

ACT 153

S.B. NO. 2930

A Bill for an Act Relating to Home and Community-Based Services.

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

SECTION 1. Act 273, Session Laws of Hawaii 2001, as amended by Acts 95 and 98, Session Laws of Hawaii 2003, is amended by amending section 1 to read as follows:

“SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . HOME AND COMMUNITY-BASED CASE MANAGEMENT AGENCIES AND COMMUNITY CARE FOSTER FAMILY HOMES

§346-A Definitions. As used in this part:

“Assisted living facility” means an assisted living facility as defined in section 321-15.1.

“Certificate of approval” means the certificate issued by [a home and community-based case management agency,] the department or its designee that authorizes a person, agency, or organization to operate a community care foster family home.

“Client” means any person who receives home and community-based case management services to reside in a community care foster family home, expanded adult residential care home, or assisted living facility.

“Community care foster family home” or “home” means a home that, for the purposes of this part:

- (1) ~~[Pursuant to section 346-B(a)(1), as applicable to the case management agency demonstration project in any county having a population of 500,000 or more persons:~~

(A) Is regulated by the department of [human services] in accordance with rules that are equitable in relation to rules that govern expanded adult residential care homes;

~~[(B)] (2) Is issued a certificate of approval by [a home and community-based case management agency] the department or its designee to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, at least one of whom shall be a medicaid recipient, who are at the nursing facility level of care, [and] who are unrelated to the foster family[;], and are receiving the services of a licensed home and community-based case management agency; and~~

~~[(C)] (3) Does not include expanded adult residential care homes[;] or assisted living facilities, which shall continue to be licensed by the department of health[;] or~~

(2) Pursuant to section 346-B(a)(2), as applicable to the case management agency demonstration project in any county having a population of less than 500,000 persons:

~~(A) Is issued a certificate of approval by a home and community-based case management agency to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, who are at the nursing facility level of care and who are unrelated to the foster family; and~~

~~(B) Does not include expanded adult residential care homes, which shall continue to be licensed by the department of health].~~

~~["Department" means the department of human services.]~~

~~"Designee" means a person, institution, organization, or agency authorized by the department to issue certificates of approval to community care foster family homes and to monitor these homes for certificate compliance and quality assurance. The department's designee shall perform these functions for the department and shall not at the same time function as a home and community-based case management agency or a community care foster family home as defined in this section.~~

~~"Expanded 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, personal care services, protection, and health care services, and who may need the professional health services provided in an intermediate or skilled nursing facility.~~

~~"Home and community-based case management agency" means [an] any person, agency, or organization licensed by the department to [locate,] provide, coordinate, and monitor comprehensive services to meet the needs of [medicaid recipients and other adults] clients whom the agency [places] serves in a community care foster family home or any medicaid clients in an expanded adult residential care home[;], or an assisted living facility.~~

~~"License" means an approval issued by the department or its authorized agents for [an] a person, agency, or organization to operate as a home and community-based case management agency.~~

§346-B Applicability. (a) Prior to June 30, [2004,] 2006, this part shall apply [equally to two distinct demonstration projects, except as provided in subsection (b), as follows:

- (1) ~~In any county having a population of 500,000 persons or more; and~~
- (2) ~~In any county having a population of less than 500,000 persons.] to the demonstration project statewide.~~

(b) ~~[Each demonstration project implemented under this part shall operate under its own distinct definition of "community care foster family home," as provided in section 346-A. In addition, for the demonstration project under subsec-~~

tion (a)(1),] Community care foster family homes shall be required to reserve at least one bed for medicaid patients.

§346-C Home and community-based case management agency, authority over and evaluation of. (a) ~~[The home and community-based case management agency shall be responsible for certifying community care foster family homes. No] Any person, agency, or organization [shall engage in locating,] engaged in providing, coordinating, or monitoring comprehensive services to [individuals] clients in community care foster family homes [and in issuing certificates of approval to community care foster family homes, unless it meets], or medicaid clients in expanded adult residential care homes, and assisted living facilities, shall meet the standards of conditions, management, and competence set by the department and [is issued] hold a license in good standing issued for this purpose by the department.~~

(b) The department shall adopt rules pursuant to chapter 91 relating to:

- (1) Standards for the organization and administration of home and community-based case management agencies;
- (2) Standards of conditions, management, and competence of home and community-based case management agencies;
- (3) Procedures for obtaining and renewing a license from the department; and
- ~~[(4) Minimum standards of conditions and competence for the operation of community care foster family homes that are to be used by home and community-based case management agencies as certification requirements of community care foster family homes; and~~
- ~~(5)] (4) Minimum grievance procedures for [certified community care foster family homes and recipients] clients of case management services.~~

(c) As a condition for obtaining a license, a person, agency, or organization shall ~~[meet the requirements set forth in] comply with rules adopted under subsection (b)(1), (2), and (3), and satisfy the [criminal history] background check requirements under section 346-E. The department may deny a license if:~~

- (1) An operator, employee, or new employee of the home and community-based case management agency has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less; ~~[or]~~
- (2) ~~[If the] The~~ department finds that the criminal history record of an operator, employee, or new employee poses a risk to the health, safety, or well being of adults receiving care in community care foster family homes~~[-], expanded adult residential care homes, or assisted living facilities;~~
- (3) An operator, employee, or new employee of the home and community-based case management agency is a perpetrator of abuse as defined in section 346-222; or
- (4) The holder of or an applicant for a home and community-based case management agency license, or one of its employees, has a certificate of approval to operate a community care foster family home, or a license from the department of health to operate an adult residential care home, expanded adult residential care home, or assisted living facility.

(d) Upon approval of any home and community-based case management agency, the department or its authorized agents shall issue a license, which shall continue in force for one year, or for two years if a home and community-based case management agency has been licensed for at least one year and is in good standing pursuant to standards adopted by the department, unless sooner revoked for cause. The department or its authorized agents shall renew the license only if, after an

annual or biennial evaluation, the agency continues to meet the standards established by the department.

(e) The department shall evaluate the home and community-based case management agency to determine compliance with the requirements established under this section:

- (1) Annually or biennially; or
- (2) Upon receipt of a complaint that the home and community-based case management agency is in violation of the requirements established under this section.

(f) The department may suspend or revoke a license if the department deems that the agency is unwilling or unable to comply with the rules adopted under this section; provided that:

- (1) Upon suspension or revocation of a license, the home and community-based case management agency shall no longer be licensed and shall immediately notify [those community care foster family homes it certified;] the agency's clients and community care foster family homes, expanded adult residential care homes, and assisted living facilities in which the agency is providing services to clients;
- (2) ~~[An]~~ A home and community-based case management agency whose license has been suspended or revoked may appeal the suspension or revocation [in accordance with chapter 91, but the appeal shall not stay the suspension or revocation;] to the department through its established process, but the appeal shall not stay the suspension or revocation;
- (3) A suspended or revoked license may be reinstated if the department deems that the agency is willing and able to comply with the rules adopted under this section; and
- (4) A revoked license shall be restored only after a new application is made and reviewed under this part.

(g) Any home and community-based case management agency shall be subject to investigation by the department at any time and in the manner, place, and form as provided in the department's rules.

(h) The department shall adopt standard forms of contract that the home and community-based case management agency shall use with each of its clients, community care foster family homes, ~~[and]~~ expanded adult residential care homes[-], and assisted living facilities.

(i) The department shall establish a review board consisting of three operators of community care foster family homes and three operators of expanded adult residential care homes. The review board shall monitor referrals and placements of clients by each home and community-based case management agency on a monthly basis. Each home and community-based case management agency shall be required to provide monthly reports to the review board.

(j) The home and community-based case management agency shall have a fiduciary duty to each ~~[medicaid recipient and other adult it places in a community care foster family home or expanded adult residential care home¹]~~ client it serves.

(k) A home and community-based case management agency shall not enter into an agreement that requires a community care foster family home to accept that agency's clients exclusively.

§346-D Community care foster family home, authority over and evaluation of. (a) ~~[No]~~ Any person in any household [shall] who wants to take in, for a fee, any adult who is at the nursing facility level of care and who is unrelated to anyone in the household, for twenty-four-hour living accommodations, including personal care and homemaker services, [unless] may do so only after the household meets the required standards established for certification and obtains a certificate of

approval from ~~[a home and community-based case management agency.]~~ the department or its designee.

~~[(b) Home and community-based case management agencies shall issue certificates of approval based on compliance with the standards required for certification, pursuant to section 346-C(b)(4), and any additional requirements established by the agencies and agreed upon by the homes.]~~ (b) The department shall adopt rules pursuant to chapter 91 relating to:

- (1) Standards of conditions and competence for the operation of community care foster family homes;
- (2) Procedures for obtaining and renewing a certificate of approval from the department; and
- (3) Minimum grievance procedures for clients of community care foster family home services.

(c) As a condition for obtaining a certificate of approval, community care foster family homes shall comply with [requirements set forth in section 346-C(b)(4)] rules adopted under subsection (b) and satisfy the [criminal history record background check requirements under section 346-E. The [certifying agency] department or its designee may deny a certificate of approval if:

- (1) An operator or other adult residing in the community care foster family home, except for adults receiving care, has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less; [or]
- (2) [If the certifying agency] The department or its designee finds that the criminal history record of an operator or other adult residing in the home, except for adults receiving care, poses a risk to the health, safety, or well being of adults in care[-]; or
- (3) An operator or other adult residing in the community care foster family home, except for adults receiving care, is a perpetrator of abuse as defined in section 346-222.

(d) Upon approval of a community care foster family home, the [home and community-based case management agency] department or its designee shall issue a certificate of approval that shall continue in force for one year, or for two years if a community care foster family home has been certified for at least one year and is in good standing pursuant to standards adopted by the department, unless sooner suspended or revoked for cause[-]; provided that:

- (1) The agency may suspend or revoke a certificate of approval if the agency deems that a community care foster family home is unwilling or unable to comply with the rules adopted under section 346-C(b)(4). The suspension or revocation shall be immediate when conditions exist that constitute an imminent danger to life, health, or safety of adults receiving care;
- (2) A community care foster family home whose certificate of approval has been suspended or revoked may appeal to the certifying agency through its established appeal process, but the appeal shall not stay the suspension or revocation;
- (3) A suspended or revoked certificate of approval may be reinstated if the certifying agency deems that the home is willing and able to comply with the rules adopted under section 346-C(b)(4);
- (4) A revoked certificate of approval shall be restored only after a new application for a certificate of approval is submitted to the agency and approved; and].

~~[(5)]~~ The [home and community-based case management agency] department or its designee shall renew the certificate of approval only if, after an annual or biennial evaluation, the home continues to meet the standards required for certification.

(e) Any community care foster family home shall be subject to investigation by the department ~~[and home and community-based case management agencies] or its designee~~ at any time and in the manner, place, and form as provided in procedures to be established by the department ~~[and home and community-based case management agencies]~~.

(f) The department or its designee may suspend or revoke a certificate of approval if the department or its designee deems that a community care foster family home is unwilling or unable to comply with the rules adopted under subsection (b); provided that:

- (1) The suspension or revocation shall be immediate when conditions exist that constitute an imminent danger to life, health, or safety of adults receiving care;
- (2) A community care foster family home whose certificate of approval has been suspended or revoked shall immediately notify its clients and their case managers;
- (3) A community care foster family home whose certificate of approval has been suspended or revoked may appeal to the department through its established process, but the appeal shall not stay the suspension or revocation;
- (4) A suspended or revoked certificate of approval may be reinstated if the department or its designee deems that the home is willing and able to comply with the rules adopted under subsection (b); and
- (5) A revoked certificate of approval shall be restored only after a new application for a certificate of approval is submitted to the department or its designee and approved.

(g) Any community care foster family home shall be subject to monitoring and evaluation by the department or its designee for certification compliance and quality assurance on an annual or biennial basis.

§346-E [~~Criminal history record~~] Background checks. (a) The department shall develop standards to ensure the reputable and responsible character of operators and employees of the home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as defined in this chapter~~[- which shall include but not be limited to criminal history record checks in accordance with section 846-].~~

(b) An applicant for a home and community-based case management agency license and operators, employees, and new employees of a home and community-based case management agency shall ~~[be subject to criminal history record checks in accordance with section 846-], and shall provide consent to obtain other criminal history record information for verification.]:~~

- (1) Be subject to criminal history record checks in accordance with section 846-2.7;
- (2) Be subject to adult abuse perpetrator checks, if the individual has direct contact with a client. For the purposes of this section, ‘adult abuse perpetrator check’ means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual’s name and birth date in the department’s adult protective service file; and
- (3) Provide consent to the department to conduct an adult abuse perpetrator check and to obtain other criminal history record information for verification.

(c) New employees of the home and community-based case management agency shall be fingerprinted within five working days of employment, for the purpose of complying with the criminal history record check requirement.

(d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center on applicants for home and community-based case management agency licenses, and operators, employees, and new employees of home and community-based case management agencies. The Hawaii criminal justice data center may assess the applicants and operators, employees, and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

(e) The department shall make a name inquiry into the criminal history records and the adult protective service file for the first two years a home and community-based case management agency is licensed and annually or biennially thereafter depending on the licensure status of the home and community-based case management agency.

~~[(e)] (f) An applicant for a certificate of approval as a community care foster family home and operators and other adults residing in a community care foster family home shall [be subject to criminal history record checks in accordance with section 846—, and shall obtain other criminal history record information for verification.];~~

- (1) Be subject to criminal history record checks in accordance with section 846-2.7;
- (2) Be subject to adult abuse perpetrator checks, if the individual has direct contact with a client. For the purposes of this section, “adult abuse perpetrator check” means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual’s name and birth date in the department’s adult protective service file; and
- (3) Provide consent to the department to conduct an adult abuse perpetrator check and to obtain other criminal history record information for verification.

(g) The ~~[certifying agency]~~ department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center on ~~[all]~~ applicants for certificates of approval as community care foster family homes and operators and other adults residing in ~~[the]~~ community care foster family ~~[home,]~~ homes, except for adults receiving care~~[-, subject to certification pursuant to this section]~~. The Hawaii criminal justice data center may assess the applicants and operators and other adults a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

(h) The ~~[certifying agency]~~ department or its designee shall make a name inquiry into the criminal history records and the adult protective service file for the first two years a community care foster family home is certified and annually or biennially thereafter depending on the certification status of the community care foster family home.

§346-F Penalty. Any person violating this part or any rule made pursuant to this part shall be fined not more than \$500.”

ACT 153

SECTION 2. Act 273, Session Laws of Hawaii 2001, as amended by Act 95 and Act 98, Session Laws of Hawaii 2003, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect on July 1, 2001, and shall be repealed on June 30, [2004.] 2006.”

SECTION 3. The department of human services shall submit a report to the legislature no later than twenty days prior to the regular session of 2006 detailing the impact changes made to Act 273, Session Laws of Hawaii 2001, as amended by Acts 95 and 98, Session Laws of Hawaii 2003, by this Act have had in addressing concerns raised in state auditor’s report number 02-22, issued December 2002, regarding conflicts of interest in the certification of community care foster family homes and the department’s monitoring of home and community-based case management agencies and community care foster family homes.

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

SECTION 5. This Act shall take effect on June 29, 2004; provided that Section 1 shall take effect on February 1, 2005.

(Approved June 29, 2004.)

Note

1. Prior to amendment “.” appeared here.