
A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. Section 386-1, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Medicaid waiver service" means service performed in the
5 employ of a contractor of the State when such service is:

6 (1) Authorized and paid for by the department of human
7 services under the Social Security Act; and

8 (2) Performed by a licensed or certified adult foster care
9 home operator-owner in the operator-owner's home for
10 residents of that particular home."

11 SECTION 2. Section 392-3, Hawaii Revised Statutes, is
12 amended by adding a new definition to be appropriately inserted
13 and to read as follows:

14 "Medicaid waiver service" means service performed in the
15 employ of a contractor of the State when such service is:

16 (1) Authorized and paid for by the department of human
17 services under the Social Security Act; and



1 (2) Performed by a licensed or certified adult foster care
 2 home operator-owner in the operator-owner's home for
 3 residents of that particular home."

4 SECTION 3. Section 383-7, Hawaii Revised Statutes, is
 5 amended to read as follows:

6 "**§383-7 Excluded service.** "Employment" shall not include
 7 the following service:

8 (1) Agricultural labor as defined in section 383-9 if it
 9 is performed by an individual who is employed by an
 10 employing unit:

11 (A) Which, during each calendar quarter in both the
 12 current and the preceding calendar years, paid
 13 less than \$20,000 in cash remuneration to
 14 individuals employed in agricultural labor; and

15 (B) Which had, in each of the current and the
 16 preceding calendar years:

17 (i) No more than nineteen calendar weeks,
 18 whether consecutive or not, in which
 19 agricultural labor was performed by its
 20 employees; or

21 (ii) No more than nine individuals in its employ
 22 performing agricultural labor in any one



1 calendar week, whether or not the same
2 individuals performed the labor in each
3 week;

4 (2) Domestic service in a private home, local college
5 club, or local chapter of a college fraternity or
6 sorority as set forth in section 3306(c)(2) of the
7 Internal Revenue Code of 1986, as amended;

8 (3) Service not in the course of the employing unit's
9 trade or business performed in any calendar quarter by
10 an individual, unless the cash remuneration paid for
11 the service is \$50 or more and the service is
12 performed by an individual who is regularly employed
13 by the employing unit to perform the service. For the
14 purposes of this paragraph, an individual shall be
15 deemed to be regularly employed to perform service not
16 in the course of an employing unit's trade or business
17 during a calendar quarter only if:

18 (A) On each of some twenty-four days during the
19 quarter the individual performs the service for
20 some portion of the day; or

21 (B) The individual was regularly employed as
22 determined under subparagraph (A) by the



1 employing unit in the performance of the service
2 during the preceding calendar quarter;

3 (4) (A) Service performed on or in connection with a
4 vessel not an American vessel, if the individual
5 performing the service is employed on and in
6 connection with the vessel when outside the
7 United States;

8 (B) Service performed by an individual in (or as an
9 officer or member of the crew of a vessel while
10 it is engaged in) the catching, taking,
11 harvesting, cultivating, or farming of any kind
12 of fish, shellfish, crustacea, sponges, seaweeds,
13 or other aquatic forms of animal and vegetable
14 life, including service performed as an ordinary
15 incident thereto, except:

16 (i) The service performed in connection with a
17 vessel of more than ten net tons (determined
18 in the manner provided for determining the
19 register tonnage of merchant vessels under
20 the laws of the United States);

21 (ii) The service performed in connection with a
22 vessel of ten net tons or less (determined



1 in the manner provided for determining the
2 register tonnage of merchant vessels under
3 the laws of the United States) by an
4 individual who is employed by an employing
5 unit which had in its employ one or more
6 individuals performing the service for some
7 portion of a day in each of twenty calendar
8 weeks all occurring, whether consecutive or
9 not, in either the current or the preceding
10 calendar year; and

11 (iii) Service performed in connection with the
12 catching or taking of salmon or halibut for
13 commercial purposes;

14 (5) Service performed by an individual in the employ of
15 the individual's son, daughter, or spouse, and service
16 performed by a child under the age of twenty-one in
17 the employ of the child's father or mother;

18 (6) Service performed in the employ of the United States
19 government or an instrumentality of the United States
20 exempt under the Constitution of the United States
21 from the contributions imposed by this chapter, except
22 that to the extent that the Congress of the United



1 States permits states to require any instrumentalities
2 of the United States to make payments into an
3 unemployment fund under a state unemployment
4 compensation law, all of the provisions of this
5 chapter shall apply to those instrumentalities, and to
6 services performed for those instrumentalities, in the
7 same manner, to the same extent, and on the same terms
8 as to all other employers, employing units,
9 individuals, and services; provided that if this State
10 is not certified for any year by the Secretary of
11 Labor under section 3304(c) of the federal Internal
12 Revenue Code, the payments required of those
13 instrumentalities with respect to that year shall be
14 refunded by the department of labor and industrial
15 relations from the fund in the same manner and within
16 the same period as is provided in section 383-76 with
17 respect to contributions erroneously collected;

18 (7) Service performed in the employ of any other state, or
19 any political subdivision thereof, or any
20 instrumentality of any one or more of the foregoing
21 which is wholly owned by one or more states or
22 political subdivisions; and any service performed in



1 the employ of any instrumentality of one or more other
2 states or their political subdivisions to the extent
3 that the instrumentality is, with respect to the
4 service, exempt from the tax imposed by section 3301
5 of the Internal Revenue Code of 1986, as amended;

6 (8) Service with respect to which unemployment
7 compensation is payable under an unemployment system
8 established by an act of Congress;

9 (9) (A) Service performed in any calendar quarter in the
10 employ of any organization exempt from income tax
11 under section 501(a) of the federal Internal
12 Revenue Code (other than an organization
13 described in section 401(a) or under section 521
14 of the Code), if:

15 (i) The remuneration for the service is less
16 than \$50; or

17 (ii) The service is performed by a fully
18 ordained, commissioned, or licensed minister
19 of a church in the exercise of the
20 minister's ministry or by a member of a
21 religious order in the exercise of duties
22 required by the order;



- 1 (B) Service performed in the employ of a school,
2 college, or university, if the service is
3 performed by a student who is enrolled and is
4 regularly attending classes at the school,
5 college, or university; or
- 6 (C) Service performed by an individual who is
7 enrolled at a nonprofit or public educational
8 institution which normally maintains a regular
9 faculty and curriculum and normally has a
10 regularly organized body of students in
11 attendance at the place where its educational
12 activities are carried on as a student in a full-
13 time program, taken for credit at such
14 institution, which combines academic instruction
15 with work experience, if such service is an
16 integral part of such program, and such
17 institution has so certified to the employer,
18 except that this subparagraph shall not apply to
19 service performed in a program established for or
20 on behalf of an employer or group of employers;
- 21 (10) Service performed in the employ of a foreign
22 government (including service as a consular or other



1 officer or employee of a nondiplomatic
2 representative);

3 (11) Service performed in the employ of an instrumentality
4 wholly owned by a foreign government:

5 (A) If the service is of a character similar to that
6 performed in foreign countries by employees of
7 the United States government or of an
8 instrumentality thereof; and

9 (B) If the United States Secretary of State has
10 certified or certifies to the United States
11 Secretary of the Treasury that the foreign
12 government, with respect to whose instrumentality
13 exemption is claimed, grants an equivalent
14 exemption with respect to similar service
15 performed in the foreign country by employees of
16 the United States government and of
17 instrumentalities thereof;

18 (12) Service performed as a student nurse in the employ of
19 a hospital or a nurses' training school by an
20 individual who is enrolled and is regularly attending
21 classes in a nurses' training school chartered or
22 approved pursuant to state law; and service performed



1 as an intern in the employ of a hospital by an
2 individual who has completed a four-year course in a
3 medical school chartered or approved pursuant to state
4 law;

5 (13) Service performed by an individual for an employing
6 unit as an insurance producer, if all service
7 performed by the individual for the employing unit is
8 performed for remuneration solely by way of
9 commission;

10 (14) Service performed by an individual under the age of
11 eighteen in the delivery or distribution of newspapers
12 or shopping news, not including delivery or
13 distribution to any point for subsequent delivery or
14 distribution;

15 (15) Service covered by an arrangement between the
16 department and the agency charged with the
17 administration of any other state or federal
18 unemployment compensation law pursuant to which all
19 services performed by an individual for an employing
20 unit during the period covered by the employing unit's
21 duly approved election, are deemed to be performed
22 entirely within the agency's state;



- 1 (16) Service performed by an individual who, pursuant to
2 the Federal Economic Opportunity Act of 1964, is not
3 subject to the federal laws relating to unemployment
4 compensation;
- 5 (17) Service performed by an individual for an employing
6 unit as a real estate salesperson, if all service
7 performed by the individual for the employing unit is
8 performed for remuneration solely by way of
9 commission;
- 10 (18) Service performed by a registered sales representative
11 for a registered travel agency, when the service
12 performed by the individual for the travel agent is
13 performed for remuneration by way of commission;
- 14 (19) Service performed by a vacuum cleaner salesperson for
15 an employing unit, if all services performed by the
16 individual for the employing unit are performed for
17 remuneration solely by way of commission;
- 18 (20) Service performed for a family-owned private
19 corporation organized for profit that employs only
20 members of the family who each own at least fifty per
21 cent of the shares issued by the corporation; provided
22 that:



- 1 (A) The private corporation elects to be excluded
2 from coverage under this chapter;
- 3 (B) The election for exclusion shall apply to all
4 shareholders and under the same circumstances;
- 5 (C) No more than two members of a family may be
6 eligible per entity for exclusion under this
7 paragraph;
- 8 (D) The exclusion shall be irrevocable for five
9 years;
- 10 (E) The family-owned private corporation presents to
11 the department proof that it has paid federal
12 unemployment insurance taxes as required by
13 federal law; and
- 14 (F) The election to be excluded from coverage shall
15 be effective the first day of the calendar
16 quarter in which the application and all
17 substantiating documents requested by the
18 department are filed with the department;
- 19 (21) Service performed by a direct seller as defined in
20 section 3508 of the Internal Revenue Code of 1986;
21 [~~and~~]



- 1 (22) Service performed by an election official or election
2 worker as defined in section 3309(b)(3)(F) of the
3 Internal Revenue Code of 1986, as amended[-]; and
- 4 (23) Medicaid waiver service performed in the employ of a
5 contractor of the State when such service is:
- 6 (A) Authorized and paid for by the department of
7 human services under the Social Security Act;
- 8 (B) Performed by a licensed or certified adult foster
9 care home operator-owner in the operator-owner's
10 home for residents of that particular home; and
- 11 (C) Performed for other than governmental entities,
12 federally recognized Indian tribes, and nonprofit
13 organizations.

14 None of the foregoing exclusions (1) to [~~+22~~] (23) shall
15 apply to any service with respect to which a tax is required to
16 be paid under any federal law imposing a tax against which
17 credit may be taken for contributions required to be paid into a
18 state unemployment fund or which as a condition for full tax
19 credit against the tax imposed by the federal Unemployment Tax
20 Act is required to be covered under this chapter."



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

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

6 SECTION 6. This Act shall take effect on July 1, 2059.



Report Title:

Employment; Exemptions; Medicaid Waiver Service

Description:

Exempts medicaid waiver service from the scope of certain employment related law. (HB833 HD2)

