

ACT 77

H.B. NO. 172

A Bill for an Act Relating to Hospice Services.

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

SECTION 1. The blue ribbon panel on living and dying with dignity was formed by the governor in late 1996 to consider the many issues involved in death and dying and to suggest guidelines for public policy. In May 1998, the blue ribbon panel issued its final report and made seven recommendations, six of which were made unanimously. The fourth unanimous recommendation recommends that hospice care be made more available and offered more expediently to the dying.

Hospice care is not a place. It is a service that can be delivered at home, in a freestanding unit operated by the hospice, in nursing or care homes, or even in beds set aside in acute care hospitals. Hospice care is a philosophy which accepts that an illness has progressed to a terminal stage, and death cannot be avoided even with aggressive medical treatment. The goal of hospice care is not to prolong life, but to make dying as comfortable as possible for the person dying, and for family and friends. The blue ribbon panel found that many of Hawaii's health care providers believe that if pain management can be improved and hospice care increased, few people would consider physician-assisted death, which may be viewed as desirable when pain is not controlled and when the patient foresees being in a sterile or strange hospital or other residential program, rather than dying at home in the presence of loved ones.

The legislature finds that hospice care not only increases patient satisfaction but also almost always costs less than either hospital care or other forms of acute care at the end of life. Yet, hospice care is underutilized. Each year, of eight thousand deaths in Hawaii, five thousand could have benefitted from hospice care, yet only about one thousand five hundred persons received hospice care.

According to the blue ribbon panel, the Medicare per diem rate of \$107 would establish a floor but this rate would still not allow hospice providers to recover their full costs amounting to \$160 to \$210 per day in room and board costs. If these additional costs were reimbursed, it would still be lower than the \$458 per diem Medicaid reimbursement for similar costs in acute care hospitals.

The blue ribbon panel also specifically recommended making hospice referral visits a reimbursable benefit regardless of whether a patient is eventually admitted to a hospice or not. Implementing this recommendation would go a long way towards encouraging greater use of hospice care on a timely basis.

The purpose of this Act is to implement two specific recommendations made by the blue ribbon panel regarding hospice care:

- (1) To make the Medicare per diem rate, the current rate set by the Health Care Financing Administration, the base rate for hospice care and to additionally reimburse room and board expenses of hospice facilities; and
- (2) To make hospice referral visits a reimbursable benefit regardless of whether a patient is eventually admitted to a hospice or not.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Hospice homes; permitted use in residential areas. For purposes of section 46-4, a hospice home shall be considered a residential use of property and shall be a permitted use in residentially designated zones including but not limited to zones for single-family dwellings. No conditional use, permit, variance, or special exception shall be required for a residence used as a hospice home.

For purposes of this section, “hospice home” means any facility operated by a licensed hospice service agency providing twenty-four-hour living accommodations to no more than five unrelated persons who are admitted to the hospice program of care.”

SECTION 3. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- Hospice services. (a) The department of health may license hospice service agencies. If the department licenses hospice service agencies, the director shall adopt rules in accordance with chapter 91 regarding hospice service agencies that shall:

- (1) Protect the health, safety, welfare, and civil rights of persons residing in their place of residence; and
- (2) Provide penalties for the failure to comply with any rule.

Licensing shall be required annually for the first two years of licensure. Thereafter, licensing shall be required biennially; provided that if the department of health receives a complaint regarding the hospice service agency from the time of the last licensure, the licensing shall be required annually until such time as the department is satisfied that licensing may proceed biennially.

(b) For the purpose of this section:

“Hospice service” means a program of palliative and supportive care for terminally ill persons and their families or caregivers.

“Hospice service agency” means an agency or organization, or a subdivision of that agency or organization, which is engaged in providing hospice services at the place of residence of its clients.”

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

“§431:10A- Hospice care coverage. (a) Any other law to the contrary notwithstanding, commencing on January 1, 2000, all authorized insurers that provide for payment of or reimbursement for hospice care, shall reimburse hospice care services for each insured policyholder covered for hospice care according to the following:

- (1) A minimum daily rate as set by the Health Care Financing Administration for hospice care;
- (2) Reimbursement for residential hospice room and board expenses directly related to the hospice care being provided; and
- (3) Reimbursement for each hospice referral visit during which a patient is advised of hospice care options, regardless of whether the referred patient is eventually admitted to hospice care.

(b) Every insurer shall provide notice to its policyholders regarding the coverage required by this section. Notice shall be in writing and in literature or correspondence sent to policyholders, beginning with calendar year 2000, along with any other mailing to policyholders, but in no case later than July 1, 2000.”

SECTION 5. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

“§432:1- Hospice care coverage. (a) Any other law to the contrary notwithstanding, commencing on January 1, 2000, all mutual benefit societies issuing or renewing an individual and group hospital or medical service plan, policy, contract, or agreement in this State that provides for payment of or reimbursement for hospice care, shall reimburse hospice care services for each insured member covered for hospice care according to the following:

- (1) A minimum daily rate as set by the Health Care Financing Administration for hospice care;
- (2) Reimbursement for residential hospice room and board expenses directly related to the hospice care being provided; and
- (3) Reimbursement for each hospice referral visit during which a patient is advised of hospice care options, regardless of whether the referred patient is eventually admitted to hospice care.

(b) Every insurer shall provide notice to its members regarding the coverage required by this section. Notice shall be in writing and in literature or correspondence sent to members, beginning with calendar year 2000, along with any other mailing to members, but in no case later than July 1, 2000.”

SECTION 6. Section 321-15.1, Hawaii Revised Statutes, is amended by adding the definition of “hospice home” to be appropriately inserted and to read as follows:

““Hospice home” means any facility operated by a licensed hospice service agency providing twenty-four-hour living accommodations to no more than five unrelated persons who are admitted for hospice service.”

SECTION 7. 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 or hospice home without a license shall be guilty of a misdemeanor.”

SECTION 8. Section 432D-23, Hawaii Revised Statutes, is amended to read as follows:

“[[§432D-23]] Required provisions and benefits. Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the State after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.5, [and] 431:10A-116.6, and 431:10A-___, and chapter 431M.”

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 10. This Act shall take effect upon its approval.

(Approved June 21, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.