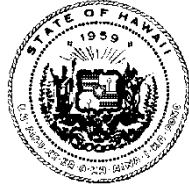


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January 30, 2017

TO: The Honorable Senator Josh Green, Chair  
Senate Committee on Human Services

The Honorable Senator Rosalyn H. Baker, Chair  
Senate Committee on Commerce, Consumer Protection, and Health

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 511 – RELATING TO CHILD CARE FACILITIES**

Hearing: Monday, January 30, 2017, 2:45 p.m.  
Conference Room 016, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the intent of this measure and offers comments. We are listening to the concerns of our community and continue to examine how to improve our systems to be more efficient and effective in serving Hawai'i's children. In response to the enactment of the Child Care and Development Block Grant (CCDBG) Act of 2014, Public Law (P.L.) 113-186, and Act 88, Session Laws of Hawaii (SLH) 2016, DHS has been and is actively working on complying with these major changes in law that already require DHS to post similar monitoring and inspection information to a public website. Proceeding with the current law, DHS expects the information to be available on a public website by late 2018.

**PURPOSE:** The purpose of the bill is to require DHS to publish reports of child care facility inspections and complaint investigations on DHS's website and creates an oversight committee for implementation of and compliance with publication requirements. The bill also requires annual reporting to the Legislature and makes an appropriation.

The primary focus of DHS child care licensing program is on the health and safety of all children in care. On November 19, 2014, President Obama signed into law the Child Care and Development Block Grant (CCDBG) Act of 2014, Public Law (P.L.) 113-186, which reauthorized the Child Care and Development Fund (CCDF). The CCDBG Act of 2014 made expansive changes focused on protecting the health and safety of children in care, ensuring parents and the general public have transparent information about the child care choices available to them, and improving the overall quality of early learning and afterschool programs.

**1. Posting reports to a public website.**

To bring Hawaii law into compliance with federal law, last session's Governor's bill package included HB2343, which the Hawaii legislature passed (HB2343 HD2 SD1 CD1) and the Governor signed into law as Act 88, Session Laws of Hawaii (SLH) 2016. Act 88 (SLH 2016) became effective July 1, 2016. Act 88 (SLH 2016) made substantial amendments to safety provisions to protect children in child care consistent with the CCDBG Act. In addition to enhancing and expanding background checks, training and monitoring provisions of exempt providers caring for children whose families receive a CCDF subsidy, Act 88 (SLH 2016) amended section 346-153, to allow DHS to post records of deficiencies and complaints on a public website. DHS is currently working to implement these extensive changes in the regulation of child care providers.

The U.S. Department of Health and Human Services, Administration for Children and Families (ACF), issued the Final Rule 45 Code of Federal Regulations (CFR) Part 98 for the CCDF program and which became effective November 30, 2016. The 45 CFR Part 98 rule revision provided needed guidance regarding P.L. 113-186 requirements to the states, territories, and tribes that receive CCDF grants and clarified that the consumer education information website requirement for each state will need to include:

- a. The process of licensing child care providers;
- b. The process for conducting monitoring and inspections of child care providers;
- c. Policies and procedures related to criminal background checks for child care providers;
- d. The offenses that prevent individuals from serving as child care providers;

- e. A localized list of all licensed child care providers searchable by zip code;
- f. Results of monitoring and inspection reports and those reports due to major substantiated complaints about failure to comply with the provisions of health and safety.

The reports on the public website shall include information on the date of such inspection, information on corrective action taken by the state and the child care provider, where applicable, any health and safety violations, including any fatalities and serious injuries occurring at the provider, prominently displayed on the report summary, and a minimum of 3 years of results where available.

DHS has been diligently working toward improving the health and safety system through meeting the requirements of the CCDBG Act, P.L. 113-186 and 45 CFR Part 98, and DHS anticipates the implementation of the public consumer education website by late 2018.

DHS provides the following comments for the committee's consideration. There may be unintended consequences if this bill is adopted in its current form as it is inconsistent with federal provisions and creates uncertainty. Page 4, line 6 insertion of "shall" and deletion of "may" would require DHS to post all complaints of alleged violations received by DHS. DHS is concerned that because there is no minimum standard of evidence required to submit a complaint to DHS, families, consumers and the public may be confused by postings of complaints in which DHS did not find any evidence of violations of the child care rules or laws.

Congress and the ACF through P.L. 113-186 and 45 CFR Part 98 understood that consumers and the public should have information posted regarding *substantiated* complaints in which the state has found violations of regulatory requirements; such posting of only substantiated complaints would allow the public and parents to access critical information quickly without having to sift through other information, like unsubstantiated reports where the state did not find violations of any regulatory requirements.

If the Committee finds that posting of all complaints whose investigation has been completed is necessary for consumers and the public, DHS may need to consider additional IT system modifications to accommodate this change as DHS is currently in the planning and

development process of the public website to meet the requirements of P.L. 113-186 and 45 CFR Part 98.

Changes to state law may result in additional delays to DHS meeting the targeted implementation date of late 2018. DHS would also need to consult with the ACF as to whether or not such additional unsubstantiated complaint information posted would risk the department's ability to comply with CCDBG Act P.L. 113-186 and 45 CFR Part 98 as consumers would have to sift through the additional information to determine for themselves which complaints are 'critical information' and which were substantiated complaints by DHS.

DHS proposes leaving page 4, line 6 as "may," since P.L. 113-186 and 45 CFR Part 98 already require DHS as a condition of continued receipt of the federal CCDF grant to post such substantiated complaint information and results of monitoring and inspection reports on a public website.

The department's current plan and design of the website to meet the federal posting requirements is designed to assist parents to find regulated child care and will identify only current providers with active and valid licenses or registrations. The system will be searchable by zip code, and information regarding active and valid child care licensed and registered providers will be updated on a nightly basis.

Currently, if a complaint involves allegations of potential risk of health and safety to children in home-based care, the license or registration may be suspended and the DHS child care licensing staff will notify involved families by phone telephone. If the same occurred regarding a facility, DHS would post a notice and facility staff would inform parents of the suspension of the facilities' license.

For annual monitoring purposes, DHS plans to post inspection reports of regulated child care within 30 days of the inspection. The ACF has provided recommendations that States post the inspection report information no later than 90 days of the completion of the inspection.

DHS is concerned that the proposed section 346-153(c) and the department's ability to post the inspection reports within 5 working days of the conclusion of the site inspection will be compromised, as larger facilities or facilities with multiple types of

licenses may require more than 1 inspection to complete the review of the applicable licensing requirements for the facility. The finalized listing of deficiencies is provided to the facility or home, and adequate time is given to the facility or home to review the deficiencies cited and discuss with the child care licensing unit if there are questions about the deficiencies cited.

Administratively, DHS does not anticipate any additional costs to the department to implement the proposed public website under the requirements of P.L. 113-186 and 45 CFR Part 98, as the work is on-going.

However, any additional requirements that the public website would need to meet under a state law amendment would likely add costs of an estimated \$80,000 and additional time of 6 – 12 months to implement the proposed changes. If this is the Legislature's intent, DHS asks that the committee provide an effective date to give DHS sufficient time to implement any required changes.

## **2. Oversight committee for child care facility inspection information.**

Regarding Section 1 of this bill to create an oversight committee to oversee implementation and compliance with the requirements of section 346-153(c), it is not clear what function(s) the oversight committee would fulfill and how often the committee would meet.

The Benefit, Employment, and Support Services Division (BESSD) currently has a Child Care Advisory group that meets quarterly. The membership for the group consists of 22 voting members, including a representative from registered family child care and a parent representative, along with other early childhood stakeholder organizations and groups. DHS wonders if this group could fulfill the functions of the proposed oversight committee.

DHS notes that the proposed oversight committee would have 6 parent consumer representatives, one from each geographic area served by the DHS child care licensing units statewide, as well as a family child care home and a group child care home. The BESSD Child Care Advisory group's 1 parent representative and 1 family child care representative are rarely able to attend the quarterly meetings due to the meetings being held during the weekdays during the days. Most parents and home-based providers are busy working or

providing care for the children and are unable to take the time off to attend the advisory meetings.

DHS estimates costs needed for expenses incurred to maintain the oversight committee. If the committee were to meet quarterly, the estimated cost of \$10,600 is needed annually for travel and other expenses incurred for members in performance of their official duties.

Regarding the membership of the oversight committee members, DHS notes that there is no coordinator position for the State Advisory Council on Early Childhood Education and Care. The Early Learning Advisory Board was designated as Hawaii's state advisory council on early childhood education and care. The program and administrator from the Center on the Family, Quality Rating and Improvement System (QRIS) no longer exists.

Further, it would also be helpful for members from the Senate and House to be nominated as advisory members.

DHS is willing to work with the Chairs and members of both committees to find the best path forward. We all have the same interest protecting the health, safety, and well-being of Hawaii's children.

Thank you for the opportunity to provide comments on this bill.