

ACT 105

S.B. NO. 2609-78

A Bill for an Act Relating to the Department of Social Services and Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Sec. 346-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read:

““Provider” means any person or public or private institution, agency or business concern authorized by the department to provide health care, service or supplies to beneficiaries of medical assistance.”

SECTION 2. Sec. 346-10, Hawaii Revised Statutes, is amended to read:

“Sec. 346-10 Protection of records; divulging confidential information prohibited. The department of social services and housing and its agents shall keep such records as may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when the official duties are directly connected with the administration of any form of public assistance, medical assistance or food stamps; or
- (2) Purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any and all forms of public assistance, food stamps or

medical assistance, including but not limited to disclosure by the department of information and documents to police departments, prosecutor's offices, the attorney general's office, or any other state or federal agency engaged in the detection, investigation or prosecution of violations of applicable state and federal laws or regulations regarding any and all aspects of theft, fraud, deception or overpayment in connection with any aspect of public assistance, food stamps or medical assistance; further, disclosure by recipient agencies and personnel is permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided.

- (3) Disclosure to the extent necessary to provide services for applicants and recipients, to determine eligibility, or to determine the amount of public assistance, such determination to include but not be limited to verification of information provided by the recipient of public assistance, medical assistance or food stamps;
- (4) Disclosure to banks, financial institutions or any other payor of a public assistance warrant or check of any and all information indicating that a public assistance warrant or check honored by the bank, institution or payor has been forged or otherwise wrongfully presented for payment;
- (5) Federal agencies responsible for the administration of federally assisted programs, which provide assistance, in cash or in kind, for services, directly to individuals on the basis of need; and certification of receipt of aid to families with dependent children to an employer for purposes of claiming tax credit under Public Law 94-12, the Tax Reduction Act of 1975, shall be permitted; and
- (6) Employees acting within the scope and course of their employment of such recognized social welfare organizations as may be approved by the department.

Disclosure to any committee or legislative body (federal, state, or local) of any information that identifies by name and address any such applicant or recipient; and publication of lists or names of applicants and recipients shall be prohibited.

The department shall promulgate and enforce such rules as may be necessary to prevent improper acquisition or use of confidential information. Any information secured pursuant to this section by the officials or employees may be used in connection with their official duties or within the scope and course of their employment but not otherwise, and shall be kept in confidential records or files, which shall not be subject to any other law permitting inspection of public records. The department and its agents shall determine whether or not such inspection is in connection with such official duties or within the scope and course of such employment.

The use of the records, and other communications of the department or its agents by any other agency or department of government to which they may be furnished, shall be limited to the purposes for which they are furnished.

Confidential information shall be released if requested by specific written waiver of the applicant or recipient concerned.

SECTION 3. Sec. 346-11, Hawaii Revised Statutes, is amended to read:

"Sec. 346-11 Unauthorized disclosure or inspection. Any person, including any person acquiring information through inspection permitted him or another under section 346-10, who, knowing the information to have been acquired from the confidential records or files of the department of social services and housing, intentionally divulges the same other than as authorized by law, or who intentionally and knowingly aids or abets in the inspection of such applications or records by any person unauthorized to inspect the same under this chapter or other provisions of law, shall be guilty of a violation."

SECTION 4. Sec. 346-13, Hawaii Revised Statutes, is amended to read:

"Sec. 346-13 Attendance and testimony of witnesses. In all hearings or investigations conducted by or initiated at the request of the director of social services or his designated subordinate with respect to all matters reasonably related to department functions and programs, the director or his designated subordinate shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of books, papers, documents or objects deemed relevant to the investigation or inquiry, and examining or causing to be examined witnesses as are possessed by a circuit court and may take depositions and certify to official acts. Books, papers, documents or objects obtained pursuant to such an investigation or inquiry may be retained by the director or his designated subordinate for a reasonable period of time for the purpose of examination, audit, copying, testing, or photographing. The circuit courts upon application by any of such officers shall have power to enforce by proper proceedings the attendance and testimony of any witnesses so subpoenaed and the production of books, papers, documents or objects. Subpoena and witness fees and mileage in such cases shall be the same as in criminal cases in the circuit court. Necessary expenses of or in connection with the hearings or investigations shall be payable from the funds appropriated for expenses of the department of social services and housing.

SECTION 5. Sec. 346-34, Hawaii Revised Statutes, is amended to read:

"Sec. 346-34 Frauds, penalties. Any recipient who buys or disposes of real property or any person who knowingly aids or abets a recipient in the purchase or sale of real property without the consent of the department of social services and housing shall be guilty of fraud.

If, at any time while the recipient of public assistance is receiving such assistance, his living requirements are reduced and he wilfully fails to report the reduction within thirty days from the date of the reduction to the department, or he acquires from any source real property, funds, income, or other resources and wilfully fails to report the amount of same together with the source of the resources to the department within thirty days of receipt of same, or prior to spending or otherwise disposing of all or any portion of the same, he shall be guilty of fraud and be subject to the penalties provided by this section.

No person shall knowingly obtain or attempt to obtain, or aid or abet another person in obtaining or attempting to obtain, any food commodity under

a food distribution program or any food stamp or coupon under a food stamp plan, to which he or the other person is not entitled to receive or use under any law, or under any rule or regulation promulgated pursuant to section 346-14(9) or chapter 91.

No person shall knowingly give, sell, trade, or otherwise dispose of to another person not entitled to receive or use the same pursuant to any law, or pursuant to any rule or regulation promulgated pursuant to section 346-14(9) or chapter 91:

- (1) Any food commodity received under a food distribution program;
- (2) Any food stamp or coupon received under a food stamp plan; or
- (3) Any food commodity received wholly or partially in exchange for a food stamp or coupon received under a food stamp plan.

Any person convicted under this section shall be guilty of a misdemeanor. Any portion of assistance obtained by any fraudulent device, and any assistance paid after receipt of resources which have not been reported to the department as herein required shall be recoverable by the State for the use of the department as a debt due the State, or, restitution of the amount may be ordered by the court following conviction.

The term "recipient" includes any person to whom a grant of public assistance is made by direct payment, and any person for whose use and benefit a grant of public assistance is made by payment to a relative or other person. Prosecution under this section shall not be considered an exclusive remedy but shall be in addition to any other criminal, civil or administrative remedy or sanction authorized by law."

SECTION 6. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 346- Maintenance and availability of records; penalty. (a) To enable another provider to determine the proper course of treatment in emergencies and in order to determine whether a provider is genuinely entitled to reimbursement and to protect the medicaid program against fraud and abuse, each provider of health care, service or supplies under the state medicaid program shall maintain, and keep for a period of three years, such records as are necessary to disclose fully the type and extent of health care, service or supplies provided to medicaid recipients. The department may identify the types of records necessary to be kept by promulgation of appropriate rules.

[As enacted, there was no subsection (b).]

(c) No provider shall refuse or fail to make available at his place of business or [appropriate]† location, during normal business hours, or, if the appropriate representative agrees, at the mutual convenience of the parties, immediate access to all records required to be maintained under this section or rules promulgated hereunder and all diagnostic devices concerning or used for the provision of health care, service or supplies to a medicaid recipient to any duly authorized representative of the attorney general's office or the department of social services

†Bracketed word substituted for "appropriation".

and housing acting in the course and scope of his employment; such diagnostic devices may be examined and tested and such records may be retained by said duly authorized representative for a reasonable period of time for the purpose of examination, audit, copying, testing or photographing. This subsection shall supersede any other provision of the Hawaii Revised Statutes to the contrary notwithstanding.

(d) Whenever a provider without reasonable justification fails to keep adequate supporting records as required by this section or rules promulgated hereunder or fails to make them available as required by this section, the director of the department of social services and housing shall suspend the provider during the period of non-compliance with this section, and no payment may be made to such provider with respect to any item or service furnished by such provider during the period of suspension. A provider shall receive notice and be provided an opportunity for a hearing in compliance with regulations of the department of social services and housing for such suspension.

(e) Wilful refusal or failure to make records available as provided in subsection (c) of this section is a misdemeanor."

SECTION 7. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 346- Inspection of institutional facilities. (a) The director of the department of health, department of social services and housing and the attorney general of the State shall have the right to inspect all institutions and organizations in the State, whether public or private, to which payments are made by the State medical assistance program, directly or indirectly, or on account of the board and maintenance of persons admitted or committed thereto. The authorized representatives of the director or the attorney general shall have the right of visitation and immediate access for inspection during business hours as often as may be necessary, to those portions of the facilities used or reasonably related to the board, care or treatment of such persons for the purpose of determining the conditions, circumstances and surroundings under which such persons admitted or committed are lodged, boarded, cared for and maintained.

(b) Wilful failure to permit authorized visitation or immediate access for inspection as provided by this section is a misdemeanor."

SECTION 8. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 346- Administrative inspections and warrants. (a) Issuance and execution of administrative inspection warrants shall be as follows:

- (1) A judge of the circuit court, or any district judge within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of the property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the

- area, premises, building, conveyance or records in the circumstances specified in the application for the warrant;
- (2) A warrant shall issue only upon an affidavit of an individual having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the issuance exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, conveyance or records to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
 - (A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
 - (B) Be directed to a person authorized by the attorney general or the director of social services and housing to execute it;
 - (C) Command the person to whom it is directed to inspect the area, premises, building, conveyance or records identified for the purpose specified and, if appropriate, use reasonable force in conducting the inspection authorized by the warrant and direct the seizure of the property specified;
 - (D) Identify the item or types of property to be seized, if any;
 - (E) Direct that it be served during normal business hours and designate the judge to whom it shall be returned;
 - (3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;
 - (4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the issuing court.
 - (b) The designated representative of the attorney general or the department may make administrative inspections of provider premises in accordance with the following provisions:
 - (1) For purposes of this section only, "provider premises" means:
 - (A) Places where providers are required to keep records; and
 - (B) Places where providers conduct business related to their receipt of payments from the medicaid program for health care, service or supplies.
 - (2) When authorized by an administrative inspection warrant issued pur-

- suant to subsection (a) the representative upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter providers premises for the purpose of conducting an administrative inspection.
- (3) When authorized by an administrative inspection warrant, the representative may:
 - (A) Inspect and copy records required by this chapter to be kept;
 - (B) Retain records required by this chapter to be kept for a reasonable period of time, not to exceed forty-eight hours, for the purpose of examination, audit, copying, testing or photographing;
 - (C) Inspect, examine and test diagnostic devices used in the provision of health care, service or supplies to a medicaid recipient;
 - (D) Inventory any stock of any substance used in the provision of health care, service or supplies to a medicaid recipient and to obtain samples thereof;
 - (E) Inspect, examine and test, within reasonable limits and in a reasonable manner, provider premises and equipment as necessary to assure compliance with this chapter.
 - (4) This section does not prevent the inspection without a warrant of property, books and records pursuant to an administrative subpoena issued in accordance with law, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:
 - (A) If the owner, operator, or agent in charge of the provider premises consents;
 - (B) In situations presenting imminent danger to health or safety;
 - (C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
 - (D) In all other situations in which a warrant is not constitutionally required."

SECTION 9. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 346- Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law."

SECTION 10. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 11. This Act shall take effect upon its approval.

(Approved May 23, 1978.)

*Edited accordingly.