

ACT 87

H.B. NO. 895

A Bill for an Act Relating to Long-Term Care.

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

SECTION 1. The legislature finds that due to Hawaii's healthful environment, people live longer here than in any other state. The elderly population is increasing at a rate of two and a half times the national average.

Many elderly persons experience the frailties associated with age and require specialized facilities and services. However, there has been a critical shortage of nursing home beds in Hawaii for more than a decade, and there is no indication that this situation will improve in the near future because of factors that include the fiscal constraints under which Medicaid is operating and the high cost of construction in Hawaii.

In many cases assisted living facilities can accommodate many individuals who would otherwise be placed in nursing homes. This is a relatively new concept based upon a social model for caring for people who have lost some of their ability to function. Assisted living combines housing, health care services, and personalized supportive services that respond to individual needs.

In assisted living facilities, care plans are developed and implemented based upon the individual's need and choice. The resident, the resident's family, friends, and the support system are all involved in the care planning process. In this way, choice, responsibility, independence, privacy, dignity, and individuality are promoted.

Assisted living stands in contrast to nursing home care and hospital care, where strictly regulated services must be provided even if not needed and in many cases are provided without regard for the wishes of the recipient. In addition to being more humane than nursing home care and hospital care, assisted living is typically far less costly as well.

In 1994, the legislature directed a task force with broad representation to be convened to explore the concept of assisted living and to make recommendations. This task force recently recommended the establishment of rules to ensure an acceptable level of quality in assisted living facilities. However, the legislature would like to emphasize that these rules should not be so stringent that they stifle or hinder the development of these facilities that are of acceptable quality.

The purpose of this Act is to authorize the department of health to establish rules for assisted living facilities.

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

“§321-11 **Subjects of health [regulations,] rules, generally.** The department of health pursuant to chapter 91 may adopt rules 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] these 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, sanitation, and sterilization of articles including linen and uniforms used by or in the following businesses and professions: barber shops, manicure shops, beauty parlors, electrology shops, 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, sanitation, and sterilization by those conducting any of [such] these 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, adult foster homes, assisted living facilities, special treatment facilities and programs, home health agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, 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”. For the purpose of this paragraph, “adult foster home” has the same meaning as provided in section 321-11.2;
- (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 manufacturers 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] the 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] objects in writing [object] thereto on grounds that [such] the requirements are not in accordance with the religious tenets of an established church of which [he] the parent or guardian 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;
- (25) Ambulances and ambulance equipment; and
- (26) Development, review, approval, or disapproval of management plans submitted pursuant to the Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519.

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

SECTION 3. Section 321-15.1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Assisted living facility” means a combination of housing, health care services, and personalized supportive services designed to respond to individual needs, to promote choice, responsibility, independence, privacy, dignity, and individuality.”

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SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 1995.)