

A Bill for an Act Relating to Human Services.

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

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . HOME AND COMMUNITY-BASED  
CASE MANAGEMENT AGENCIES AND  
COMMUNITY CARE FOSTER FAMILY HOMES**

**§346-A Definitions.** As used in this part:

“Certificate of approval” means the certificate issued by a home and community-based case management agency, that authorizes a person, agency, or organization to operate a community care foster family home.

“Community care foster family home” means a home that, for the purposes of this part:

- (1) Pursuant to section 346-B(a)(1), as applicable to the case management agency demonstration project in any county having a population of 500,000 or more persons:
  - (A) Is regulated by the department of human services in accordance with rules that are equitable in relation to rules that govern expanded adult residential care homes;
  - (B) Is issued a certificate of approval by a home and community-based case management agency to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, who are at the nursing facility level of care and who are unrelated to the foster family; and
  - (C) Does not include expanded adult residential care homes, which shall continue to be licensed by the department of health; or
- (2) Pursuant to section 346-B(a)(2), as applicable to the case management agency demonstration project in any county having a population of less than 500,000 persons:
  - (A) Is issued a certificate of approval by a home and community-based case management agency to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, who are at the nursing facility level of care and who are unrelated to the foster family; and
  - (B) Does not include expanded adult residential care homes, which shall continue to be licensed by the department of health.

“Criminal history record check” means an examination of an individual’s criminal history record through:

- (1) A search of the individual's fingerprints in the Federal Bureau of Investigation criminal history record files;
- (2) Further analysis and search for other information available for individuals found in the Federal Bureau of Investigation criminal history record files;
- (3) Subsequent fingerprint analyses for required individuals; and
- (4) A name inquiry into the state criminal history record files.

“Department” means the department of human services.

“Expanded adult residential care home” means any facility providing twenty-four-hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, personal care services, protection, and health care services, and who may need the professional health services provided in an intermediate or skilled nursing facility.

“Home and community-based case management agency” means an agency licensed by the department to locate, coordinate, and monitor comprehensive services to meet the needs of medicaid recipients and other adults whom the agency places in a community care foster family home or an expanded adult residential care home.

“License” means an approval issued by the department for an agency to operate as a home and community-based case management agency.

**§346-B Applicability.** (a) Prior to June 30, 2003, this part shall apply equally to two distinct demonstration projects, except as provided in subsection (b), as follows:

- (1) In any county having a population of 500,000 persons or more; and
  - (2) In any county having a population of less than 500,000 persons.
- (b) Each demonstration project implemented under this part shall operate under its own distinct definition of “community care foster family home,” as provided in section 346-A. In addition, for the demonstration project under subsection (a)(1), foster homes shall be required to reserve at least one bed for medicaid patients.

**§346-C Home and community-based case management agency, authority over and evaluation of.** (a) The home and community-based case management agency shall be responsible for certifying community care foster family homes. No person, agency, or organization shall engage in locating, coordinating, or monitoring comprehensive services to individuals in community care foster family homes and in issuing certificates of approval to community care foster family homes, unless it meets the standards of conditions, management, and competence set by the department and is issued a license for this purpose by the department.

(b) The department shall adopt rules pursuant to chapter 91 relating to:

- (1) Standards for the organization and administration of home and community-based case management agencies;
- (2) Standards of conditions, management, and competence of home and community-based case management agencies;
- (3) Procedures for obtaining and renewing a license from the department;
- (4) Minimum standards of conditions and competence for the operation of community care foster family homes that are to be used by home and community-based case management agencies as certification requirements of community care foster family homes; and
- (5) Minimum grievance procedures for certified community care foster family homes and recipients of case management services.

(c) As a condition for obtaining a license, a person, agency, or organization shall meet the requirements set forth in subsection (b)(1), (2), and (3), and satisfy the criminal history check requirements under section 346-E. The department may deny a license if:

- (1) An operator, employee, or new employee of the home and community-based case management agency has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less; or
  - (2) If the department finds that the criminal history record of an operator, employee, or new employee poses a risk to the health, safety, or well being of adults receiving care in community care foster family homes.
- (d) Upon approval of any home and community-based case management agency, the department or its authorized agents shall issue a license, which shall continue in force for one year or for two years unless sooner revoked for cause. The department or its authorized agents shall renew the license only if after an annual or biennial evaluation, the agency continues to meet the standards established by the department.

(e) The department shall evaluate the home and community-based case management agency to determine compliance with the requirements established under this section:

- (1) Annually or biennially; or
- (2) Upon receipt of a complaint that the home and community-based case management agency is in violation of the requirements established under this section.

(f) The department may suspend or revoke a license if the department deems that the agency is unwilling or unable to comply with the rules adopted under this section; provided that:

- (1) Upon suspension or revocation of a license, the home and community-based case management agency shall no longer be licensed and shall immediately notify those community care foster family homes it certified;
- (2) An agency whose license has been suspended or revoked may appeal the suspension or revocation in accordance with chapter 91, but the appeal shall not stay the suspension or revocation;
- (3) A suspended or revoked license may be reinstated if the department deems that the agency is willing and able to comply with the rules adopted under this section; and
- (4) A revoked license shall be restored only after a new application is made and reviewed under this part.

(g) Any home and community-based case management agency shall be subject to investigation by the department at any time and in the manner, place, and form as provided in the department's rules.

(h) The department shall adopt standard forms of contract that the home and community-based case management agency shall use with each of its clients, community care foster family homes, and expanded adult residential care homes.

(i) The department shall establish a review board consisting of three operators of community care foster family homes and three operators of expanded adult residential care homes. The review board shall monitor referrals and placements of clients by each home and community-based case management agency on a monthly basis. Each home and community-based case management agency shall be required to provide monthly reports to the review board.

(j) The home and community-based case management agency shall have a fiduciary duty to each medicaid recipient and other adult it places in a community care foster family home or expanded adult residential care home.

**§346-D Community care foster family home, authority over and evaluation of.** (a) No person in any household shall take in, for a fee, any adult who is at the nursing facility level of care and who is unrelated to anyone in the household, for twenty-four-hour living accommodations, including personal care and homemaker services, unless

the household meets the required standards established for certification and obtains a certificate of approval from a home and community-based case management agency.

(b) Home and community-based case management agencies shall issue certificates of approval based on compliance with the standards required for certification, pursuant to section 346-C(b)(4), and any additional requirements established by the agencies and agreed upon by the homes.

(c) As a condition for obtaining a certificate of approval, community care foster family homes shall comply with requirements set forth in section 346-C(b)(4) and satisfy the criminal history record check requirements under section 346-E. The certifying agency may deny a certificate of approval if:

- (1) An operator or other adult residing in the community care foster family home, except for adults receiving care, has been convicted of a crime other than a minor traffic violation involving a fine \$50 or less; or
- (2) If the certifying agency finds that the criminal history record of an operator or other adult residing in the home, except for adults receiving care, poses a risk to the health, safety, or well being of adults in care.

(d) Upon approval of a community care foster family home, the home and community-based case management agency shall issue a certificate of approval that shall continue in force for one year unless sooner suspended or revoked for cause; provided that:

- (1) The agency may suspend or revoke a certificate of approval if the agency deems that a community care foster family home is unwilling or unable to comply with the rules adopted under section 346-C(b)(4). The suspension or revocation shall be immediate when conditions exist that constitute an imminent danger to life, health, or safety of adults receiving care;
- (2) A community care foster family home whose certificate of approval has been suspended or revoked may appeal to the certifying agency through its established appeal process, but the appeal shall not stay the suspension or revocation;
- (3) A suspended or revoked certificate of approval may be reinstated if the certifying agency deems that the home is willing and able to comply with the rules adopted under section 346-C(b)(4);
- (4) A revoked certificate of approval shall be restored only after a new application for a certificate of approval is submitted to the agency and approved; and
- (5) The home and community-based case management agency shall renew the certificate of approval only if, after an annual evaluation, the home continues to meet the standards required for certification.

(e) Any community care foster family home shall be subject to investigation by the department and home and community-based case management agencies at any time and in the manner, place, and form as provided in procedures to be established by the department and home and community-based case management agencies.

**§346-E Criminal history record checks.** (a) The department shall develop standards to ensure the reputable and responsible character of operators and employees of the home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as defined in this chapter, which shall include but not be limited to criminal history record checks.

(b) An applicant for a home and community-based case management agency license shall submit statements signed under penalty of perjury by the operators, employees, and new employees of the home and community-based case management agency, indicating whether the operators, employees, or new employees have

ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, and the details thereof.

The operators, employees, and new employees shall also provide consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The operators and employees of the home and community-based case management agency shall be fingerprinted for the purpose of complying with the criminal history record check. New employees of the home and community-based case management agency shall be fingerprinted within five working days of employment, for the purpose of complying with the criminal history record check requirement.

The department shall obtain criminal history record information through the Hawaii criminal justice data center on all operators, employees, and new employees of home and community-based case management agencies subject to licensure pursuant to this section. The Hawaii criminal justice data center may assess the operators, employees, and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

The department shall make a name inquiry into the criminal history records for the first two years a home and community-based case management agency is licensed and annually or biennially thereafter depending on the licensure status of the home and community-based case management agency.

(c) An applicant for a certificate of approval as a community care foster family home shall submit to the home and community-based case management agency, statements signed under penalty of perjury by the operators and other adults residing in the home, except for adults receiving care, indicating whether they have been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less. The operators and other adults residing in the home, except for adults receiving care, shall also provide consent to the certifying agency to conduct a criminal history record check and to obtain other criminal history record information for verification. The operators and other adults residing in the home, except for adults receiving care, shall be fingerprinted for the purpose of complying with the criminal history record check.

The certifying agency shall obtain criminal history record information through the Hawaii criminal justice data center on all operators and other adults residing in the community care foster family home, except for adults receiving care, subject to certification pursuant to this section. The Hawaii criminal justice data center may assess the operators and other adults a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

The certifying agency shall make a name inquiry into the criminal history records for the first two years a community care foster family home is certified and annually or biennially thereafter depending on the certification status of the community care foster family home.

**§346-F Penalty.** Any person violating this part or any rule made pursuant to this part shall be fined not more than \$500.”

SECTION 2. No later than twenty days before the convening of the regular session of 2002 and 2003, respectively, the department of human services shall report interim and final findings and recommendations regarding the effectiveness of the new part added to chapter 346, Hawaii Revised Statutes, by section 1 of this Act, as reflected by the status of the two demonstration projects, including comparative findings of the success of the two levels of regulation, and whether that part should be extended to the entire State. The report shall measure performance in the

following areas: vacancy rates, placement processes, pricing of private pays, costs to the State for placement and administration, consumer complaints, and negative clinical outcomes.

The following agencies and entities shall assist in evaluation of the two demonstration projects: home operators associations, case management agency associations, the department of human services, and department of health. The report shall also address the need and feasibility of a single entry point system for intermediate care facility and skilled nursing facility patients in community care settings.

SECTION 3. As part of the demonstration project in any county having a population of 500,000 or more persons, the department of human services, in consultation with the department of health, shall adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to regulate community care foster family homes that are equitable in relation to rules that govern expanded adult residential care homes.

SECTION 4. There is appropriated out of the criminal history record improvement revolving fund the sum of \$65,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$65,000 or so much thereof as may be necessary for fiscal year 2002-2003 to effectuate the purposes of this Act.

The sums appropriated shall be expended by the department of the attorney general.

SECTION 5. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. This Act shall take effect on July 1, 2001, and shall be repealed on June 30, 2003.

(Approved June 25, 2001.)