

JAN 23 2015

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# A BILL FOR AN ACT

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RELATING TO HUMAN SERVICES.

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

**PART I**

SECTION 1. The legislature finds that intermediate care facilities offer individuals with intellectual and developmental disabilities a place to work and live. Over the last few years, intermediate care facilities have seen a decrease in financial support; and existing medicaid payment rates, which took effect in 2008 and were based on 2005 cost reports, do not cover the daily costs incurred by intermediate care facilities in providing services to individuals with intellectual and developmental disabilities. As a result, intermediate care facilities have suffered financially and have been operating at a loss.

The legislature further finds that section 17-1739.2-17, Hawaii Administrative Rules, requires the department of human services to rebase inadequate and dated compensation rates, a process that uses a more recent cost report to update medicaid payment rates. However, section 17-1739.2-17, Hawaii



1 Administrative Rules, ignores wage changes, inflation, level of  
2 care requirements, and best practice standards and only requires  
3 that a provider shall not have its basic prospective payment  
4 system rates calculated by reference to the same base year for  
5 more than eight fiscal years.

6 The legislature additionally finds that section  
7 17-1739.2-14(c), Hawaii Administrative Rules, mandates inflation  
8 adjustments to the basic prospective payment system rates for  
9 years when the department of human services does not perform a  
10 rebasing of the rates. However, there has not been an inflation  
11 adjustment to the basic prospective payment system rates for  
12 intermediate care facility residents since fiscal year 2011.

13 The legislature also finds that intermediate care  
14 facilities receive a fixed per diem payment for each bed  
15 occupied. However, if a resident is absent from the facility at  
16 midnight, with the exception of twelve days per year, the per  
17 diem payment is not made to the facility, even if the facility  
18 provided services to the resident for the majority of the day.  
19 Uncompensated therapeutic and hospital related absences present  
20 a severe financial challenge to intermediate care facilities.



1       The purpose of this part is to require the department of  
2 human services to reevaluate its administrative rebasing rules  
3 that establish intermediate care facility rates; rebase existing  
4 rates using the 2013 provider cost reports; establish a rebasing  
5 of basic prospective payment system rates every two fiscal  
6 years; increase intermediate care facility bed hold days from  
7 twelve to twenty-four days for therapeutic or hospitalization  
8 related absences; appropriate funds for any increase in basic  
9 prospective payment system rates; and appropriate funds to  
10 provide a retroactive reimbursement owed by the State to The Arc  
11 in Hawaii.

12       SECTION 2. The department of human services shall evaluate  
13 and consider an alternate methodology for establishing  
14 intermediate care facility rates to address the inadequacy of  
15 the existing system. The department shall update prospective  
16 payment system rates for intermediate care facilities providing  
17 services to medicaid recipients with intellectual and  
18 developmental disabilities using provider cost reports from the  
19 base year ending June 30, 2013, to take effect on July 1, 2015.  
20 The department shall adopt rules pursuant to chapter 91 to



1 require rebasing using updated cost report data once every two  
2 fiscal years.

3 SECTION 3. The department of human services shall adopt  
4 rules pursuant to chapter 91 to establish that a medicaid  
5 recipient may reserve a bed at an intermediate care facility for  
6 a therapeutic or hospitalization related absence for no more  
7 than twenty-four days in a calendar year.

8 SECTION 4. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$ or so  
10 much thereof as may be necessary for fiscal year 2015-2016 and  
11 the same sum or so much thereof as may be necessary for fiscal  
12 year 2016-2017 for any increase in basic prospective payment  
13 system rates as provided for in section 2 of this Act.

14 The sums appropriated shall be expended by the department  
15 of human services for the purposes of this part.

16 SECTION 5. There is appropriated out of the general  
17 revenues of the State of Hawaii the sum of \$800,000 or so much  
18 thereof as may be necessary for fiscal year 2015-2016 and the  
19 same sum or so much thereof as may be necessary for fiscal year  
20 2016-2017 to provide a retroactive reimbursement that is owed by  
21 the State to The Arc in Hawaii.



1       The sums appropriated shall be expended by the department  
2 of human services for the purposes of this part.

3                               **PART II**

4       SECTION 6. The legislature finds that developmental  
5 disability domiciliary homes are neighborhood homes where a  
6 caretaker provides room, board, and care for individuals with  
7 intellectual or developmental disabilities. An individual with  
8 an intellectual or developmental disability who resides in a  
9 developmental disability domiciliary home pays for room, board,  
10 and care with the individual's own funds. These funds include  
11 federal social security disability insurance, federal  
12 supplemental security income, and state supplemental security  
13 income supplement that is intended to cover the high costs  
14 associated with operating a developmental disability domiciliary  
15 home.

16       The legislature further finds that state supplemental  
17 security income supplement offers critical financial assistance  
18 to individuals with an intellectual or developmental disability,  
19 as well as the operators of the developmental disability  
20 domiciliary homes. However, the state supplemental security  
21 income supplement rate was last increased in 2008 to \$651.90 per



1 month, despite the consumer price index increasing an average of  
2 2.28 per cent per year.

3       The legislature additionally finds that under medicaid cost  
4 share, if a developmental disability domiciliary resident's  
5 income exceeds the income eligibility standard, the resident has  
6 to "spend down" or subtract all of the resident's income for  
7 medicaid medical expenses and home and community based services,  
8 not including room and board at a developmental disability  
9 domiciliary home, until the amount remaining satisfies the  
10 State's income eligibility standard of \$469. As a result, even  
11 the smallest increase in income can make a person ineligible for  
12 medicaid and provide a person with only \$469 for housing, food,  
13 and other expenses each month. This forces a developmental  
14 disability domiciliary home to either evict the resident or to  
15 absorb the cost.

16       The purpose of this part is to ensure that individuals with  
17 intellectual and developmental disabilities continue to have  
18 access to developmental disability domiciliary homes by  
19 increasing the state supplemental security income supplement  
20 amount by \$50; authorizing an annual inflation adjustment to the  
21 state supplemental security income supplement amount;



1 disregarding benefit payments under title II of the federal  
2 Social Security Act if a payment results in a person losing  
3 federal supplemental security income or state supplemental  
4 security income; and appropriating funds for the state  
5 supplemental security income supplement amount increase.

6 SECTION 7. Section 346-53, Hawaii Revised Statutes, is  
7 amended by amending subsection (c) to read as follows:

8 "(c) The director, pursuant to chapter 91, shall determine  
9 the rate of payment for domiciliary care, including care  
10 provided in licensed developmental disabilities domiciliary  
11 homes, community care foster family homes, and certified adult  
12 foster homes, to be provided to recipients who are eligible for  
13 Federal Supplementary Security Income or public assistance, or  
14 both. The director shall provide for level of care payment as  
15 follows:

- 16 (1) Beginning on July 1, [~~2008~~,] 2015, for adult  
17 residential care homes classified as facility type I,  
18 licensed developmental disabilities domiciliary homes  
19 as defined under section 321-15.9, community care  
20 foster family homes as defined under section 321-481,  
21 and certified adult foster homes as defined under



1 section 321-11.2, the state supplemental payment shall  
2 not exceed [~~\$651.90,~~] \$701.90; and

3 (2) Beginning on July 1, [~~2008,~~] 2015, for adult  
4 residential care homes classified as facility type II,  
5 the state supplemental payment shall not exceed  
6 [~~\$759.90,~~] \$809.90.

7 If the operator does not provide the quality of care  
8 consistent with the needs of the individual to the satisfaction  
9 of the department, the department may remove the recipient to  
10 another facility.

11 The department shall handle abusive practices under this  
12 section in accordance with chapter 91.

13 Nothing in this subsection shall allow the director to  
14 remove a recipient from an adult residential care home or other  
15 similar institution if the recipient does not desire to be  
16 removed and the operator is agreeable to the recipient  
17 remaining, except where the recipient requires a higher level of  
18 care than provided or where the recipient no longer requires any  
19 domiciliary care.





1       As the director deems appropriate, the state supplemental  
2 payment amounts shall be adjusted annually in reasonable and  
3 appropriate increments for inflation."

4       SECTION 8. The department of human services shall adopt  
5 rules pursuant to chapter 91 to disregard any excess countable  
6 income that a disabled adult receives that is over the medicaid  
7 income qualification standard if the excess countable income is  
8 a payment from additional benefits under title II of the federal  
9 Social Security Act that results in the loss of federal  
10 supplemental security income or state supplemental security  
11 income; provided that the same amount is disregarded for all  
12 disabled adults.

13       SECTION 9. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$               or so  
15 much thereof as may be necessary for fiscal year 2015-2016 and  
16 the same sum or so much thereof as may be necessary for fiscal  
17 year 2016-2017 for increases in level of care payments as  
18 provided for in section 7 of this Act.

19       The sums appropriated shall be expended by the department  
20 of human services for the purposes of this part.

21                               **PART III**



1       SECTION 10. The legislature finds that the department of  
2 health oversees the billing procedures for medicaid waiver home  
3 and community based adult day health services. Providers are  
4 authorized to bill for services provided at an hourly rate but  
5 only in two blocks--a full day, which is six hours, or a half  
6 day, which is three hours. If a participant receives services  
7 for more than three hours but fewer than six hours, the provider  
8 of full-day services may only bill for a half-day. Similarly,  
9 if a participant receives fewer than three hours of services,  
10 the provider of half-day services may not collect any payment,  
11 despite services having been rendered and costs incurred.

12       The purpose of this part is to ensure that providers of  
13 home and community based adult day health services are  
14 compensated for the services that they provide by allowing  
15 providers to bill for services in fifteen-minute increments  
16 rather than three-hour increments.

17       SECTION 11. The department of health shall adopt rules  
18 pursuant to chapter 91 to allow a provider of medicaid home and  
19 community based adult day health services to bill for services  
20 in fifteen-minute increments.

21                   **PART IV**



1       SECTION 12. If any provision of this Act, or the  
2 application thereof to any person or circumstance, is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7       SECTION 13. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9       SECTION 14. This Act shall take effect on July 1, 2015.

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INTRODUCED BY: *Suzanne Chun Aakari*



**Report Title:**

Department of Human Services; The Arc; Administrative Rules; Intermediate Care Facilities; Developmental Disability Domiciliary Homes; Medicaid; Rates; Appropriation

**Description:**

Requires the department of human services to reevaluate administrative rebasing rules for establishing intermediate care facility rates and consider a more responsive methodology; requires existing system rates to be rebased; appropriates funds for any increase in basic prospective payment system rates; increases rebasing frequency to once every two fiscal years; appropriates funds to provide a retroactive reimbursement to The Arc in Hawaii; increases intermediate care facility bed hold days from twelve to twenty-four days for therapeutic and hospitalization absences; increases the state supplemental security income supplement amount by \$50 and appropriates funds for increases in level of care payments; authorizes an annual inflation adjustment to the state supplemental security income supplement amount; disregards benefit payments under title II of the federal Social Security Act if a payment results in a person losing federal supplemental security income or state supplemental security income; and requires the Department of Health to authorize a provider of medicaid home and community based adult day health services to bill for services in fifteen-minute increments.

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