

ACT 107

H.B. NO. 2185-78

A Bill for an Act Relating to Adult Care Homes, Family Boarding Homes, and Other Similar Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Adult family boarding home” means any family home operated as a business providing twenty-four hour living accommodations to one to three adults unrelated to the family, who are in need of minimal assistance and supervision in their living activities, and includes other similar institutions.”

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding six new sections to part IVB to be appropriately designated and to read as follows:

“Sec. 346- Licenses; temporary permits. To protect the best interests of adults accommodated therein, all adult family boarding homes shall be licensed by the department. A license to operate an adult family boarding home shall be granted only after the minimum standards of operation established by the department have been satisfied. The license shall be valid for one year.

The department may issue a temporary permit to operate an adult family boarding home if an operator or applying operator is temporarily unable to conform to all minimum licensing standards. A temporary permit shall be valid for not more than six months.

Sec. 346- Rules. The department shall adopt such rules as are necessary and in accordance with chapter 91 to carry out the purpose of this subpart and to:

- (1) Protect the health, safety, and welfare of adults residing in adult family boarding homes;
- (2) Establish and enforce minimum licensing standards; and

(3) Comply with applicable statutes and regulations.

Sec. 346- Suspension and revocation of licenses and permits; reissuance. Any license or temporary permit issued hereunder may be suspended or revoked by the department after due notice and hearing. The license or temporary permit of an adult family boarding home may be suspended immediately, without notice and pending a hearing, if conditions exist which constitute an imminent danger to the health and safety of the adults residing therein. The department shall provide for hearings consistent with chapter 91.

Sec. 346- Inspection, visitation, training. (a) The department shall visit and inspect licensed premises as frequently as is deemed necessary to insure conformance with standards of operation, sanitation, and safety. An inspection shall be made at least once annually. Every licensed home shall be open to visitation and inspection by representatives of the department with or without prior notice.

(b) The department of social services and housing shall provide for at least a quarterly visitation of persons receiving care in any facility licensed under section 346- and 321- ; provided that the placement of the person in the facility was initiated by the State, and the payment for the person's care is being made under any medical or other assistance program administered by the State. The visitation shall be made to ensure the well-being of the persons receiving care, and the appropriateness of the level of care to the needs of the person.

(c) The department shall provide for the training of operators and staff of any facility licensed under section 346- in conjunction with any licensing thereof, and in coordination with the department of health, to ensure that adult family boarding home operators shall have the needed skills to provide proper care and supervision in a home environment (i.e., first aid, cardiopulmonary resuscitation, and nutrition training as a minimum). Such training shall be provided at the expense of the State.

(d) Rules to implement this section shall be adopted subject to chapter 91.

Sec. 346- Penalty. Any person who intentionally operates an adult family boarding home without a license shall be guilty of a misdemeanor.

Sec. 346- Vacancy inventory; clearinghouse. The department shall maintain an inventory of all facilities licensed under sections 321- and 346- , and shall maintain a current inventory of vacancies therein to facilitate the placement of individuals in such facilities. The department shall serve as a clearinghouse for placements in such facilities, and shall provide for the regulation of placements therein. Rules to implement this section shall be adopted subject to chapter 91."

SECTION 3. Chapter 321, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"Sec. 321- Care homes; licenses; temporary permits; training and regulation. (a) All care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein; provided that the department may issue a temporary permit to operate a care home if an operator or applying operator is temporarily unable to conform to all minimum licensing standards. A temporary permit shall be valid for not more than six months.

(b) The director shall adopt rules regarding care homes in accordance with chapter 91 which shall be designed to:

- (1) Protect the health, safety, and civil rights of persons residing in the facilities regulated;
- (2) Provide for the licensing of facilities regulated;
- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rules.

(c) The department shall provide for the training of operators and staff of any facility licensed under section 321- , in conjunction with any licensing thereof, and in coordination with the department of health, to ensure that adult family boarding home operators shall have the needed skills to provide proper care and supervision in a home environment (i.e., first aid, cardiopulmonary resuscitation, and nutrition training as a minimum). Such training shall be provided at the expense of the State.

(d) Rules adopted under this section shall be enforced by the director.

Sec. 321- Penalty. Any person who intentionally operates an adult care home without a license shall be guilty of a misdemeanor.

SECTION 4. Section 321-15,† Hawaii Revised Statutes, is repealed.

[**Sec. 321-15.5 Emergency placements in unlicensed care homes.** Placement of persons needing care in care homes shall be authorized only in facilities duly licensed by the department of health, except that in a bona fide emergency where no appropriate licensed facility is available. The department of health may authorize placement in an unlicensed facility; provided the department concurrently issues a special certificate authorizing such placement for a period not to exceed six consecutive calendar months; and provided further that immediate planning shall take place for the location of an appropriate licensed facility for the individual so placed in an unlicensed facility. In unusual circumstances where an appropriate licensed facility is unavailable, the department may, with the prior written approval of the director of health, extend authorization for continued placement in the unlicensed facility at the end of the initial six-month period for an additional period not to exceed one year.]

SECTION 5. Section 346-14, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 346-14 Duties generally. Except as otherwise provided by law, the department of social services and housing shall:

- (1) Administer, establish programs and standards, and promulgate rules as deemed necessary for all public assistance, including payments for medical care;
- (2) Establish, extend, and strengthen services for the protection and care of neglected children and children in danger of becoming delinquent;
- (3) Assist in preventing family breakdown;

†So in original.

- (4) Place, or cooperate in placing neglected children in suitable private homes or institutions, and place, or cooperate in placing, children in suitable adoptive homes;
- (5) Have authority to establish, maintain, and operate receiving homes for the temporary care and custody of neglected children until suitable plans are made for their care; and accept from the police and other agencies, for temporary care and custody, any neglected child until satisfactory plans are made for the child;
- (6) 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 such reports, the adoption of such methods of administration and the making of such rules and regulations 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 such public welfare, assistance, and child welfare services, or as may be necessary or desirable for the receipt of financial assistance from the federal government;
- (7) 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;
- (8) Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare problems;
- (9) Make such rules governing the procedure in hearings, investigations, recording, registration, determination of allowances, and accounting and conduct such other activities, as may be necessary or proper to carry out this chapter, which rules, when approved by the governor, shall have the force and effect of law;
- (10) 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;
- (11) Make, prescribe, and enforce such policies and rules governing the activities provided for in section 346-31 as 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 such apportionment has not been made pursuant to other provisions of law, if any, governing expenditures of the funds, which rules, when approved by the governor, shall have the force and effect of law; and
- (12) Have authority to establish, maintain, and operate intermediate care facilities and care homes for the care of medical indigents; to enter into contracts with nonprofit corporations for the maintenance and operation of such facilities and homes; and to recruit and license adult family

boarding homes as defined by the department to care for adult recipients who do not require the level of care provided in an intermediate care facility or care home.”

SECTION 6. Section 346-53, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 346-53 Determination of amount of assistance.** (a) The director shall adopt rules pursuant to chapter 91 concerning the determination of public assistance grants under this chapter. Public assistance grants shall be sufficient to maintain a standard consistent with this chapter. In granting public assistance to a person under this chapter the department may take into account part or all of the needs of the person’s dependents or those persons essential to his well being, provided that they are also eligible for public assistance. In the event that a public assistance grant to a recipient has taken into consideration only part of the needs of other eligible persons this public assistance grant shall be without prejudice to a separate public assistance grant to such other eligible persons or any of them, as may be proper to meet their remaining needs and in compliance with this chapter.

(b) The maximum basic need allowance which the department shall initially pay a recipient considering income and resources in accordance with this chapter shall be \$100 plus an additional \$44 for each additional person whose needs have been taken into account by the department. Once each year, beginning July 1, 1976, the director shall increase the maximum basic needs allowance which the department may pay a recipient, by a percentage equal to the annual percentage increase in the average weekly wage in covered employment, as computed by the director of labor and industrial relations pursuant to section 383-22. The department shall pay a recipient the maximum basic needs allowance if the department determines that his needs are not reduced by this income or resources.

(c) If a child is eligible for public assistance under section 346-55, and if the child lives in a home or a place of residence maintained as a home by a relative specified under section 346-55, and if such a relative is a person essential to the child’s well being, then the department shall pay in behalf of each child the basic needs allowance and shelter allowance as prescribed in this chapter. The department shall make such payment regardless of whether such relative does or does not receive public assistance.

(d) For recipients in nondomiciliary shelter, the shelter allowance (to include rent and utilities) shall be for cost paid, up to the maximum as provided in the following schedule:

- (1) \$175 for 1 person;
- (2) \$215 for 2 persons;
- (3) \$240 for 3 persons;
- (4) \$265 for 4 persons;
- (5) \$290 for 5 persons;
- (6) \$320 for 6 persons;
- (7) \$360 for 7 or more persons.

(e) The director shall pursuant to chapter 91 determine the rate of payment for the different levels of domiciliary care provided to recipients eligible for

Federal Supplemental Security Income or public assistance in accordance with state standards.

The rate of payment at which level a recipient enters an adult family boarding home or a care home licensed pursuant to sections 346- and 321- , shall remain the same for as long as the recipient resides in that adult family boarding home or care home. The rate of payment may be raised if the recipient's condition so requires, or by rule of the department in accordance with this subsection; provided that, notwithstanding the rate of payment at the time of entry, the department shall ensure that the recipient shall receive the quality of care consistent with the level of care as determined by the department; provided further that if the operator does not provide the quality of care consistent with the needs of the individual as determined by and to the satisfaction of the department, the department may reduce the rate of payment, or adjust the level of care, or 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 family boarding home, care home, or other similar institution if the recipient does not desire to be removed and the operator thereof is agreeable to the recipient remaining therein, except where the recipient requires a higher level of care than provided thereby, or where the recipient no longer requires any domiciliary care.

(f) The department shall establish rules pursuant to chapter 91 for supplement payments under the Federal Supplemental Security Income Program or its successor agency, such that a recipient's payments and benefits do not exceed the total of the maximum basic needs allowance and shelter allowance as provided by this chapter; provided that if a recipient sharing housing with a person receiving a shelter allowance from the department could qualify as an essential person to or dependent of such person, then the recipient shall be considered to live in free shelter. A recipient renting private housing or purchasing the home he lives in shall receive a shelter allowance for cost paid, up to the maximum established in subsection (d).

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

(h) Any recipient may petition the department for additional assistance when his 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. Such 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 the household appliances is more than one-half the unit cost of the item, the department shall

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

The department shall establish an emergency fund, not to exceed one per cent of total money payments 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."

SECTION 7. Section 346-90, Hawaii Revised Statutes, is repealed.

SECTION 8. **Appropriation.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$76,686 or so much thereof as may be necessary, to carry out the purposes of this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the department of social services and housing for the purpose of this Act. Any unexpended or unencumbered balance of any appropriation made by the Act as of the close of business on June 30, 1979 shall lapse into the general fund.

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 10. This Act shall take effect on July 1, 1978.

(Approved May 23, 1978.)

*Edited accordingly except as to SECTION 4 which has been set out in full.