



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

January 31, 2013

MEMORANDUM

TO: The Honorable Mele Carroll, Chair
House Committee on Human Services

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 1022 - RELATING TO CARE HOMES**

Hearing: Thursday, January 31, 2013; 9:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of H.B. 1022 is to require all operators of adult foster homes, adult residential care homes, assisted living facilities, expanded adult residential care homes, and community care foster family homes (CCFFH) to obtain and maintain sufficient liability insurance.

This bill also proposes to amend Act 221, Session Laws of Hawaii 2011, by extending the repeal date to July 1, 2014. Act 221 amended the requirements for primary and substitute caregivers caring for three clients in CCFFHs.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) respectfully opposes Sections 1 and 4 of this bill.

Section 1: The provisions in Section 1 are not necessary because Hawaii Administrative Rules section 17-1454-49 already require the Community Care Foster Family Homes (CCFFH) to have liability insurance in order to be certified as a CCFFH. In addition, the CCFFH must have a contract with the Med-QUEST Division's health

plans in order to be paid for services rendered to Medicaid clients. The health plan contracts also require the CCFFH to have liability insurance.

The Department of Health (DOH) has the licensing authority over the Assisted Living Facilities (ALF) and Expanded Adult Residential Care Homes (EARCHs). DHS becomes involved with the ALF and EARCH when a Medicaid client is placed in these facilities and payment for services is needed. In order to be paid, the ALF or the EARCH must have a contract with a health plan. Liability insurance is a requirement for the health plan contract.

Section 4: The DHS is strongly opposed to the language in this section which extends the repeal date of Act 221, SLH 2011, to July 1, 2014. The DHS recommends that no amendments be made to Act 221, SLH 2011, allowing the provisions of the Act to sunset effective June 30, 2013. It is DHS' position that the provisions of HRS sections 346-331 and 346-334 be reenacted in the form in which they read prior to the passage of Act 221, SLH 2011. This means that the requirements for primary and substitute caregivers caring for three clients in CCFFHs shall be reinstated as follows:

1. All caregivers must be, at a minimum, certified nurse aides;
2. Age requirement is 18 years or older; and
3. All caregivers must complete a minimum of twelve hours of continuing education every twelve months or at least twenty-four hours of continuing education every twenty-four months.

All clients residing in a CCFFH are at the nursing facility level of care. Caring for three clients at the nursing facility level of care significantly raises the amount of supervision and care required by the caregiver. Because the substitute caregiver assumes the responsibilities of the primary caregiver whenever the primary caregiver is absent from the home, the substitute caregiver must have the same qualifications as the primary caregiver in order to adequately care for the needs of the clients. The absence

of the primary caregiver may be for short periods of time, or may be for as long as ten to twelve hours per day when the primary caregiver is employed outside of the home. For the health, safety, and welfare of each client residing in the CCFFH, the substitute caregiver must be as knowledgeable and competent as the primary caregiver.

The DHS defers to the DOH regarding the provisions of Sections 2 and 3 that pertain to facilities under DOH's jurisdiction.

Thank you for the opportunity to provide comments on this bill.



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

In reply, please refer to:
File:

House Committee on Human Services

HB 1022, Relating to Care Homes

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health
January 31, 2013

1 **Department's Position:** The Department of Health respectfully OPPOSES this bill as unnecessary.

2 **Fiscal Implications:** Unspecified, but the Department would incur the unnecessary cost of staff time
3 and effort to revise the definition of an adult residential care home (ARCH) when the definition is
4 already sufficiently broad in the administrative rules.

5 **Purpose and Justification:** This bill would require assisted living facilities (ALF), community care
6 foster homes and expanded ARCHs to obtain and maintain liability insurance, and for DOH to
7 determine the amount of coverage. Further, this bill would expand the definition of an ARCH to include
8 the ability for an ARCH to provide care to an adult with developmental or intellectual disabilities.
9 Neither requirement is necessary.

10 Liability Insurance: a bill to require liability insurance was signed into law last year as Act 266,
11 July 6, 2012 (Gov. Msg. No. 1369). The language requiring liability insurance will be inserted into the
12 administrative rules. These revised rules are currently in review and will be presented at public hearing
13 in the near future.

14 ARCH definition: HAR Chapter 100.1's current definition of an ARCH is sufficiently broad to
15 allow an adult with developmental or intellectual disabilities to be a resident of an ARCH. The current
Promoting Lifelong Health and Wellness

1 definition is: "...any facility providing twenty four hour living accommodations, for a fee, to adults
2 unrelated to the family, who require at least minimal assistance in the activities of daily living, personal
3 care services, protection, and health care services, but who do not need the professional health services
4 of an intermediate, skilled nursing, or acute care facility." Conditions related to medical,
5 developmental, intellectual or mental status are neither specified nor excluded so long as the patient
6 meets the requirement of minimal assistance in the activities of daily living, personal care services, and
7 health care services not at an intermediate, skilled or acute level of care.