

ACT 272

S.B. NO. 64

A Bill for an Act Relating to Domiciliary Care.

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

SECTION 1. The purpose of this Act is to place all licensing functions relative to domiciliary care facilities in one state agency, the department of

health. The objective is to increase cost efficiency in carrying out the licensing function in regard to domiciliary care facilities. This Act combines within one licensed group, all facilities currently licensed as adult family boarding homes, family care homes, residential care facilities, and independent group residences. This new licensing group is to be called adult residential care homes.

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

"§321- Definitions. Whenever used in this chapter, unless the context otherwise requires:

"Adult residential care home" means any facility providing twenty-four-hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, but who do not need the services of an intermediate care facility."

SECTION 3. Section 46-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) In areas zoned for residential use, neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities licensed by the State as provided for under [sections] section 321-15.6[, 346-91, or 346-122] for persons, including the elderly, the handicapped, the developmentally disabled, or the totally disabled persons[, whether or not such persons], who are not related[, and] to the home operator or facility staff; provided that such group living facilities meet all applicable county requirements, not inconsistent with the intent of this subsection and including building height, setback, maximum lot coverage, parking, and floor area requirements. For purposes of this section, "elderly person" means an elderly person as defined under section 359-52; "handicapped person" means a handicapped individual as defined under section 515-2; "developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333E-2; and "totally disabled person" means a person totally disabled as defined under section 235-1."

SECTION 4. Section 321-11, Hawaii Revised Statutes, is amended to read as follows:

"§321-11 Subjects of health regulations, generally. The department of health may make such regulations as it deems necessary for the public health and safety respecting:

- (1) Nuisances, foul or noxious odors, gases, vapors, waters in which mosquitoes breed or may breed, sources of filth, and causes of sickness or disease, within the respective districts of the State, and on board any vessel;
- (2) Adulteration and misbranding of food or drugs;
- (3) Location, air space, ventilation, sanitation, drainage, sewage disposal, and other health conditions of buildings, courts, construction projects, excavations, pools, watercourses, areas, and alleys;
- (4) Privy vaults and cesspools;
- (5) Fish and fishing;
- (6) Interments and dead bodies;
- (7) Disinterments of dead human bodies, including the exposing, disturbing, or removing of such bodies from their place of burial, or the opening, removing, or disturbing after due interment of any receptacle, coffin, or container holding human remains or a dead

- human body or a part thereof and the issuance and terms of permits for the aforesaid disinterments of dead human bodies;
- (8) Cemeteries and burying grounds;
 - (9) Laundries, and the laundering and sterilization of all articles of linen and uniforms used by or in the following businesses and professions: barber shops, manicure shops, beauty parlors, restaurants, soda fountains, hotels, rooming and boarding houses, bakeries, butcher shops, public bathhouses, midwives, masseurs, and others in similar calling, public or private hospitals, and canneries and bottling works where foods or beverages are canned or bottled for public consumption or sale; provided that nothing in this chapter shall be construed as authorizing the prohibiting of such laundering and sterilization by those conducting any of such businesses or professions where the laundering or sterilization is done in an efficient and sanitary manner;
 - (10) Hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, special treatment facilities and programs, home health agencies, but excluding youth shelter facilities unless clinical treatment of mental, emotional, or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility, as defined in section 346-16 under "child care institution";
 - (11) Hotels, rooming houses, lodging houses, apartment houses, tenements, and residences for persons with developmental disabilities including, but not limited to, those built under federal funding;
 - (12) Laboratories;
 - (13) Any place or building where noisome or noxious trades or manufactures are carried on, or intended to be carried on;
 - (14) Milk;
 - (15) Poisons and hazardous substances, the latter term including, but not limited to, any substance or mixture of substances which (A) is corrosive, (B) is an irritant, (C) is a strong sensitizer, (D) is inflammable, or (E) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;
 - (16) Pig and duck ranches;
 - (17) Places of business, industry, employment, commerce, and processes, materials, tools, machinery, and methods of work done therein, and places of public gathering, recreation, or entertainment;
 - (18) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manufactured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;
 - (19) Foods, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale or for consumption or use of any food, drug, or cosmetic;
 - (20) Devices as defined in section 328-1;
 - (21) Sources of ionizing radiation;

- (22) Medical examination, vaccination, revaccination, and immunization of school children. No child shall be subjected to such medical examination, vaccination, revaccination, or immunization, whose parent or guardian shall in writing object thereto on grounds that such requirements are not in accordance with the religious tenets of an established church of which he is a member or adherent, but no such objection shall be recognized when, in the opinion of the department there is danger of an epidemic from any communicable disease;
- (23) Disinsectization of aircraft entering or within the State as may be necessary to prevent the introduction, transmission, or spread of disease or the introduction or spread of any insect or other vector of significance to health;
- (24) Fumigation. The process by which substances emit or liberate gases, fumes, or vapors which may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the department may be lethal, poisonous, noxious, or dangerous to human life; and
- (25) Ambulances and ambulance equipment.

The department may require such certificates, permits, or licenses as it may deem necessary adequately to regulate the conditions or businesses referred to in this section."

SECTION 5. Section 321-15.6, Hawaii Revised Statutes, is amended to read as follows:

"§321-15.6 [Care homes; licenses; temporary permits; training and regulation.] Adult residential care homes. (a) All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein; provided that the department may issue a temporary permit to operate [a] an adult residential care home if an operator or applying operator is temporarily unable to conform to all minimum licensing standards. A temporary permit shall be valid for not more than six months.

(b) The director shall adopt rules regarding adult residential care homes in accordance with chapter 91 which shall be designed to:

- (1) Protect the health, safety, and civil rights of persons residing in facilities regulated;
- (2) Provide for the licensing of facilities [regulated;] providing domiciliary care; provided that in areas zoned for residential use, the rules shall allow group living in [a family] an adult residential care home of up to five persons, including the elderly, the handicapped, the developmentally disabled, or the totally disabled persons[, whether or not such persons] who are not related[, and] to the home operator or facility staff. For purposes of this section, "elderly person" means an elderly person as defined under section 359-52; "handicapped person" means a handicapped individual as defined under section 515-2; "developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333E-2; and "totally disabled person" means a person totally disabled as defined under section 235-1;
- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.

(c) The department shall provide for the training of operators and staff of any facility licensed under this section, in conjunction with any licensing thereof, and [in coordination with the department of social services and housing,] to ensure that adult residential care home operators shall have the needed skills to provide proper care and supervision in a home environment (i.e., first aid, cardiopulmonary resuscitation, and nutrition training as a minimum). Such training shall be provided at the expense of the State.

(d) Rules adopted under this section shall be enforced by the director.

(e) The department shall maintain an inventory of all facilities licensed under this section and shall maintain a current inventory of vacancies therein to facilitate the placement of individuals in such facilities."

SECTION 6. Section 321-15.7, Hawaii Revised Statutes, is amended to read as follows:

"[]§321-15.7[] Penalty. Any person who intentionally operates an adult residential care home without a license shall be guilty of a misdemeanor."

SECTION 7. Section 346-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "domiciliary care" to read:

"**"Domiciliary care"** means the provision of twenty-four-hour living accommodations and personal care services and appropriate medical care, as needed, to adults unable to care for themselves by persons unrelated to the recipient in private residences or other facilities. ["Domiciliary care" is the type of care provided by licensed adult family boarding homes, family care homes, and residential care homes.] "Domiciliary care" does not include the provision of rehabilitative treatment services provided by special treatment facilities."

2. By deleting the definition of "adult family boarding home".

["**"Adult family boarding home"** means any family home providing twenty-four hour living accommodations for a fee to adults unrelated to the family, who are in need of minimal assistance and supervision in their living activities, and includes other similar institutions, which home accommodates group living by up to eight persons, including the elderly, the handicapped, the developmentally disabled, or the totally disabled persons, whether or not such persons are related, and the home operator or facility staff. For purposes of this definition, "elderly person" means an elderly person as defined under section 359-52; "handicapped person" means a handicapped individual as defined under section 515-2; "developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333E-2; and "totally disabled person" means a person totally disabled as defined under section 235-1."]

SECTION 8. Section 346-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) 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, food stamps, social services; 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, medical assistance, or social services, including but not limited to disclosure by the department of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, 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, medical assistance, or social services; provided that 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, or to determine the type, kind, frequency, and amount of social services, including health and mental health related services, needed;
- (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;
- (6) Employees acting within the scope and course of their employment of such recognized social welfare organizations as may be approved by the department; and
- (7) Purposes directly connected with any investigation, prosecution, or criminal proceeding conducted in connection with the licensure or operation of an [adult boarding home, or] adult day care center, including but not limited to disclosure by the department of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations."

SECTION 9. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The director shall pursuant to chapter 91 determine the rate of payment for the different levels of domiciliary care provided to recipients eligible for Federal Supplemental Security Income or public assistance in accordance with state standards.

The rate of payment at which level a recipient enters an adult [family boarding home or a] residential care home licensed pursuant to [sections 346-91 and] section 321-15.6[,] shall remain the same for as long as the recipient resides in that adult [family boarding home or] residential care home. The rate of payment may be raised if the recipient's condition so requires, or by rule of the department in accordance with this subsection; provided that notwithstanding the rate of payment at the time of entry, the department shall ensure that the recipient shall receive the quality of care consistent with the level of care as determined by the department; provided further that if the operator does not provide the quality of care consistent with the needs of the individual as determined by and to the satisfaction of the department, the department may reduce the rate of payment, or adjust the level of care, or remove the recipient to another facility. The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection shall allow the director to remove a recipient from an adult [family boarding home,] residential care home[,] or other similar institution if the recipient does not desire to be removed and the operator thereof is agreeable to the recipient remaining therein, except where the recipient requires a higher level of care than provided thereby, or where the recipient no longer requires any domiciliary care."

SECTION 10. Section 346-64, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) "Substantially less" as the term is used in this section means not more than sixty per cent of the cost of the lowest level of care in an adult [family boarding home or a] residential care home."

SECTION 11. Subpart B of part IV of chapter 346, Hawaii Revised Statutes, is repealed.

SECTION 12. Part VI of chapter 346, Hawaii Revised Statutes, is repealed.

SECTION 13. This Act does not affect the rights and duties which matured, penalties which were incurred, or proceedings which were begun, prior to the effective date of this Act.

SECTION 14. All rights, powers, functions, and duties of that portion of the department of social services and housing which relate to adult family boarding homes in regard to licensing and clearinghouse functions are transferred to the department of health.

All appropriations, position counts, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of social services and housing relating to the functions transferred to the department of health shall be transferred with the functions to which they related.

SECTION 15. All facilities that hold an adult family boarding home license or a family care home license shall upon the date of expiration of the current license be placed into one of the following transitional categories:

Category one, which shall include all facilities which have the requisite level of operator skills and physical environment requirements, as determined by the department of health to receive a license to operate an adult residential care home.

Category two, which shall include all facilities in which either the operator skills, or the physical environment, or both, are not up to standard, but whose operators desire to enter category one after appropriate upgrading; provided that any facility previously licensed by the department of social services and housing shall not have to meet the physical requirements of the department of health so long as all residents in the home remain ambulatory. These facilities shall accept only those new patients who do not need trained medical care. If a facility initially contains a resident needing trained medical care, it shall upgrade within one year after the effective date of this Act or transfer such residents promptly. If a facility fails to obtain an adult residential care home license within two years after the effective date of this Act, it shall revert to category three.

Category three, which shall include all facilities which are not up to adult residential care home licensing standards and whose operators choose not to be upgraded to the required level. These facilities may obtain an appropriately waived adult residential care home license pursuant to administrative rules of the department of health, as long as no resident has, or develops a need for, trained medical care. Such residents shall be transferred immediately to another facility. These facilities shall not accept new residents.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$127,202, or so much thereof as may be necessary for fiscal year 1986-1987, to implement the provisions of this Act.

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

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 18. This Act shall take effect on July 1, 1986, except that section 15 shall take effect upon approval.

(Approved June 7, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.