
A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that existing state law
2 regulates home care services provided by home care agencies, but
3 does not regulate personal care services provided by
4 individuals. The legislature further finds that, in Hawaii,
5 there are more individuals providing personal care services to
6 residents than any other form of care, including home health
7 services and home care services. The legislature also finds
8 that Hawaii residents want to hire individual personal
9 caregivers to provide personal care services to their loved ones
10 in their homes. These services may include assistance with
11 regular daily activities, as well as skilled nursing services
12 like medication administration and wound care. Unfortunately,
13 most individual personal caregivers work without any
14 supervision, making Hawaii's elderly population and other
15 persons requiring personal care services potentially vulnerable
16 to receiving improper care services.



1 The legislature finds that the administration of individual
2 personal care services is vital and necessary when a person
3 requiring care prefers to remain in the person's residence.
4 However, in order to promote public health and welfare,
5 individuals providing care should be supervised by registered
6 nurses acting as case managers.

7 The purpose of this Act is to protect Hawaii's seniors and
8 other persons that need home-based personal care by requiring
9 the department of health to regulate individual personal
10 caregivers and requiring the supervision of such individuals by
11 registered nurses acting as case managers.

12 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§321- Individual personal care providers. (a) An
16 individual who is not licensed by the department may provide
17 personal care services in this State only if the individual
18 meets the requirements of this section.

19 (b) An individual personal caregiver who is not employed
20 by a home care agency may provide personal care services outside
21 of a regulated facility only under the supervision of a nurse



1 case manager. An individual personal caregiver may provide
2 personal care services under the supervision of one or more
3 nurse case managers; provided that each service recipient has a
4 nurse case manager.

5 (c) Each nurse case manager shall provide the following
6 information to the department on a monthly basis:

7 (1) The name of each individual personal caregiver
8 supervised by the nurse case manager; and

9 (2) Subject to the Health Insurance Portability and
10 Accountability Act of 1996, P.L. 104-191, and title 45
11 Code of Federal Regulations part 164, the name and
12 address of each service recipient.

13 (d) Each nurse case manager shall:

14 (1) Ensure that each individual personal caregiver
15 providing personal care services under the nurse case
16 manager's supervision:

17 (A) Is certified in first aid and cardiopulmonary
18 resuscitation;

19 (B) Obtains a tuberculosis clearance certificate
20 prior to providing personal care services and



- 1 thereafter obtains an annual tuberculosis
- 2 clearance certificate;
- 3 (C) Has completed a background check substantially
- 4 similar to the background check required in
- 5 section 321-15.2, to the extent permitted under
- 6 applicable law, and has no disqualifying
- 7 information, as defined in section 321-15.2, or
- 8 other background check information that the nurse
- 9 case manager finds may pose a risk to the health,
- 10 safety, or welfare of service recipients; and
- 11 (D) Has completed a course of instruction on
- 12 medication conducted by the nurse case manager;
- 13 (2) Ensure that each residence where personal care
- 14 services are provided by an individual personal
- 15 caregiver under the nurse case manager's supervision:
- 16 (A) Has been inspected by the nurse case manager
- 17 within the preceding twelve months and is
- 18 suitable for the personal care services to be
- 19 administered;
- 20 (B) Is not the residence of any individual personal
- 21 caregiver under the nurse case manager's



1 supervision providing personal care services at
2 the residence; and

3 (C) Is not owned by any individual personal caregiver
4 under the nurse case manager's supervision
5 providing personal care services at the residence
6 or by the spouse of the individual personal
7 caregiver; and

8 (3) Maintain written records in compliance with the
9 requirements of this subsection, which shall be
10 subject to inspection by the department upon at least
11 forty-eight hours' prior written request.

12 (e) Each nurse case manager shall obtain and maintain
13 professional liability insurance with respect to the nurse case
14 manager's supervision of individual personal caregivers under
15 this section with limits of no less than \$1,000,000 per
16 occurrence and \$5,000,000 in the aggregate; provided that the
17 director may adopt rules pursuant to chapter 91 to establish
18 different minimum coverage limits as appropriate. Each nurse
19 case manager shall provide proof of such insurance to the
20 department on an annual basis.



1 (f) The care and supervision provided by nurse case
2 managers under this section shall be subject to exclusive
3 regulation by the board pursuant to chapter 457. The board
4 shall adopt rules pursuant to chapter 91 to carry out the
5 purposes of this section.

6 (g) An organization that provides referrals to individual
7 personal caregivers or to nurse case managers, or that
8 promulgates voluntary standards of practice and care for
9 individual personal caregivers or nurse case managers, shall not
10 be required to be licensed by the department; provided that the
11 organization charges fees to individual personal caregivers,
12 nurse case managers, or service recipients based upon the number
13 of such referrals.

14 (h) The director may impose an administrative fine on any
15 person that violates this section or rule adopted pursuant to
16 this section after notice and opportunity for an administrative
17 hearing held in accordance with chapter 91. The fine shall not
18 exceed \$ _____ ; provided that the fine for any violation
19 occurring within five years of a prior violation shall not
20 exceed \$ _____ .

1 (i) The director may apply for an injunction in any court
2 of competent jurisdiction to enjoin any person from providing
3 personal care services in violation of this section. Upon the
4 filing of a verified petition in the court, the court or any
5 judge thereof, if satisfied by affidavit or otherwise, may issue
6 a temporary injunction, without notice or bond, enjoining the
7 individual personal caregiver from providing further personal
8 care services in violation of this section. A copy of the
9 verified complaint shall be served upon the individual personal
10 caregiver, and the proceedings shall thereafter be conducted
11 pursuant to civil procedure. If it is established that the
12 individual personal caregiver has been or is providing personal
13 care services in violation of this section, the court or judge
14 may enter a decree enjoining the person from further providing
15 personal care services in violation of this section. In the
16 event the injunction is breached, the court may summarily try
17 and impose penalties for contempt of court. The injunction
18 proceeding shall be in addition to, and not in lieu of, fines
19 and other remedies provided in this section.

20 (j) This section shall not apply to home care services
21 provided in a regulated facility or by a home care agency, an



1 individual providing personal care services without
2 compensation, an individual providing personal care services to
3 a grandparent, parent, sibling, spouse, or reciprocal
4 beneficiary, child, grandchild, aunt, uncle, cousin, legal
5 guardian, or a practitioner of medicine or surgery licensed
6 under section 453-2.

7 (k) As used in this section, unless the context otherwise
8 requires:

9 "Board" means the state board of nursing.

10 "Department" means the department of health.

11 "Director" means the director of health.

12 "Individual personal caregiver" means an individual who
13 receives compensation for providing personal care services under
14 this section.

15 "Nurse case manager" means a registered nurse who
16 supervises individual personal caregivers as provided in this
17 section.

18 "Personal care services" means services including but not
19 limited to assistance with dressing, feeding, and personal
20 hygiene, performing chores, housekeeping, shopping, meal
21 planning and preparation, respite care services, and skilled



1 nursing services, such as medication administration and wound
2 care, performed on behalf of a service recipient who desires or
3 requires such services due to advanced age, disability, injury,
4 or illness.

5 "Registered nurse" means an individual licensed as a
6 registered nurse under chapter 457.

7 "Regulated facility" means an adult day health center,
8 adult day care center, community care foster family home,
9 developmental disabilities domiciliary home, adult foster home,
10 special treatment facility, adult residential care home,
11 expanded adult residential care home, assisted living facility,
12 intermediate care facility, nursing facility, skilled nursing
13 facility, or long-term care facility.

14 "Residence" means the premises in which a service recipient
15 resides, which may be owned, leased, or rented by the service
16 recipient, or by a responsible relative or other adult. This
17 term shall not include a regulated facility.

18 "Service recipient" means an individual receiving personal
19 care services under this section."

20 SECTION 3. New statutory material is underscored.

21



1 SECTION 4. This Act shall take effect upon July 1, 2019.

2

INTRODUCED BY: *Robert Am*

JAN 24 2019



H.B. NO. 1474

Report Title:

Department of Health; Individual Personal Caregiver; Registered Nurse; Residential Personal Care Services

Description:

Authorizes individual personal caregivers providing in-home care services to be exempt from licensure under certain conditions, including being supervised by a registered nurse. Requires supervising registered nurses to complete certain training and make reports to the department of health.

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