

ACT 205

H.B. NO. 3190

A Bill for an Act Relating to Health.

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

SECTION 1. Section 321-15.8, Hawaii Revised Statutes, is repealed.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
DISPERSAL REVIEW COUNCIL**

§ -1 **Purpose.** The purpose of this chapter is to establish a dispersal review council to ensure that group living facilities for persons who are developmentally disabled, elderly, handicapped, mentally ill, or totally disabled are dispersed throughout the State. The provisions of this chapter with respect to group living facilities as defined in section -2, shall supersede any other law to the contrary.

§ -2 **Definitions.** As used in this chapter, unless the context requires otherwise:

“Council” means the dispersal review council established in section -3;

“Developmentally disabled person” means a person with developmental disabilities as defined in section 333E-2;

“Elderly person” means a person as defined in section 359-52;

“Handicapped person” means an individual having a physical impairment as defined in section 515-2;

“Group living facility” means a facility licensed by the State or its political subdivisions, including adult residential care homes as defined in section 321-15.6, intermediate care facilities/mental retardation-community (ICF/MR-C) as defined in section 46-4(d), special treatment facilities as defined in section 334-1, and boardinghouses, lodging or tenement houses, group homes, group residences, or group living arrangements as defined in section 445-90;

“Mentally ill person” means a mentally ill person as defined in section 334-1;

“Person suffering from substance abuse” means a person suffering from substance abuse as defined in section 334-1;

“Person totally disabled” means a person totally disabled as defined in section 235-1;

“Saturation rating” means a rating which reflects the extent to which a geographic area is occupied with group living facilities based upon criteria set by the dispersal review council;

“State agency” means the state health planning and development agency established in section 323D-11;

“Subarea” means one of the geographic subareas designated by the state agency pursuant to section 323D-21.

**§ -3 Dispersal review council.** (a) There is established within the department of health for administrative purposes, the dispersal review council to be composed of fifteen members to be appointed by the governor for staggered terms without advice and consent of the Senate. The members shall include one person from each of the seven subareas, four representatives who have a special interest in persons who are developmentally disabled, elderly, handicapped, mentally ill, suffering from substance abuse, or totally disabled, and four persons from at least the two geographic areas which have the highest number of group living facilities. In addition, the director of health, the director of human services, the director of the department of land utilization of the city and county of Honolulu, and the directors of planning of the counties of Maui, Kauai, and Hawaii, shall be ex-officio non-voting members.

(b) The members shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred in the performance of their duties, including travel expenses.

(c) The council shall elect a chairperson from among its voting members.

(d) A simple majority of all voting members shall constitute a quorum to do business and concurrence of a majority of the quorum shall be necessary to validate any action of the council.

(e) No member of the council shall vote on any matter with which the member has or has had within the twelve months preceding the vote any direct or indirect financial interest or other conflict of interest.

**§ -4 Powers, duties, and functions of the council.** The council shall have and perform the following functions:

- (1) Maintain an updated registry of group living facilities with information to include, at a minimum, the number of group living facilities in the State, the location of each group living facility in each community, and the size and type of such group living facilities;
- (2) Establish criteria to determine the geographic areas of the State which are appropriate to the purposes of this chapter, the saturation rating of each geographic area, and criteria to determine when a geographic area has reached its saturation point or is oversaturated;
- (3) Determine a saturation rating for each geographic area of the State based upon appropriate criteria;
- (4) Issue a saturation rating for all applications for new group living facilities;
- (5) Establish memoranda of agreement with licensing agencies to utilize the rating system when a group living facility applies for licensure;
- (6) Review applications for licensure of new group living facilities which would be located in any area designated as having reached its saturation point or oversaturated;
- (7) Establish criteria to determine the density of the geographic areas with regard to proximity of group living facilities to each other;
- (8) Explore means to resolve conflicts between group living facility residents and the community; and
- (9) Explore and develop incentives for new and existing group living facilities to locate or relocate outside of saturated or oversaturated areas.

**§ -5 Use of rating system.** Upon the establishment of a saturation rating system, no applicant seeking licensure as a group living facility shall be granted licensure unless a satisfactory saturation rating has been issued from the dispersal review council, except as in section -9.

§ **-6 Interagency coordination.** The council may require any agency of the State or its political subdivisions which issues a license to a group living facility to provide information on the number, location, and occupancy of group living facilities under their jurisdiction in order to carry out the duties and responsibilities of this chapter.

§ **-7 Rules.** The council shall adopt rules pursuant to chapter 91 necessary and appropriate to carry out the purposes of this chapter. The rules shall include, but not be limited to:

- (1) Procedures for application review by the dispersal review council and the information required of applicants;
- (2) Establishment of geographic boundaries for the purpose of issuing saturation ratings;
- (3) Criteria to determine the saturation rating of each geographic area as well as criteria as to whether that geographic area is oversaturated with group living facilities;
- (4) Criteria to determine the density within a geographic area with regards to the proximity of group living facilities to each other;
- (5) Procedures for the collection of data on the number, location, and occupancy of group living facilities;
- (6) Criteria under which an exemption or waiver of the requirements of this chapter may be granted; and
- (7) Establishment of a fair and timely grievance procedure to provide administrative due process and recourse for a party aggrieved by any action or failure to act under this chapter.

§ **-8 Council administration.** The state agency shall provide staff services to the council in order that the council may carry out the duties and functions of this chapter. For administrative purposes, the council shall be independent of the state agency.

§ **-9 Unlicensed facilities.** Unlicensed facilities currently operating as though they were group living facilities as of the effective date of this act may be granted a license by an agency responsible for licensing of group living facilities without regard to saturation rating if they file a letter of application for licensure with the licensing agency before July 1, 1989, and are in compliance with licensure requirements."

SECTION 3. The areas of Waipahu and Kalihi-Palama shall be given first priority by the council in the development and implementation of saturation ratings.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$72,544, or so much thereof as may be necessary for fiscal year 1988-1989, to carry out the purposes of this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the department of health.

SECTION 5. Statutory material to be repealed is bracketed.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval; provided that:

- (1) Section 4 shall take effect on July 1, 1988;

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- (2) The Council shall concentrate on implementation of this Act on Oahu until July 1, 1990.

(Approved June 7, 1988.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.