

CHAPTER 346D
[LONG-TERM CARE]

Section

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Nursing facility sustainability program (repealed June 30, 2016 and December 31, 2016).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

Cross References

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

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

Nursing facility sustainability program, see chapter 346F.

Law Journals and Reviews

Implementing *Olmstead v. L.C.*: Defining "Effectively Working" Plans for "Reasonably Paced" Wait Lists for Medicaid Home and Community-Based Services Waiver Programs. 23 UH L. Rev. 731 (2001).

Case Notes

Where plaintiffs challenged State's administration of its medicaid home and community based services for the developmentally disabled or mentally retarded program (HCBS-MR), defendants' motion for partial summary judgment granted to extent it covered (1) plaintiffs' claim that defendants violated "reasonable promptness" provision of the medicaid statute, 42 U.S.C. §1396a(a)(8), by denying plaintiffs HCBS-MR services, as to filled slots; and (2) plaintiffs' claims based on 42 U.S.C. §1396n(c)(2)(A) or (C) since plaintiffs were not entitled to HCBS-MR services under the medicaid statute once slots were filled by other eligible individuals. 114 F. Supp. 2d 1017 (1999).

" **§346D-1 Definitions.** For the purpose of this chapter:

"Comprehensive home and community-based services" means the provision of a broad range of services, not otherwise available under the approved medicaid state plan, which the waiver program individual needs in order to avoid institutionalization for an indefinite period of time.

"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.

"Home care agency" means an agency licensed by the State to do business in Hawaii that provides home care services such as personal care, personal assistance, chore, homemaker, and nursing services in the individual's home.

"Residential alternative" means a community-based residence authorized to admit waiver program individuals, such as an adult foster home, adult residential care home, domiciliary care home, or foster home for the developmentally disabled.

"Service plan" means a written plan that specifies the services, along with their frequency and their provider, necessary to maintain the individual in the community as a cost-effective alternative to institutionalization.

"Waiver program" means the medicaid home and community-based services programs under 42 U.S.C. section 1396n. [L 1983, c 192, §2; am L 1985, c 207, pt of §1; am L 1987, c 134, pt of §1; am L 1988, c 208, pt of §3; am L 1989, c 154, §1; am L 1998, c 294, §2; am L 2000, c 226, §§3, 9; am L 2004, c 148, §2; am L 2011, c 43, §10]

" **§346D-1.5 Medicaid reimbursement equity.** Not later than July 1, 2008, there shall be no distinction between hospital-based and nonhospital-based reimbursement rates for institutionalized long-term care under medicaid. Reimbursement for institutionalized intermediate care facilities and institutionalized skilled nursing facilities shall be based solely on the level of care rather than the location. This section shall not apply to critical access hospitals. [L 1998, c 294, §1; am L 2000, c 226, §§5, 9; am L 2004, c 148, §§1, 2]

Note

L 2000, c 226, §6 provides:

"SECTION 6. The State's share of matching funds shall be provided through the Hawaii health systems corporation and other designated critical access hospitals' appropriations to the extent funding is available. If funding is not available, medicaid reimbursement to critical access hospitals shall revert back to the existing medicaid payment methodology."

" **§346D-2 Establishment of medicaid home and community-based waiver programs.** (a) Waiver programs shall be established and administered by the department of human services to provide comprehensive home and community-based services for the aged, chronically ill, disabled, developmentally disabled, and

individuals with intellectual disabilities, who are certified as requiring acute, skilled nursing, intermediate care facility, or intermediate care facility for individuals with intellectual disabilities level of care.

(b) These services shall be furnished to individuals in the geographic areas of the State identified in the approved waiver program applications.

(c) Medicaid home and community-based waiver program expenditures shall not exceed the amount authorized by the federal Centers for Medicare and Medicaid Services. [L 1983, c 192, §3; am L 1985, c 207, pt of §1; am L 1987, c 134, pt of §1; am L 1988, c 208, pt of §3; am L 1990, c 324, §3; am L 1991, c 61, §1; am L 1998, c 294, §3; am L 2011, c 43, §11 and c 220, §§5, 11]

Cross References

Long term care service development fund, see §321-22.

" **§346D-3 Determination of eligibility for participation in a waiver program.** (a) To qualify for participation in a waiver program, individuals shall:

- (1) Be determined by the department of human services to be eligible for federally-funded medicaid assistance;
- (2) Be certified by the department of human services, through the preadmission screening process, to be in need of acute, skilled nursing facility, intermediate care facility, or intermediate care facility for individuals with intellectual disabilities level of care; and
- (3) Choose to remain in the community with the provision of home and community-based waiver program services as an alternative to institutionalization.

(b) Individuals approved for a waiver program shall have the following:

- (1) Comprehensive assessment of their health, functional, social, and environmental needs;
- (2) Written service plan that addresses the necessary safeguards to protect the health and welfare of the individual, and reflects the individual's freedom of choice of providers and services;
- (3) Budget based on the services defined in the service plan; and
- (4) Periodic review of their health, functional, and financial status to ensure continued eligibility for waiver program services. [L 1983, c 192, §4; am L 1985, c 207, pt of §1; am L 1987, c 134, pt of §1; am

L 1988, c 208, pt of §3; am L 1998, c 294, §4; am L 2011, c 220, §11]

Cross References

Chore services, see §346-64.5.

" **§346D-4 Provision of services.** (a) Services that maximize the individual's independence shall be provided in the individual's home, the home of a responsible relative or other adult, or a residential alternative setting.

(b) The program shall provide the services in the most economic manner feasible which is compatible with preserving quality of care through:

- (1) Informal care providers, such as family members, friends, or neighbors who regularly provide specific services without remuneration and not as a part of any organized volunteer activity;
- (2) Individual providers hired and directed by the waiver program individual to provide specific approved services;
- (3) Contracts with agency providers, such as home care agencies and public or private health and social service organizations;
- (4) Contracts with individual providers, such as counselors, nurses, therapists, and residential alternative program operators who provide services for the waiver program; and
- (5) Program personnel, such as social workers and nurses who are hired by the waiver program to provide specific services. [L 1983, c 192, §5; am L 1985, c 207, pt of §1; am L 1987, c 134, pt of §1; am L 1988, c 208, pt of §3; am L 1998, c 294, §5]

" **§346D-4.5 Needs allowance; waiver program individuals.**

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

- (1) Adult residential care home type I and type II facilities;
- (2) Licensed developmental disabilities domiciliary homes as defined in section 321-15.9;
- (3) Community care foster family homes as defined in section 321-481;
- (4) Certified adult foster homes as defined in section 321-11.2;
- (5) Domiciliary care as defined in section 346-1;
- (6) A nursing facility as defined in section 346E-1; or

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

(b) The needs allowance may be administered by the department of human services to pay for clothing and other personal miscellaneous needs, such as bus fare, personal postage costs, haircuts, and other costs of day-to-day living.

(c) The State's supplemental payment for a needs allowance under subsection (a) shall be increased by an amount necessary to bring the allowance up to \$50 per month. The payment under this section shall be afforded to an individual notwithstanding that the individual is incapacitated; provided that the moneys may be spent on behalf of the client, with a written accounting, by the operator of the residence or facility. [L 2007, c 96, §2; am L 2012, c 93, §5]

" **§346D-5 REPEALED.** L 1998, c 294, §6.

" **§346D-6 REPEALED.** L 1994, c 110, §1.

" **[§346D-7] Rules.** The department of human services shall adopt rules in accordance with chapter 91, for the purpose of this chapter. [L 1983, c 192, §9; am L 1985, c 207, pt of §1; am L 1987, c 134, pt of §1; am L 1988, c 208, pt of §3]

Revision Note

"Chapter" substituted for "Act" pursuant to §23G-15.

" **§346D-8 Personnel exempt.** The department of human services may employ civil service personnel in accordance with chapter 76 to service the waiver programs. [L 1983, c 192, §10; am L 1985, c 207, pt of §1; am L 1987, c 134, pt of §1; am L 1988, c 208, pt of §3; am L 2000, c 45, §1 and c 253, §150; am L 2006, c 300, §10]