

ACT 270

S.B. NO. 3247

A Bill for an Act Relating to Care Homes.

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

SECTION 1. Section 46-15.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For the purpose of regulation under a county’s life safety code, building code, fire code, or any other ordinance of similar purpose, a licensed adult family boarding home or licensed care home ~~which~~ that provides living accommodations for:

- (1) The operator of the home and operator’s family; and
- (2) Up to ~~[five]~~ six other persons, not more than ~~[two]~~ three of whom are incapable of self-preservation because of age or physical or mental limitations~~;~~].

shall be deemed a single-family dwelling occupied by a family.”

SECTION 2. Section 321-15.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) Protect the health, safety, and civil rights of persons residing in facilities regulated;
- (2) Provide for the licensing of adult residential care homes; provided that the rules shall allow group living in two categories of adult residential care homes as licensed by the department of health:
  - (A) Type I allowing ~~[group living by]~~ five or fewer ~~[unrelated persons;]~~ residents; provided that up to six residents may be allowed at the discretion of the department to live in a type I home; provided that the primary caregiver or home operator is a certified nurse aide who has completed a state-approved training program and other training as required by the department; and
  - (B) Type II allowing six or more ~~[persons]~~ residents, including but not limited to the mentally ill, elders, ~~[the handicapped,]~~ persons with disabilities, the developmentally disabled, or totally disabled persons who are not related to the home operator or facility staff[-];

~~[For purposes of this section:~~

~~“Mentally ill person” means a mentally ill person as defined under section 334-1.~~

~~“Elder” means an elder as defined under sections 201G-1 and 201G-151.~~

~~“Handicapped person” means an individual with a physical handicap as defined under section 515-2.~~

~~“Developmentally disabled person” means a person with developmental disabilities as defined under section 333F-1.~~

~~“Totally disabled person” means a person totally disabled as defined under section 235-1;]~~

- (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 rule.

For the purposes of this subsection:

“Developmentally disabled” means a person with developmental disabilities as defined under section 333F-1.

“Elder” has the same meaning as defined under section 201G-1.

“Mentally ill” means a mentally ill person as defined under section 334-1.

“Persons with disabilities” means persons having a disability under section 515-2.

“Totally disabled person” has the same meaning as a person totally disabled as defined under section 235-1.”

SECTION 3. Section 321-15.62, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director of health shall adopt rules regarding expanded adult residential care homes in accordance with chapter 91 ~~[which]~~ that shall implement a social model of health care designed to:

- (1) Protect the health, safety, civil rights, and rights of choice of ~~[the persons to reside]~~ residents in a nursing facility or in home- or community-based care;
- (2) Provide for the licensing of expanded adult residential care homes for persons who are certified by the department of human services, a physician, advanced practice registered nurse, or registered nurse case manager as requiring skilled nursing facility level or intermediate care facility level of care who have no financial relationship with the home care operator or facility staff; provided that the rules shall allow group living in the following two categories of expanded adult residential care homes as licensed by the department of health:
  - (A) ~~[Type]~~ A type I home shall consist of five or ~~[less]~~ fewer residents with no more than two nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department; and provided further that up to six residents may be allowed at the discretion of the department to live in a type I home; provided that the primary caregiver or home operator is a certified nurse aide who has completed a state-approved training program and other training as required by the department; and<sup>1</sup>
  - (B) ~~[Type]~~ A type II home shall consist of six or more residents, with no more than twenty per cent of the home’s licensed capacity as nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department;

provided further that the department shall exercise its discretion for a resident presently residing in a ~~[Type]~~ type I or ~~[Type]~~ type II home, to allow the resident to remain as an additional nursing facility level resident based upon the best interests of the resident. The best interests

of the resident shall be determined by the department after consultation with the resident, the resident's family, primary physician, case manager, primary caregiver, and home operator;

- (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 rule."

SECTION 4. Section 346-331, Hawaii Revised Statutes, is amended by amending the definition of "community care foster family home" or "home" to read as follows:

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

- (1) Is regulated by the department in accordance with rules that are equitable in relation to rules that govern expanded adult residential care homes;
- (2) Is issued a certificate of approval by the department or its designee 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, at least one of whom shall be a medicaid recipient, who are at the nursing facility level of care, who are unrelated to the foster family, and who are receiving the services of a licensed home and community-based case management agency; provided that the department, in its discretion, may certify a home for a third adult who is at the nursing level of care and a medicaid recipient; provided that the primary and substitute caregivers are certified nurse aides who have completed a state-approved training program and other training as required by the department; and
- (3) Does not include expanded adult residential care homes or assisted living facilities, which shall continue to be licensed by the department of health."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2007.

(Approved July 4, 2006.)

**Note**

1. "And" should be underscored.