L 2016, c 234, §5]

" **[§346-374.5] Emergency shelter; minimum requirements.**
[Section effective July 1, 2017.] (a) This section shall apply to every emergency shelter operated by a provider agency that is under contract with the department to receive homeless shelter

stipends for providing shelter and services to homeless families or individuals at the emergency shelter.

(b) The department shall require an emergency shelter to comply with the following:

- (1) The shelter shall have the number of showers and bathrooms that the department deems appropriate and sufficient for the number of homeless families or individuals that use the shelter and the capacity of the shelter. The showers and bathrooms may be part of the shelter building or portable and unattached to the shelter building;
- (2) The shelter shall have partitioned space for each homeless family or individual that provides separation from other homeless families or individuals in the shelter. The minimum area of the partitioned space and height of the partition shall be determined by the department and may differ among transitional shelters, according to the number of homeless families or individuals that use the shelter and the capacity of the shelter. A shelter that provides separate rooms or portable dwelling units for homeless families or individuals, including converted shipping containers or school classrooms, shall be deemed to exceed this minimum requirement; and
- (3) The shelter shall provide storage for the personal possessions of each homeless family or individual served by the shelter. The storage shall be securable by the homeless family or individual. The type and number of the storage equipment, space, or area shall be determined by the department.

(c) The department may require an emergency shelter to comply with any other requirements that the department deems appropriate or necessary. The requirements established by the department may vary among emergency shelters.

(d) A provider agency contracted to operate or manage an emergency shelter not owned by the department shall comply with the minimum requirements of subsection (b). The provider agency shall bear all costs of compliance, unless the department provides or contributes state funding assistance; provided that the state funding assistance shall be:

- (1) In addition to homeless shelter stipends paid to the provider agency under section 346-374;
- (2) Subject to the availability of legislative appropriations; and
- (3) Recoverable, in whole or part, by the department if the provider agency does not perform satisfactorily

under or for the duration of the term of its contract with the department to operate or manage the shelter.

(e) Any emergency shelter owned by the department shall comply with the minimum requirements under subsection (b), regardless of whether the department contracts with a provider agency to manage or operate the emergency shelter. [L 2016, c 234, §2]

" **[§346-375] Temporary emergency shelter.** (a) In addition to any other duties prescribed by law, the department shall develop, in consultation with the four counties, a procedure for identifying locations that shall be used for temporary emergency shelters for homeless individuals and families. The department shall actively partner with and monitor the efforts of the counties.

(b) Each county shall be responsible for partnering with nonprofit organizations to locate, designate, and maintain the areas that shall be used for temporary emergency shelters. The designated locations may include private, county, state, and federal lands. [L 2010, c 89, pt of §2]

" **[§346-376] Additional powers.** The powers conferred upon the department by this part shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities conferred. [L 2010, c 89, pt of §2]

" **§346-377 REPEALED.** L 2016, c 42, §7.

" **§346-378 Housing first programs.** (a) The department of human services, in consultation with the United States Department of Housing and Urban Development, as necessary, shall implement housing first programs and services, as the department deems appropriate for clientele who would most likely benefit from and succeed with the implementation of housing first programs and services, and subject to the availability of existing funds.

(b) The principles of housing first include:

- (1) Moving chronically homeless individuals into housing directly from streets and shelters, without a precondition of accepting or complying with treatment; provided that the department may condition continued tenancy through a housing first program on participation in treatment services;

- (2) Providing robust support services for program participants, predicated on assertive engagement instead of coercion;
- (3) Granting chronically homeless individuals priority as program participants in housing first programs;
- (4) Embracing a harm-reduction approach to addictions, rather than mandating abstinence, while supporting program-participant commitments to recovery; and
- (5) Providing program-participants with leases and tenant protections as provided by law.

The department of human services may contract with housing first consultants to effectuate the purposes of this section.

(c) Housing first programs shall incorporate the following:

- (1) Identification of target populations, specifically chronically homeless individuals;
- (2) Developing assessments for the chronically homeless population;
- (3) Developing service components, including:
 - (A) Financial assistance;
 - (B) In-home case management services;
 - (C) Affordable housing requirements;
 - (D) Landlord cultivation;
 - (E) Housing-placement requirements; and
 - (F) Support services to move program-participants toward self-sufficiency.

(d) The department of human services shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2011. The annual report shall include:

- (1) The total number of participants in housing first programs;
- (2) The annual costs of the programs;
- (3) The types of support services offered; and
- (4) Information regarding the duration of services required for each participant.

(e) As used in this section, "chronically homeless individual" means a homeless individual who has an addiction or a mental illness, or both. [L 2010, c 212, pt of §2, §5; am L 2016, c 42, §6]

Revision Note

In subsections (a), (b), and (d), "the department of human services" was substituted for "the Hawaii public housing authority, in collaboration with the department of human services" pursuant to §23G-15.

"[PART XVIII.] HAWAII INTERAGENCY COUNCIL ON HOMELESSNESS

Note

Establishment of designated safe facilities for overnight stays. L 2012, c 105, §4.

[\$346-381] Hawaii interagency council on homelessness; establishment. (a) There is established the Hawaii interagency council on homelessness, which shall be an advisory body exempt from section 26-34. The Hawaii interagency council on homelessness shall be established within the department of human services for administrative purposes.

(b) The Hawaii interagency council on homelessness shall:

- (1) Serve as the statewide homelessness planning and policy development entity with broad representation from state and county government and the community;
- (2) Formulate, and advise the governor on the implementation of, a unified ten-year statewide plan to address homelessness in all Hawaii counties;
- (3) Facilitate the acquisition of funding and resources for state and county homeless programs;
- (4) Recommend policy, regulatory, and statutory changes, and identify resource strategies for the successful execution of the ten-year plan;
- (5) Assemble accurate fiscal and demographic information to support policy development and track outcomes;
- (6) Consider collaborative homelessness initiatives of other states that have demonstrated positive measurable outcomes as possible models for state and local programs;
- (7) Promote systems integration of social, health, training, and housing services to reduce duplication among homeless assistance programs;
- (8) Advise on the development and implementation of a public education program on homelessness in Hawaii and disseminate information including data and best practices; and
- (9) Report annually to the governor, the legislature, and the mayor of each county on the progress of its activities, including formulation and progress of the ten-year plan no later than twenty days prior to the convening of each regular session.

(c) The ten-year statewide plan developed by the Hawaii interagency council on homelessness shall:

- (1) Assist individuals who are homeless or facing homelessness;
- (2) Prioritize the needs of the most vulnerable individuals and families;
- (3) Encourage and promote partnerships between public and private entities to identify, renovate, and secure dignified transitional and permanent housing options;
- (4) Promote development and utilization of support services, including job training, mental health, and substance abuse treatment, that will enhance the transition out of homelessness;
- (5) Increase access to public areas for all members of the community;
- (6) Support efforts to obtain accurate statistics on homeless persons; and
- (7) Activate, coordinate, and maintain responsive action among the public, business, and faith-based communities to become part of the homelessness solution strategy. [L 2012, c 105, pt of §2]

" **§346-382 Membership.** (a) The Hawaii interagency council on homelessness shall be composed of the following members or the member's designee:

- (1) Governor's coordinator on homelessness, who shall serve as chair;
- (2) Director of human services;
- (3) Administrator of the homeless programs office of the department of human services;
- (4) Director of health;
- (5) Director of labor and industrial relations;
- (6) Director of public safety;
- (7) Director of business, economic development, and tourism;
- (8) Chairperson of the Hawaiian homes commission;
- (9) Adjutant general;
- (10) Chairperson of the board of trustees of the office of Hawaiian affairs;
- (11) Attorney general;
- (12) Superintendent of education;
- (13) Two members of the house of representatives to be designated by the speaker of the house of representatives, of whom one member shall be designated by the speaker of the house of representatives to serve as an alternate member on the Hawaii interagency council on homelessness to serve in the other member's absence;

- (14) Two members of the senate to be designated by the president of the senate, of whom one member shall be designated by the president of the senate to serve as an alternate member on the Hawaii interagency council on homelessness to serve in the other member's absence;
- (15) A representative of the Hawaii public housing authority;
- (16) The mayor of each county;
- (17) A representative of the continuum of care programs in each county, to be designated by the respective mayors;
- (18) A representative of the United States Department of Veterans Affairs who shall be requested to serve by the governor;
- (19) A representative from the Office of Community Planning and Development, United States Department of Housing and Urban Development, who shall be requested to serve by the governor;
- (20) A representative of a faith-based organization with interfaith relationships, to be designated by the governor; and
- (21) A representative of the business community, to be designated by the governor.

(b) The nongovernmental members of the Hawaii interagency council on homelessness shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(c) Except as provided in subsection (a)(13) and (a)(14), if a member of the Hawaii interagency council on homelessness is unable to attend a meeting, that member may appoint a designee to attend and to act on the member's behalf during the meeting.

(d) Chapter 84 shall not apply to the members of the Hawaii interagency council on homelessness. [L 2012, c 105, pt of §2; am L 2013, c 76, §1]

" **[§346-383] Meetings; quorum.** (a) The Hawaii interagency council on homelessness shall meet quarterly, or more frequently as it deems necessary.

(b) A majority of the members of the Hawaii interagency council on homelessness shall constitute a quorum to do business and to validate any decision or act of the council. [L 2012, c 105, pt of §2]

"**[PART XIX.] YOUNG ADULT VOLUNTARY FOSTER CARE PROGRAM**

[§346-391] Purpose. The purpose of this part is to establish the young adult voluntary foster care program, to care for and assist eligible foster youth until their twenty-first birthday. The young adult voluntary foster care program will support former foster youth in the transition to adulthood and in becoming independent and self-sufficient. [L 2013, c 252, pt of §2]

" **[§346-392] Definitions.** As used in this part, unless the context clearly indicates otherwise:

"Case plan" means a plan developed by the department, in consultation with the young adult, as developmentally appropriate, containing a written description of the programs and services that will help the young adult transition from foster care to independent living.

"Court" means one of the family courts established pursuant to chapter 571.

"Department" means the department of human services and its authorized representatives.

"Foster custody" means the legal status created when the department places a child outside of the family home with the agreement of the legal custodian or pursuant to court order as set forth in chapter 587A.

"Party" means the department or the young adult who is subject to a proceeding brought under this part and may include any other person whose participation the court finds is in the best interest of the young adult.

"Permanent custody" means the legal status created by order of the court after the termination of parental rights as set forth in chapter 587A.

"Young adult" means a person who has attained the age of eighteen or older, but is less than twenty-one years of age. [L 2013, c 252, pt of §2]

" **[§346-393] Rights of the young adult.** (a) Young adults have a right to meaningful court reviews, including the right to:

- (1) Receive notice of any court hearings and reviews and any other case related proceedings and meetings;
- (2) Be involved in the development of a personalized case plan;
- (3) Be present at all court hearings and reviews and be able to address the court during those hearings; provided that young adults may waive their right to be present at the court hearings and reviews or may request to participate in the court hearings and reviews by phone; and

(4) Request competent legal counsel.

(b) Nothing in this part shall be construed to abrogate any other rights that a person who has attained eighteen years of age, may have as an adult under state law. [L 2013, c 252, pt of §2]

" **[§346-394] Jurisdiction.** The family courts established pursuant to chapter 571 shall have exclusive jurisdiction over proceedings brought under this part. [L 2013, c 252, pt of §2]

" **§346-395 Eligibility.** A young adult may continue to receive services under this part if the young adult meets the following criteria:

(1) The young adult was:

(A) Under the permanent custody, foster custody, voluntary foster custody, or court-ordered temporary foster custody of the department at the time the young adult attained the age of eighteen;

(B) A child who was placed in guardianship after attaining the age of sixteen and the legal guardians are no longer willing to provide emotional and financial support; or

(C) A child who was adopted after attaining the age of sixteen and the adoptive parents are no longer willing to provide emotional and financial support;

(2) The young adult voluntarily consents to participate in the young adult voluntary foster care program and meets the program requirements;

(3) The court finds that exercising jurisdiction under this part is in the young adult's best interest; and

(4) The young adult is:

(A) Completing secondary education or a program leading to an equivalent credential;

(B) Enrolled in an institution that provides post-secondary or vocational education;

(C) Participating in a program or activity designed to promote or remove barriers to employment;

(D) Employed for at least eighty hours per month; or

(E) Incapable of doing any of the activities described in subparagraphs (A) to (D) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the young adult. [L 2013, c 252, pt of §2; am L 2016, c 134, §3]

" **§346-396 Voluntary care agreement.** If a young adult is no longer under jurisdiction pursuant to chapter 587A as the subject child and chooses to participate in the young adult voluntary foster care program and meets the eligibility criteria set forth in section 346-395, the department and the young adult shall enter into a voluntary care agreement that shall include, at a minimum, the following:

- (1) The obligation for the young adult to continue to meet the conditions for eligibility described in section 346-395 and the program requirements for the duration of the voluntary care agreement;
- (2) The young adult's right to terminate the voluntary care agreement at any time; and
- (3) The voluntary nature of the young adult's participation in the young adult voluntary foster care program. [L 2013, c 252, pt of §2; am L 2016, c 134, §4]

" **[§346-397] Provision of extended foster care services.** As soon as the department determines that a young adult is eligible under section 346-395 and the young adult signs the voluntary care agreement as described in section 346-396, prior to the filing of the petition invoking the jurisdiction of the court or the court's determination of jurisdiction pursuant to section 346-398, the department may provide extended foster care services to the young adult. [L 2013, c 252, pt of §2]

" **[§346-398] Petition; venue.** (a) Within thirty days after the voluntary care agreement is signed, the department shall file with the court in the county where the young adult resides a petition invoking the jurisdiction of the court under this part, which shall contain:

- (1) The young adult's name, date of birth, and current address;
- (2) A statement of facts that supports the eligibility of the young adult for foster care services that includes the following:
 - (A) The reasonable efforts made to achieve permanency for the young adult; and
 - (B) The reasons why it is in the best interest of the young adult to extend foster care services; and
- (3) A copy of the signed voluntary care agreement.

(b) Upon the filing of the petition, the court shall open a young adult voluntary foster care case for the purpose of determining whether extending foster care services is in the young adult's best interests. The court shall conduct a hearing

and make its determination no later than fifteen days after the filing of the petition.

(c) The court shall set a periodic review to be held within one hundred eighty days after the signing of the voluntary care agreement. [L 2013, c 252, pt of §2]

" **[\$346-399] Notice of hearings and reviews.** Notice of hearings and reviews shall be provided to the parties; provided that no further notice is required for any party who was given actual notice of a hearing or review while present in court. Notice of hearings or reviews shall be served no less than forty-eight hours before the scheduled hearing, or as otherwise determined by the court. [L 2013, c 252, pt of §2]

" **[\$346-400] Case plan; reports to be submitted by the department.** (a) A case plan shall:

- (1) Establish goals for the young adult, including those pertaining to education; health; therapy; counseling; a relationship with the young adult's birth family, including visits; cultural connections; independent living; and transition plans;
- (2) Describe services needed to assist the young adult to achieve the goals set forth in paragraph (1); and
- (3) Describe the methods for achieving the goals and services set forth in paragraphs (1) and (2).

(b) The department shall prepare a report to the court, developed in collaboration with the young adult as developmentally appropriate, describing:

- (1) The young adult's progress toward achieving the goals of the case plan;
- (2) Proposed revisions to the goals of the case plan and reasons for the revisions; and
- (3) Proposed revisions to the methods for achieving the goals of the case plan and the reasons for the revisions.

(c) The report shall be submitted to the court seven days prior to a scheduled periodic review hearing date and a copy shall be provided to the young adult. [L 2013, c 252, pt of §2]

" **[\$346-401] Court proceedings.** (a) The court shall conduct all proceedings under this part without a jury.

(b) The general public shall be excluded from these proceedings. Only parties found by the court to have a direct interest in the case shall be admitted to the proceeding.

(c) Except with respect to the department or the young adult, the court may limit a party's right to participate in any

proceeding if the court deems the limitation to be consistent with the best interests of the young adult.

(d) All documents, reports, and records under this part shall be confidential and shall not be released to any third party without the consent of the young adult or the consent of the court for good cause shown. [L 2013, c 252, pt of §2]

" **[§346-402] Court-appointed attorneys.** The court may appoint an attorney sua sponte or at the request of any party to represent a young adult who is eligible under section 346-395 and has signed the voluntary care agreement as described in section [346-396] if it is deemed by the court to be in the young adult's best interest. Attorneys who are appointed by the court to represent a qualifying young adult may be paid by the court, unless the young adult for whom counsel is appointed has an independent estate sufficient to pay fees and costs. [L 2013, c 252, pt of §2]

" **[§346-403] Periodic review.** (a) Periodic judicial reviews shall occur not less than once every one hundred eighty days after the signing of the voluntary care agreement and may be conducted either by court hearing or court review.

(b) At the periodic review, the court shall issue the following findings:

- (1) Whether the young adult continues to meet the eligibility requirements set forth in section 346-395;
- (2) Whether the young adult continues to comply with the case plan developed in collaboration between the department and the young adult, and the appropriateness of the case plan; and
- (3) The young adult's progress toward achieving independence. [L 2013, c 252, pt of §2]

" **[§346-404] Termination of jurisdiction.** Jurisdiction under this part shall terminate when:

- (1) The young adult has reached the age of twenty-one years;
- (2) The young adult chooses to terminate the voluntary care agreement and stop receiving extended foster care services if the young adult:
 - (A) Has voluntarily signed a document attesting to the fact that the young adult no longer consents to the court's jurisdiction;
 - (B) Has been informed in writing of the effects of terminating voluntary foster care early; and

- (C) Has been informed in writing of the option to reestablish jurisdiction before reaching age twenty-one and the procedures to do so; or
- (3) After a court finds that:
 - (A) The young adult no longer meets the eligibility requirements as set forth in section 346-395; or
 - (B) Despite the fact that the department has made ongoing reasonable efforts to provide the young adult with services, the young adult is in material noncompliance with the case plan. [L 2013, c 252, pt of §2]

" **[\$346-405] Reestablishing jurisdiction.** A young adult who was previously under the jurisdiction of the court under this part and who was terminated from the young adult voluntary foster care program may reestablish jurisdiction by signing a new voluntary foster care agreement at which time the department and the court shall proceed pursuant to section 346-398. [L 2013, c 252, pt of §2]

" **[\$346-406] Liability of the department.** The department or any of its employees who provide services under this part shall not be liable to a third person:

- (1) For any acts of the young adult; and
- (2) For injury to the young adult resulting from the negligence or act of a third person providing services or housing to the young adult. [L 2013, c 252, pt of §2]

" **§346-407 REPEALED.** L 2016, c 134, §5.