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## A BILL FOR AN ACT

RELATING TO HEALTH.

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

1           SECTION 1. The legislature finds that there are currently  
2 more than 238,000 Hawaii residents aged sixty and over. This  
3 population constitutes 18.7 per cent of Hawaii's total  
4 population. By 2030, people aged sixty and older are projected  
5 to increase to more than 27.4 per cent. Hawaii's total  
6 population is expected to grow by twenty-one per cent between  
7 2000 and 2030. However, the number of adults sixty years and  
8 older will increase by 93.8 per cent and those eighty-five years  
9 and older will increase by 174.7 per cent during the same  
10 period. The legislature further finds that there is a "silver  
11 tsunami" coming, with even more individuals entering their  
12 senior years and retirement.

13           The recession of 2007 removed the possibility of a  
14 comfortable retirement for many of the State's elderly, and once  
15 seniors are no longer able to work or are employable, there is  
16 no safety net to keep retired Hawaii residents out of  
17 homelessness. In the next ten years, the "silver tsunami" will



1 substantially affect the entire State and the healthcare system.  
 2 The legislature finds that essential policies must be enacted to  
 3 address the issues relating to Hawaii's elderly and disabled to  
 4 address the impending "silver tsunami".

5 The purpose of this Act is to create and establish various  
 6 policies to adequately address the various issues concerning the  
 7 elderly and disabled and the community healthcare industry while  
 8 ensuring consumer protection for Hawaii's elderly and disabled.

PART I

10 SECTION 2. Section 321-15.6, Hawaii Revised Statutes, is  
 11 amended to read as follows:

12 "§321-15.6 Adult residential care homes; community-based  
 13 care homes; day care centers; licensing. (a) All adult  
 14 residential care homes shall be licensed to ensure the health,  
 15 safety, and welfare of the individuals placed therein. The  
 16 department shall conduct unannounced visits, other than the  
 17 inspection for relicensing, to every licensed adult residential  
 18 care home [and], licensed expanded adult residential care home,  
 19 and any community-based care home or day care center licensed or  
 20 certified and under the purview of the department on an annual  
 21 basis and at such intervals as determined by the department to



1 ensure the health, safety, and welfare of each resident.  
2 Unannounced visits may be conducted during or outside regular  
3 business hours. All inspections relating to follow-up visits,  
4 visits to confirm correction of deficiencies, or visits to  
5 investigate complaints or suspicion of abuse or neglect shall be  
6 conducted unannounced during or outside regular business hours.  
7 Annual inspections for relicensing may be conducted during  
8 regular business hours or at intervals determined by the  
9 department. Annual inspections for relicensing shall be  
10 conducted with notice, unless otherwise determined by the  
11 department."

12 SECTION 3. Section 321-15.62, Hawaii Revised Statutes, is  
13 amended by amending its title and subsection (a) to read as  
14 follows:

15 "§321-15.62 Expanded adult residential care homes;  
16 community-based care homes; day care centers; licensing. (a)  
17 All expanded adult residential care homes and any community-  
18 based care home or day care center providing healthcare to the  
19 elderly or disabled who are unrelated to the caregiver family  
20 shall be licensed or certified and subject to the purview of the



1 department to ensure the health, safety, and welfare of the  
2 individuals placed therein."

3 SECTION 4. Section 321-15.7, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "~~§321-15.7~~ **Penalty.** Any person who intentionally operates  
6 an adult residential care home, community-based foster family  
7 home, adult foster home, adult day care center, or hospice home  
8 without a license shall be guilty of a misdemeanor."

9 SECTION 5. Section 3, Act 184, Session Laws of Hawaii  
10 2016, is repealed.

11 [~~"SECTION 3. Section 321-15.6, Hawaii Revised Statutes, is~~  
12 ~~amended by amending subsection (a) to read as follows:~~

13 ~~(a) All adult residential care homes shall be licensed to~~  
14 ~~ensure the health, safety, and welfare of the individuals placed~~  
15 ~~therein. The department shall conduct visits and inspections~~  
16 ~~pursuant to section 321-1.9-"]~~

17 SECTION 6. Section 4, Act 184, Session Laws of Hawaii  
18 2016, is repealed.

19 [~~"SECTION 4. Section 321-15.62, Hawaii Revised Statutes,~~  
20 ~~is amended by amending subsection (a) to read as follows:~~



1       ~~(a) All expanded adult residential care homes shall be~~  
 2       ~~licensed to ensure the health, safety, and welfare of the~~  
 3       ~~individuals placed therein. The department shall conduct visits~~  
 4       ~~and inspections pursuant to section 321-1.9." ]~~

PART II

6       SECTION 7. Section 321-1.8, Hawaii Revised Statutes, is  
 7       amended to read as follows:

8       "**[+]§321-1.8[+] Inspections; public notice.** (a)  
 9       Beginning with inspections occurring on January 1, 2015, the  
 10       department of health shall post on its website electronic copies  
 11       of reports for all inspections it performs of the following  
 12       state-licensed care facilities:

- 13       (1) Adult day health centers;
- 14       (2) Adult day care centers;
- 15       (3) Community care foster family homes;
- 16       (4) Developmental disabilities domiciliary homes as
- 17       defined in section 321-15.9;
- 18       (5) Developmentally disabled adult foster homes;
- 19       (6) Long-term care facilities as defined in section
- 20       349-21(f); and



1 (7) Special treatment facilities as defined in section  
2 334-1.

3 (b) Each inspection report shall be posted on the  
4 department of health's website within five working days of the  
5 conclusion of each inspection and shall include the following  
6 information:

- 7 (1) The date of the inspection;
- 8 (2) A description of violations of relevant state laws or  
9 rules, if applicable;
- 10 (3) Plans of correction and the status of corrective  
11 actions in response to any violations, if applicable;
- 12 (4) A list and description of all corrective actions taken  
13 by the facility, if applicable, to be submitted by the  
14 facility and added to the report at a later time, as  
15 determined by the department; and
- 16 (5) Other information regarding the quality and conditions  
17 of the facility the department of health deems  
18 appropriate.

19 (c) Each inspection report posted on the department of  
20 health's website that reports a violation committed by a state-  
21 licensed care facility as described in subsection (a) shall be



1 removed from the website after three years from the date the  
2 report was posted.

3 (d) Beginning \_\_\_\_\_, in addition to the inspection  
4 information required by subsection (a), the department of health  
5 may maintain a forum on its website where all state-licensed  
6 care facilities specified in subsection (a) may post vacancy  
7 information to facilitate the placement of individuals therein."

8 SECTION 8. (a) No later than \_\_\_\_\_, the department of  
9 health may convene a working group to discuss and provide  
10 feedback on the implementation and maintenance of a forum on its  
11 website where state-licensed care facilities may post vacancy  
12 information to facilitate the placement and referrals of  
13 individuals in the facilities within state-licensed care  
14 facilities, as specified in section 321-1.8(d), Hawaii Revised  
15 Statutes.

16 (b) The department of health shall submit a report to the  
17 legislature no later than twenty days before the convening of  
18 the regular session of 2018 of its findings and recommendations  
19 relative to the implementation and maintenance of a forum on its  
20 website, as specified in subsection (a). The report shall also



1 include feedback on the posting of vacancy information on the  
2 website.

3 SECTION 9. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$ or so much  
5 thereof as may be necessary for fiscal year 2017-2018 and the  
6 same sum or so much thereof as may be necessary for fiscal year  
7 2018-2019 for the implementation and maintenance of a forum on  
8 the department of health's website as required by this part.

9 The sums appropriated shall be expended by the department  
10 of health for the purposes of this Act.

11 PART III

12 SECTION 10. Chapter 321, Hawaii Revised Statutes, is  
13 amended by adding a new section to be appropriately designated  
14 and to read as follows:

15 "§321- License, relicense, certification, and  
16 recertification fees. (a) The department shall charge and  
17 collect fees for the licensure, relicensure, certification, and  
18 recertification of the following facilities:

- 19 (1) Not more than \$ per year for adult residential  
20 care homes;



- 1        (2) Not more than \$ \_\_\_\_\_ per year for expanded adult
- 2        residential care homes;
- 3        (3) Not more than \$ \_\_\_\_\_ per year for developmental
- 4        disabilities domiciliary homes;
- 5        (4) Not more than \$ \_\_\_\_\_ per year for community care
- 6        foster family homes;
- 7        (5) Not more than \$ \_\_\_\_\_ per year for adult day care
- 8        centers;
- 9        (6) Not more than \$ \_\_\_\_\_ per year for adult foster
- 10       homes for developmentally disabled individuals;
- 11       (7) Not more than \$ \_\_\_\_\_ per year for other homes
- 12       specified in section 346-53; and
- 13       (8) Not more than \$ \_\_\_\_\_ per year for case managers
- 14       having purview of facilities specified in paragraphs
- 15       (1) to (7).
- 16       (b) The fees shall be deposited into the general fund to
- 17       support the licensing, relicensing, certification, and
- 18       recertification of facilities under this section.
- 19       (c) The department shall adopt rules pursuant to chapter
- 20       91 as necessary to carry out the purposes of this section."



1 SECTION 11. The department of health shall submit a report  
2 to the legislature no later than twenty days prior to the  
3 convening of the regular session of 2018 on the following:

4 (1) The nexus and use of the fees collected pursuant to  
5 this part;

6 (2) A brief description of any operational problems or  
7 legal impediments that are anticipated to affect  
8 collection of the fees or have affected collection of  
9 the fees; and

10 (3) With respect to community care facilities, a cost  
11 analysis on the savings to the State in relation to  
12 providing health care services to the elderly and  
13 disabled persons.

14 PART IV

15 SECTION 12. The legislature finds that there is an ever-  
16 increasing need for community care foster family homes to  
17 support the health and long-term care needs of an aging  
18 population and families. Community care foster family homes  
19 provide an essential function in the State by providing twenty-  
20 four-hour living accommodations, which include housing,  
21 supervision, personal care, and assistance with daily living



1 activities for their residents. These homes provide individuals  
2 who are at a nursing facility level of care with living  
3 accommodations in a family-like setting, an alternative to  
4 living in an institutional setting.

5 Community care foster family homes are licensed to provide  
6 accommodations and services to not more than two adults at any  
7 one time, at least one of whom shall be a medicaid recipient,  
8 and who are at the nursing facility level of care. The  
9 department of health working together with the department of  
10 human services may certify a community care foster family home  
11 for a third adult who is at the nursing level of care and a  
12 medicaid recipient, provided that certain requirements are met.

13 The legislature further finds that not only do medicaid  
14 clients have limited options for long-term care, but so do  
15 individuals who do not rely on medicaid for long-term care.  
16 Besides providing accommodations to medicaid recipients,  
17 community care foster family homes also provide accommodations  
18 to private-pay individuals. There is also a recognized need to  
19 accommodate private-pay individuals who share a long-term  
20 relationship. As the cost of medical care continues to rise, it  
21 is becoming apparent that even those who do not rely on medicaid



1 for their long-term care cannot afford the cost of private care,  
2 leaving this population, also, with limited options.

3 The purpose of this part is to recognize the varied needs  
4 of the State's aging population by giving the department of  
5 health the flexibility to permit two private-pay individuals to  
6 be cared for in the same community care foster family home,  
7 provided they meet certain qualifying conditions.

8 SECTION 13. Section 321-15.62, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

10 "(b) The director of health shall adopt rules regarding  
11 expanded adult residential care homes in accordance with chapter  
12 91 that shall implement a social model of health care designed  
13 to:

14 (1) Protect the health, safety, civil rights, and rights  
15 of choice of residents in a nursing facility or in  
16 home- or community-based care;

17 (2) Provide for the licensing of expanded adult  
18 residential care homes for persons who are certified  
19 by the department of human services, a physician,  
20 advanced practice registered nurse, or registered  
21 nurse case manager as requiring skilled nursing



1 facility level or intermediate care facility level of  
2 care who have no financial relationship with the home  
3 care operator or facility staff; provided that the  
4 rules shall allow group living in the following two  
5 categories of expanded adult residential care homes as  
6 licensed by the department of health:

7 (A) A type I home shall consist of five or fewer  
8 residents with no more than ~~two~~ three nursing  
9 facility level residents; provided that more  
10 nursing facility level residents may be allowed  
11 at the discretion of the department; and provided  
12 further that up to six residents may be allowed  
13 at the discretion of the department to live in a  
14 type I home; provided that the primary caregiver  
15 or home operator is a certified nurse aide who  
16 has completed a state-approved training program  
17 and other training as required by the department;  
18 and

19 (B) A type II home shall consist of six or more  
20 residents, with no more than twenty per cent of  
21 the home's licensed capacity as nursing facility



1 level residents; provided that more nursing  
2 facility level residents may be allowed at the  
3 discretion of the department;  
4 provided further that the department shall exercise  
5 its discretion for a resident presently residing in a  
6 type I or type II home, to allow the resident to  
7 remain as an additional nursing facility level  
8 resident based upon the best interests of the  
9 resident. The best interests of the resident shall be  
10 determined by the department after consultation with  
11 the resident, the resident's family, primary  
12 physician, case manager, primary caregiver, and home  
13 operator;  
14 (3) Comply with applicable federal laws and regulations of  
15 title XVI of the Social Security Act, as amended; and  
16 (4) Provide penalties for the failure to comply with any  
17 rule."

18 SECTION 14. Section 321-481, Hawaii Revised Statutes, is  
19 amended by amending the definition of "community care foster  
20 family home" or "home" to read as follows:



1            ""Community care foster family home" or "home" means a home  
2 that:

- 3            (1) Is regulated by the department in accordance with
- 4                    rules that are equitable in relation to rules that
- 5                    govern expanded adult residential care homes;
- 6            (2) Is issued a certificate of approval by the department
- 7                    or its designee to provide, for a fee, twenty-four-
- 8                    hour living accommodations, including personal care
- 9                    and homemaker services, for not more than two adults
- 10                   at any one time, at least one of whom shall be a
- 11                   medicaid recipient, who are at the nursing facility
- 12                   level of care, who are unrelated to the foster family,
- 13                   and who are receiving the services of a licensed home
- 14                   and community-based case management agency; provided
- 15                   that the department, in its discretion, may certify a
- 16                   home for a third adult who is at the nursing level of
- 17                   care and a medicaid recipient; provided further that
- 18                   [the]:

- 19            (A) The department of health, working together with
- 20                    the department of human services, may jointly in
- 21                    their discretion allow two private-pay



1           individuals to be cared for in the same community  
2           care foster family home if all of the following  
3           are met:

4           (i) The community care foster family home is  
5           certified for three beds;

6           (ii) Operators of three-bed community care foster  
7           family homes immediately notify the  
8           department or its designee of any vacancy in  
9           writing; and

10          (iii) The two private-pay clients are in a  
11          relationship with each other as a married or  
12          civil union couple;

13          (B) The department, in its discretion, may certify a  
14          home for a third adult who is at the nursing  
15          level of care and a medicaid recipient; provided  
16          further that the:

17          ~~[(A) Home]~~   (i) The home has been certified and in operation  
18                            for not less than one year;

19          ~~[(B) Primary]~~ (ii) The primary caregiver is a certified nurse  
20                            aide, as defined in section 457A-1.5, who has



1 completed a state-approved training program and  
2 other training as required by the department; and  
3 [~~(C) Substitute~~] (iii) The substitute caregiver is a nurse  
4 aide, as defined in section 457A-1.5, who has  
5 completed a state-approved training program and  
6 other training as required by the department; and  
7 (3) Does not include expanded adult residential care homes  
8 or assisted living facilities."

9 SECTION 15. The department of health and the department of  
10 human services shall jointly submit a report of their findings  
11 and recommendations to the legislature, no later than twenty  
12 days prior to the convening of the regular session of 2018, on  
13 the authorization to allow two private-pay individuals to be  
14 cared for in the same community care foster family home as  
15 provided under this part, including its impact on the  
16 availability of space for medicaid clients.

17 SECTION 16. It is the intent of this part not to  
18 jeopardize the receipt of any federal aid. If this part is  
19 found to be in conflict with federal requirements that are a  
20 prescribed condition for the allocation of federal funds to the  
21 State, this part shall be deemed void.



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PART V

SECTION 17. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§321- Compensation for caregivers and case managers.

The department shall ensure caregivers are fairly compensated as follows:

(1) Not more than \$ \_\_\_\_\_ per year for caregivers working in adult residential care homes;

(2) Not more than \$ \_\_\_\_\_ per year for caregivers working in expanded adult residential care homes;

(3) Not more than \$ \_\_\_\_\_ per year for caregivers working in developmental disabilities domiciliary homes;

(4) Not more than \$ \_\_\_\_\_ per year for caregivers working in community care foster family homes;

(5) Not more than \$ \_\_\_\_\_ per year for caregivers working in adult day care centers;

(6) Not more than \$ \_\_\_\_\_ per year for caregivers working in adult foster homes for developmentally disabled individuals;



- 1        (7) Not more than \$ \_\_\_\_\_ per year for caregivers
- 2            working in other homes specified in section 346-53;
- 3            and
- 4        (8) Not more than \$ \_\_\_\_\_ per year for case managers
- 5            having purview of facilities specified in paragraphs
- 6            (1) to (7)."

PART VI

8            SECTION 18. Chapter 321, Hawaii Revised Statutes, is

9 amended by adding a new section to be appropriately designated

10 and to read as follows:

11            "§321- Community health care facilities; case managers;

12 late payment interest. The department shall reimburse community

13 health care facilities and case managers with purview over those

14 facilities for the interest on late payments that are overdue by

15 at least thirty days. The interest shall be calculated as a

16 percentage of the late payment as follows:

- 17            (1) \_\_\_\_\_ per cent for adult residential care homes;
- 18            (2) \_\_\_\_\_ per cent for expanded adult residential care
- 19            homes;
- 20            (3) \_\_\_\_\_ per cent for developmental disabilities
- 21            domiciliary homes;



- 1        (4)        per cent for community care foster family homes;
- 2        (5)        per cent for adult day care centers;
- 3        (6)        per cent for adult foster homes for
- 4        developmentally disabled individuals;
- 5        (7)        per cent for other homes specified in section
- 6        346-53; and
- 7        (8)        per cent for case managers having purview of
- 8        facilities specified in paragraphs (1) to (7)."

9        SECTION 19. The department of health shall submit a report  
 10 to the legislature with respect to community health care  
 11 facilities no later than twenty days before the convening of the  
 12 regular session of 2018 on:

- 13        (1) The actions taken to ensure timely payments to
- 14        community health care facilities and case managers;
- 15        (2) Any operational problems or legal impediments that are
- 16        anticipated to affect or have affected the
- 17        department's ability to make timely payments to
- 18        community health care facilities and case managers;
- 19        and





1        (3) Application fee for an initial certificate of approval  
 2        and to renew a certificate of approval; provided that  
 3        the application fee for an initial certificate of  
 4        approval shall be \$ \_\_\_\_\_ and the fee to renew a  
 5        certificate of approval shall be \$ \_\_\_\_\_ ;

6        [~~3~~] (4) Minimum grievance procedures for clients of  
 7        community care foster family home services[+] and any  
 8        other community-based care home or facility licensed  
 9        or certified under the department;

10       [~~4~~] (5) Requirements for primary and substitute  
 11       caregivers caring for three clients in community care  
 12       foster family homes and any other community-based care  
 13       home or facility licensed or certified under the  
 14       department, including:

15       (A) Mandating that primary and substitute caregivers  
 16       be twenty-one years of age or older;

17       (B) Mandating that primary and substitute caregivers  
 18       complete a minimum of twelve hours of continuing  
 19       education every twelve months or at least twenty-  
 20       four hours of continuing education every twenty-  
 21       four months;



- 1 (C) Allowing the primary caregiver to be absent from  
2 the community care foster family home or other  
3 community-based care home or facility for no more  
4 than twenty-eight hours in a calendar week, not  
5 to exceed five hours per day; provided that the  
6 substitute caregiver is present in the community  
7 care foster family home or other community-based  
8 care home or facility during the primary  
9 caregiver's absence;
- 10 (D) Where the primary caregiver is absent from the  
11 community care foster family home or other  
12 community-based care home or facility in excess  
13 of the hours as prescribed in subparagraph (C),  
14 mandating that the substitute caregiver be a  
15 certified nurse aide; and
- 16 (E) Mandating that the substitute caregiver have, at  
17 a minimum, one year prior work experience as a  
18 caregiver in a community residential setting or  
19 in a medical facility."



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PART VIII

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 22. This Act shall take effect on July 1, 2017.

INTRODUCED BY:

*Ch. F. Cook*  
*John M. ...*  
*...*  
*...*  
*Calvin H. ...*

JAN 25 2017



# H.B. NO. 1510

**Report Title:**

Caregivers Omnibus Bill

**Description:**

Amends provisions relating to the care of the elderly and disabled in state-licensed care facilities.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

