

Honolulu, Hawaii

March, 2009

RE: H.B. No. 704
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 704
entitled:

"A BILL FOR AN ACT RELATING TO HOME CARE AGENCIES,"

begs leave to report as follows:

The purpose of this measure is to ensure that agencies providing home care services to consumers meet minimum standards relating to the health, safety, and welfare of consumers by requiring the Department of Health (DOH) to temporarily license home care agencies until June 30, 2014.

The Healthcare Association of Hawaii, AARP Hawaii, ILWU Local 142, and Policy Advisory Board for Elder Affairs supported this bill. The Department of Human Services and DOH opposed this bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2020, to encourage further discussion; and
- (2) Making technical, nonsubstantive changes for clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 704, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 704, H.D. 1.

Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



A BILL FOR AN ACT

RELATING TO HOME CARE AGENCIES.

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

1 SECTION 1. The health care environment is dynamic, with
2 changes occurring constantly due to new products and services
3 and changing demands of the market. The public must be assured
4 of quality in the care that is offered by providers. Standards
5 of quality for the growing home care industry must also be
6 ensured.

7 Home care is a component of the health care continuum that
8 is quickly expanding. The expansion is largely due to the
9 rising demand by disabled elderly individuals for care in their
10 homes when possible, rather than in institutional settings. In
11 addition, many other non-elderly individuals with illnesses,
12 injuries, and disabilities also prefer to receive care in the
13 privacy of their own home.

14 Since different types of home care clients have a variety
15 of needs, home care agencies provide a broad range of services,
16 both professional and nonprofessional such as private-duty
17 nursing services, rehabilitation therapy services, social



1 services, personal care services, and companion services. Home
2 care is usually purchased directly by consumers or their
3 families with personal funds since it is not a routine benefit
4 of health insurance plans.

5 A home care worker is often the only other person in the
6 home of a client, who may be mentally or physically disabled,
7 and it is essential to ensure that home care workers are
8 adequately trained and ethically responsible. However, home
9 care agencies in Hawaii are not currently required to meet such
10 standards of quality and responsibility.

11 The legislature finds that it is necessary to license home
12 care agencies to assure the public that minimum standards are
13 being met. For example, licensure should require criminal
14 background checks of home care staff who work in the homes of
15 clients to provide personal care services.

16 The purpose of this Act is to protect consumers of home
17 care services by:

- 18 (1) Requiring home care agencies to be licensed by the
19 department of health; and
- 20 (2) Appropriating funds for a position in the department
21 of health to assist with licensure and monitoring of
22 home care agencies.



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

4 "§321- Home care agencies; licensing. (a) A home care
5 agency shall be licensed by the department of health to ensure
6 the health, safety, and welfare of clients.

7 (b) The department of health shall adopt rules in
8 accordance with chapter 91 to:

9 (1) Protect the health, safety, and civil rights of
10 clients of home care agencies; and

11 (2) Provide for the licensure of home care agencies.

12 (c) For purposes of this section:

13 "Home care agency" means a public or proprietary agency, a
14 private, nonprofit organization, or a subdivision of an agency
15 or organization, engaged in providing home care services to a
16 client in the client's residence. The term "home care agency"
17 does not apply to an individual, including an individual who is
18 incorporated as a business or is an unpaid or stipended
19 volunteer.

20 "Home care services" include:

21 (1) Personal care, including assistance with dressing,
22 feeding, and personal hygiene to facilitate self-care;



- 1 (2) Homemaker assistance, including housekeeping,
2 shopping, and meal planning and preparation; and
3 (3) Respite care and assistance and support provided to
4 the family."

5 SECTION 3. Section 321-11, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§321-11 Subjects of health rules, generally.** The
8 department of health pursuant to chapter 91 may adopt rules that
9 it deems necessary for the public health and safety respecting:

- 10 (1) Nuisances, foul or noxious odors, gases, vapors,
11 waters in which mosquitoes breed or may breed, sources
12 of filth, and causes of sickness or disease, within
13 the respective districts of the State, and on board
14 any vessel;
15 (2) Adulteration and misbranding of food or drugs;
16 (3) Location, air space, ventilation, sanitation,
17 drainage, sewage disposal, and other health conditions
18 of buildings, courts, construction projects,
19 excavations, pools, watercourses, areas, and alleys;
20 (4) Privy vaults and cesspools;
21 (5) Fish and fishing;
22 (6) Interments and dead bodies;



- 1 (7) Disinterments of dead human bodies, including the
2 exposing, disturbing, or removing of these bodies from
3 their place of burial, or the opening, removing, or
4 disturbing after due interment of any receptacle,
5 coffin, or container holding human remains or a dead
6 human body or a part thereof and the issuance and
7 terms of permits for the aforesaid disinterments of
8 dead human bodies;
- 9 (8) Cemeteries and burying grounds;
- 10 (9) Laundries, and the laundering, sanitation, and
11 sterilization of articles including linen and uniforms
12 used by or in the following businesses and
13 professions: barber shops, manicure shops, beauty
14 parlors, electrology shops, restaurants, soda
15 fountains, hotels, rooming and boarding houses,
16 bakeries, butcher shops, public bathhouses, midwives,
17 masseurs, and others in similar calling, public or
18 private hospitals, and canneries and bottling works
19 where foods or beverages are canned or bottled for
20 public consumption or sale; provided that nothing in
21 this chapter shall be construed as authorizing the
22 prohibiting of laundering, sanitation, and



1 sterilization by those conducting any of these
2 businesses or professions where the laundering or
3 sterilization is done in an efficient and sanitary
4 manner;

5 (10) Hospitals, freestanding surgical outpatient
6 facilities, skilled nursing facilities, intermediate
7 care facilities, adult residential care homes, adult
8 foster homes, assisted living facilities, special
9 treatment facilities and programs, home health
10 agencies, home care agencies, hospices, freestanding
11 birthing facilities, adult day health centers,
12 independent group residences, and therapeutic living
13 programs, but excluding youth shelter facilities
14 unless clinical treatment of mental, emotional, or
15 physical disease or handicap is a part of the routine
16 program or constitutes the main purpose of the
17 facility, as defined in section 346-16 under "child
18 care institution". For the purpose of this paragraph,
19 "adult foster home" has the same meaning as provided
20 in section 321-11.2;

21 (11) Hotels, rooming houses, lodging houses, apartment
22 houses, tenements, and residences for persons with



- 1 developmental disabilities including[7] but not
2 limited to[7] those built under federal funding;
- 3 (12) Laboratories;
- 4 (13) Any place or building where noisome or noxious trades
5 or [~~manufacturers are~~] manufacturing is carried on, or
6 intended to be carried on;
- 7 (14) Milk;
- 8 (15) Poisons and hazardous substances, the latter term
9 including but not limited to any substance or mixture
10 of substances [~~which-~~] that:
- 11 (A) Is corrosive;
- 12 (B) Is an irritant;
- 13 (C) Is a strong sensitizer;
- 14 (D) Is inflammable; or
- 15 (E) Generates pressure through decomposition, heat,
16 or other means,
- 17 if the substance or mixture of substances may cause
18 substantial personal injury or substantial illness
19 during or as a proximate result of any customary or
20 reasonably foreseeable handling or use, including
21 reasonably foreseeable ingestion by children;
- 22 (16) Pig and duck ranches;



- 1 (17) Places of business, industry, employment, and
2 commerce, and the processes, materials, tools,
3 machinery, and methods of work done therein; and
4 places of public gathering, recreation, or
5 entertainment;
- 6 (18) Any restaurant, theater, market, stand, shop, store,
7 factory, building, wagon, vehicle, or place where any
8 food, drug, or cosmetic is manufactured, compounded,
9 processed, extracted, prepared, stored, distributed,
10 sold, offered for sale, or offered for human
11 consumption or use;
- 12 (19) Foods, drugs, and cosmetics, and the manufacture,
13 compounding, processing, extracting, preparing,
14 storing, selling, and offering for sale, consumption,
15 or use of any food, drug, or cosmetic;
- 16 (20) Devices as defined in section 328-1;
- 17 (21) Sources of ionizing radiation;
- 18 (22) Medical examination, vaccination, revaccination, and
19 immunization of school children. No child shall be
20 subjected to medical examination, vaccination,
21 revaccination, or immunization, whose parent or
22 guardian objects in writing thereto on grounds that



1 the requirements are not in accordance with the
2 religious tenets of an established church of which the
3 parent or guardian is a member or adherent, but no
4 objection shall be recognized when, in the opinion of
5 the department, there is danger of an epidemic from
6 any communicable disease;

7 (23) Disinsectization of aircraft entering or within the
8 [~~State~~] state as may be necessary to prevent the
9 introduction, transmission, or spread of disease or
10 the introduction or spread of any insect or other
11 vector of significance to health;

12 (24) Fumigation, including the process by which substances
13 emit or liberate gases, fumes, or vapors [~~which~~] that
14 may be used for the destruction or control of insects,
15 vermin, rodents, or other pests, [~~which~~] that, in the
16 opinion of the department, may be lethal, poisonous,
17 noxious, or dangerous to human life;

18 (25) Ambulances and ambulance equipment;

19 (26) Development, review, approval, or disapproval of
20 management plans submitted pursuant to the Asbestos
21 Hazard Emergency Response Act of 1986, Public Law
22 99-519; and



1 (27) Development, review, approval, or disapproval of an
2 accreditation program for specially trained persons
3 pursuant to the Residential Lead-Based Paint Hazard
4 Reduction Act of 1992, Public Law 102-550.

5 The department of health may require any certificates,
6 permits, or licenses that it may deem necessary to adequately
7 regulate the conditions or businesses referred to in this
8 section."

9 SECTION 4. Section 321-11.5, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) All fees paid and collected pursuant to this section
12 and rules adopted in accordance with chapter 91 from facilities
13 seeking licensure or certification by the department of health,
14 including hospitals, nursing homes, home health agencies, home
15 care agencies, intermediate care facilities for the mentally
16 retarded, freestanding outpatient surgical facilities, adult day
17 health care centers, rural health centers, laboratories, adult
18 residential care homes, expanded adult residential care homes,
19 developmental disability domiciliary homes, assisted living
20 facilities, therapeutic living programs, and special treatment
21 facilities, shall be deposited into the office of health care
22 assurance special fund created under section 321-1.4. Any other



1 entities required by law to be licensed by the department of
2 health shall also be subject to reasonable fees established by
3 the department of health by rules adopted in accordance with
4 chapter 91."

5 SECTION 5. Section 321-15.2, Hawaii Revised Statutes, is
6 amended by amending the definition of "healthcare facility" to
7 read as follows:

8 "Healthcare facility" means a facility or setting where a
9 frail, elderly, or disabled adult receives care or is provided
10 living accommodations such as a skilled nursing facility,
11 intermediate care facility, adult residential care home,
12 expanded adult residential care home, assisted living facility,
13 home health agency, home care agency, hospice, adult day health
14 center, special treatment facility, therapeutic living program,
15 intermediate care facility for the mentally retarded, hospital,
16 rural health center, and rehabilitation agency."

17 SECTION 6. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2009-2010 for
20 one full-time equivalent position in the department of health to
21 assist in the licensure and monitoring of home care agencies.



1 The sum appropriated shall be expended by the department of
2 health for the purposes of this Act.

3 SECTION 7. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect on July 1, 2020, and
6 shall be repealed on June 30, 2014; provided that sections
7 321-11, and 321-11.5(b), and the definition of "healthcare
8 facility" in section 321-15.2, Hawaii Revised Statutes, shall be
9 reenacted in the form in which they read on the day before the
10 effective date of this Act.



Report Title:

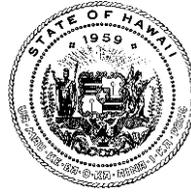
Health; Home Care Agencies; Licensing; Appropriation

Description:

Requires the department of health to license home care agencies.
Sunsets 6/30/2014. Makes appropriation. Effective July 1,
2020. (HB704 HD1)



LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

**SENATE COMMITTEES ON HEALTH AND COMMERCE AND CONSUMER
PROTECTION**

HB0704, HD1 RELATING TO HOME CARE AGENCIES

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

**March 19, 2009
9:30 a.m.**

1 **Department's Position:** The department appreciates the intent of this bill and respectfully defers to the
2 Department of Human Services.

3 **Fiscal Implications:**

4 **Purpose and Justification:** While the intent of the bill continues to have merit, the Department of
5 Health will defer to the Department of Human Services.

6 Thank you for the opportunity to testify.



SENATE COMMITTEE ON HEALTH
Senator David Y. Ige, Chair

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair

Conference Room 229
March 19, 2009 at 9:30 a.m.

Testimony in support of HB 704 HD 1.

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including acute care hospitals, two-thirds of the long term care beds in Hawaii, as well as home care and hospice providers. Thank you for this opportunity to testify in support of HB 704 HD 1, which requires all home care agencies to be licensed.

The mandatory licensure of home care agencies is designed to assure the public of quality by requiring such agencies to comply with appropriate standards. Without mandatory licensure, this assurance cannot be given.

Home care is a rapidly growing sector of the health care continuum. It is a cost-effective service for many individuals who are recuperating from a hospital stay and also for many who, because of a functional or cognitive disability, are unable to take care of themselves.

Elderly and disabled people increasingly prefer to remain living in their homes rather than being institutionalized. Home care reinforces and supplements care provided in the home by family members and friends, maintaining the recipient's dignity and independence.

Unfortunately, home care is often confused with other types of health care. Home health agencies are currently licensed by the Department of Health. Home health is directed by a physician and focuses on services provided by licensed professionals, such as registered nurses, physical and occupational therapists, and speech therapists.

On the other hand, the Department of Health does not license home care agencies. Home care services are consumer directed, focusing primarily on services provided by non-medical personnel, often called custodial care. Home care services include assistance with tasks of daily living such as bathing and meal preparation, laundry, light housekeeping, errands, shopping, transportation, and companionship.

Also, the similarity between the terms "home care" and "care homes" may be confusing. Since care homes are licensed, many people incorrectly believe that home care agencies are also licensed.

Without licensure, the safety of those who receive home care is at risk, especially since home care is in many cases provided to frail and elderly consumers. Unlike in an institutional setting, the home care worker is often alone with the consumer of services.

The State has an obligation to protect consumers from improper care, exploitation, and abuse. At a minimum, the competence of home care agency employees should be established, and criminal background checks should be performed.

This bill directs the Department of Health (DOH) to establish a licensure system that protects the health and safety of clients receiving services from home care agencies. Any home care agency that is not licensed would not be allowed to operate.

This bill has been needed for some time now to assure quality and to protect the many elderly and disabled people who receive home care. Any delay will only extend the potential for abuse at a time when the demand for home care is increasing.

For the foregoing reasons, the Healthcare Association of Hawaii strongly supports HB 704 HD 1.

**Testimony to the Senate Committees on
Health and Commerce and Consumer Protection
Thursday, March 19, 2009 at 9:30 a.m.
Conference Room 229, State Capitol**

RE: HOUSE BILL NO. 704 HD1 RELATING TO HOME CARE AGENCIES

Chairs Ige and Baker, Vice Chair Green, and members of the committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber supports House Bill 704 HD1 relating to Home Care Agencies.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure requires the Department of Health to license home care agencies.

Quality health care is critical to the people and economy of Hawaii. As one of the largest private industries in Hawaii, the health care industry plays an important role in our economy, particularly through attractive, well-paying jobs and through the purchase of goods and services that contribute to our state's economy. As such, the health care industry plays a crucial role in the economic development and sustainability of our state and all of Hawaii's businesses. Also, Hawaii's healthcare system provides quality care for our families and serves to attract and retain a professional workforce, new companies, and even tourists to our state.

However, the quality healthcare that Hawaii has enjoyed for years is now in jeopardy. It is on the verge of declining because healthcare providers are no longer being paid for essential services at a level sufficient to cover annually increasing costs. The health care system must be maintained and challenges must be addressed.

Therefore, The Chamber supports prescriptions of improvements of the quality of our health care system that will increase long term care capacity and access statewide. Implementing a license requirement of home care agencies is the first step in the right direction in ameliorating the current state of health care in Hawaii.

In light of the above, The Chamber of Commerce of Hawaii supports HB 704 HD1. Thank you for the opportunity to testify.