

**[CHAPTER 346C
LONG-TERM CARE FINANCING PROGRAM]**

Section

- 346C-1 Definitions
- 346C-2 Long-term care financing program; establishment
- 346C-3 Composition of the board
- 346C-4 Fiduciary and other obligations of the board of trustees
- 346C-5 Repealed
- 346C-6 Investments
- 346C-7 Annual audits of the long-term care benefits fund
- 346C-8 Qualified long-term care services

Note

Long-term care policy goals and guidelines. L 2008, c 224, §§2, 3.

Nursing facility sustainability program (repealed June 30, 2016 and December 31, 2016).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.

Revision Note

Throughout this chapter, "long-term care financing program" substituted for "Hawaii long-term care financing program" and "long-term care benefits fund" substituted for "Hawaii long-term care benefits fund" pursuant to §23G-15.

Cross References

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

Nursing facility sustainability program, see chapter 346F.

" **[§346C-1] Definitions.** As used in this chapter:

"Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

"Board of trustees" means the board of trustees charged with the general administration of this program under section 346C-3.

"Long-term care services" means a broad range of supportive services needed by individuals with physical or mental impairments and have lost or never acquired the ability to function independently.

"Program" means the long-term care financing program set forth in this chapter. [L 2002, c 245, pt of §2]

" **[§346C-2] Long-term care financing program; establishment.** There is established the long-term care financing program, which shall be placed with the department of budget and finance for administrative purposes. The purpose of this program shall be to provide a universal and affordable system of providing for long-term care. The program shall be administered by a board of trustees. [L 2002, c 245, pt of §2]

" **[§346C-3] Composition of the board.** (a) The board of trustees of the long-term care financing program shall consist of five regular members and one ex officio[,] nonvoting member to be appointed by the governor as provided in section 26-34; provided that:

- (1) The terms of members shall be six years; and
- (2) The initial appointments may be staggered in accordance with section 26-34(a).

[(b)] The members of the board of trustees shall have experience in accounting, business, finance, law, or other similar fields, and experience equivalent to five years as an officer or manager of a viable business, community, or organization involved with insurance management, portfolio management, health care management, or similar field. The composition of the board of trustees shall represent a diversity of relevant experience.

[(c)] The board of trustees shall elect a chairperson from among themselves. The trustees shall serve without compensation. [L 2002, c 245, pt of §2]

Attorney General Opinions

Cited, in determining that in the absence of other statutory wording to the contrary, the holdover provision from §26-34(b) would apply to board and commission statutes that refer to §26-34 and that the provision is constitutional. Att. Gen. Op. 16-3.

" **[\$346C-4] Fiduciary and other obligations of the board of trustees.** (a) The board of trustees shall:

- (1) Have and maintain a fiduciary obligation for the program;
- (2) Discharge their duties solely in the best interest of the program;
- (3) Not knowingly participate in or undertake to conceal an act or omission of a trustee, when the act or omission is known to be a breach of fiduciary responsibility; or fail to discharge specific fiduciary responsibilities in a manner that enables another trustee to commit a breach; or having knowledge of a breach, fail to take whatever action that is reasonable and appropriate under the circumstances to remedy the breach;
- (4) Act with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent trustee, acting in a like capacity and familiar with similar matters would use in conducting an enterprise of similar character and purpose; and
- (5) Maintain proper books of accounts and records of the administration of the program.

(b) The board of trustees may contract with a qualified entity to administer the program or to process claims for

benefit payments, or both; provided that the entity shall be appropriately licensed under chapter 431. Selection of the entity shall be subject to chapter 103D; provided that the insurance commissioner shall advise the board of trustees in selection of the entity.

(c) In lieu of subsection (b), the board of trustees may contract with a qualified entity to assume the risk of underwriting loss under the program at a capitated rate of payment to the entity. The entity shall be appropriately licensed under chapter 431 and adequately capitalized. Selection of the entity shall be subject to chapter 103D; provided that the state insurance commissioner shall advise the board of trustees in the selection of the entity. An entity selected under this subsection shall perform the functions under subsection (b), in addition to assuming the risk. [L 2002, c 245, pt of §2]

" **§346C-5 REPEALED.** L 2011, c 124, §54.

" **[§346C-6] Investments.** (a) With the advice of the director of finance to ensure investment soundness, the board of trustees shall invest moneys in the long-term care benefits fund solely in:

- (1) Obligations of any of the following classes:
 - (A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof or by any municipal or political subdivision or school district of any of the foregoing; provided that the principal of and interest on such obligations are payable in currency of the United States, or sovereign debt instruments issued by agencies of, or guaranteed by foreign governments;
 - (B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State; and
 - (C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;

- (2) Obligations eligible by law for purchase in the open market by federal reserve banks;
- (3) Securities and futures contracts in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on such contracts to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system's securities portfolios; covered put and call options on securities; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitation of any of the foregoing paragraphs; and
- (4) Any other investments deemed secure on the advice of the state director of finance.

(b) The board of trustees shall submit to the legislature no later than January 1 of every year, an annual report for the preceding fiscal year. The annual report shall include information concerning:

- (1) Investments, including the types and amounts;
- (2) Current balance in the fund;
- (3) Projected liabilities for the upcoming year;
- (4) Current reserve requirements to meet the projected liabilities for the upcoming year;
- (5) Amount of claims paid and taxes received in the year immediately preceding the issuance of the report; and
- (6) Any other useful information to determine the fiscal soundness of the fund. [L 2002, c 245, pt of §2]

" **[§346C-7] Annual audits of the long-term care benefits fund.** The auditor shall conduct an audit of the long-term care benefits fund annually for the first three years from the date the fund first receives deposits, and every three years thereafter; provided that the auditor may modify the time periods after the first three years as appropriate to the circumstances. The auditor shall publish a report of the results of every audit, including any recommendations. [L 2002, c 245, pt of §2]

" **§346C-8 Qualified long-term care services.** (a) To be eligible for benefit payments for long-term care services under the program, a qualifying individual shall:

- (1) Need assistance with two or more activities of daily living; or

(2) Be afflicted with Alzheimer's disease or dementia.

(b) An individual qualifying for long-term care services under the program shall have written certification from a physician or osteopathic physician licensed under chapter 453 or an advanced practice registered nurse licensed under section 457-8.5, assigned by the board of trustees certifying that the individual requires one or more long-term care services for the period of time during which the individual receives the benefits under the program. The written certification shall specify that the individual:

- (1) Is unable to perform, without substantial assistance from another individual, at least two of six activities of daily living for a period of at least ninety days due to a loss of functional capacity; or
- (2) Requires substantial supervision to protect the individual from threats to health and safety to self or others due to severe cognitive impairment.

(c) The written certification required by subsection (b) shall be subject to approval by the board of trustees. [L 2002, c 245, pt of §2; am L 2009, c 11, §46; am L 2015, c 35, §44]