

ACT 220

S.B. NO. 2830

For the complete final text of this law, see Special Session Act 11 beginning on page 947 which reflects the Legislature's override of the item veto in this Act.

A Bill for an Act Relating to Caregiving.

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

PART I. JOINT LEGISLATIVE COMMITTEE ON FAMILY CAREGIVING

SECTION 1. (a) The legislature finds that during the 2007 interim, the joint legislative committee on family caregiving continued its work on creating a comprehensive and sustainable, community-based family caregiver support system that includes:

- (1) A coordinated referral and case management service;
- (2) Centralization of available services;
- (3) Volunteers;
- (4) Education and training; and
- (5) Financial assistance.

During the 2007 interim, the joint legislative committee examined localized studies and surveys, some of which contained preliminary results, which provided concrete evidence of the needs of family caregivers. The joint legislative committee also studied what other states have done and are doing in response to the growing concern regarding eldercare issues.

- (b) The purpose of this part is to:
- (1) Extend the work of the joint legislative committee on family caregiving for one year and require the committee to submit a report of its findings and recommendations to the legislature prior to the convening of the 2009 regular session;
 - (2) Change the name of the joint legislative committee on family caregiving to the "joint legislative committee on aging in place"; and
 - (3) Require the aging and disability resource center to provide the joint legislative committee with an update on the physical site for the center in Hawaii county and the "virtual" site in the city and county of Honolulu.

SECTION 2. Act 285, Session Laws of Hawaii 2006, as amended by Act 204, Session Laws of Hawaii 2007, is amended by amending section 2 to read as follows:

"SECTION 2. (a) There is established a joint legislative committee on [~~family caregiving~~] aging in place. The committee shall be composed of eight members as follows:

- (1) Four members of the house of representatives, consisting of three members from the majority party and one member from the minority party, who shall be appointed by the speaker of the house of representatives; and
- (2) Four members of the senate, consisting of three members from the majority party and one member from the minority party, who shall be appointed by the president of the senate.

The committee shall select a chairperson from its membership.

(b) The joint legislative committee shall develop comprehensive public policy to strengthen support for family caregivers. For purposes of this Act, "family caregiver" means:

- (1) A person, including a non-relative such as a friend or neighbor, who provides unpaid, informal assistance to a person age sixty and older with physical or cognitive disabilities; and
- (2) A grandparent who is a caregiver for a grandchild who is age eighteen years or younger, or who is nineteen years of age or older with physical or cognitive limitations.
- (c) The joint legislative committee shall:
 - (1) Consider providing support in categories including:
 - (A) Coordinated services and policies;
 - (B) Training and education;
 - (C) Respite services;
 - (D) Financial incentives; and
 - (E) Balancing work and caregiving; ~~and~~

and

- (2) Explore establishing a paid family leave program under the state temporary disability insurance law, similar to the California Paid Family Leave Program, to provide wage replacement benefits to employees who take time off from work to care for a seriously ill family member.

(d) The joint legislative committee may explore issues of "aging in place" as they relate to family caregiving.

(e) The Hawaii aging and disability resource center shall provide an update to the joint legislative committee of its development and implementation of the physical site for the center in the county of Hawaii, and the "virtual" site planned for the city and county of Honolulu.

~~[(d)]~~ (f) The joint legislative committee shall seek input from the department of health, the department of human services, the department of taxation, the University of Hawaii, the executive office on aging, and the elderly, disability, business, and faith-based communities.

~~[(e)]~~ (g) The joint legislative committee shall submit its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular sessions of 2007 ~~[and]~~, 2008~~[-]~~, and 2010.

~~[(f)]~~ (h) The joint legislative committee shall cease to exist on June 30, ~~[2008.]~~ 2010."

PART II. FINANCIAL ASSISTANCE FOR CAREGIVING

SECTION 3. The cash and counseling program is a national initiative sponsored by the Robert Wood Johnson Foundation; the United States Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation; and the Administration on Aging. Under the program, recipients of medicaid personal care services or home- and community-based services receive a flexible monthly allowance and can decide whom to hire and what services to receive. The program's innovative approach enables participants to direct and manage their personal assistance services according to their own specific needs. Participants can choose a family member or friend, in lieu of an agency worker, to provide the services. They receive counseling and fiscal assistance to help them manage their allowance and responsibilities. The program was first implemented in Arkansas, New Jersey, and Florida, and has since expanded to include other states.

During the 2007 interim, the joint legislative committee on family caregiving received information and data related to the family caregiver needs assessment conducted by the executive office on aging, and cash and counseling research conducted by the executive office on aging and the University of Hawaii school of social work. The family caregiver needs assessment indicated that caregivers need more affordable services and financial assistance. The cash and counseling research demonstrated that those states that have cash and counseling programs reported high

satisfaction by both caregivers and care recipients and allowed informal caregivers to receive financial recognition for their services.

In Hawaii, there are out-of-pocket costs for families to pay for home- and community-based programs that are available for elders and persons with disabilities. The government pays for services for those who have lower incomes and qualify for medicaid. However, a majority of Hawaii's families are ineligible for public assistance and have to carry the financial burdens of caregiving. This leaves a gap in services for those elders of modest means. As a result, this group of individuals has the least coverage in terms of home- and community-based services.

The work on cash and counseling being conducted by the executive office on aging and the University of Hawaii school of social work will continue until the end of the 2007-2008 fiscal year. The research conducted to date shows that a cash and counseling project is worth pursuing, and it is essential to continue the work in developing phase two of a cash and counseling project, which can be completed by the end of 2008.

SECTION 4. The executive office on aging shall design a cash and counseling project for non-medicaid participants to direct and manage their personal assistance services according to their own specific needs, while enabling family caregivers to receive a level of financial recognition and support. In designing a cash and counseling project, the executive office on aging may consider including a respite care component, a case management component, a separate fiscal agent, a personal care component, and allowing the consumer to be the employer of any service provider, whether an agency or family member.

The executive office on aging may contract with a qualified consultant to assist in designing a cash and counseling project.

The project shall include an advisory group to assist with the design of the cash and counseling project. To ensure that those who have the greatest need and the fewest resources are able to use the program, the advisory group shall examine whether an asset limitation or restriction on consumers shall be implemented in the design of a cash and counseling project.

The executive office on aging shall report on the results of its efforts to design a cash and counseling project as part of the joint legislative committee on aging in place's report to the legislature pursuant to section 2 of this Act.

PART III. KUPUNA CARE

SECTION 5. (a) On July 1, 1999, the executive office on aging launched its statewide long-term care program called kupuna care. Kupuna care was developed in partnership with the county area agencies-on-aging to address the growing numbers of elders with long-term care needs.

Services provided by kupuna care are intended to help meet the needs of older adults who cannot live at home without adequate help from family or formal services, and includes services such as adult day care, respite care, assisted transportation, attendant care, case management, chores, home-delivered meals, homemaker, transportation, and personal care.

Kupuna care was designed to assist, not totally support, Hawaii's older adults to live independently, safely, and healthily for as long as possible. The care may cover United States citizens or legal aliens sixty years or older who are not receiving other comparable government assistance, who need help with activities of daily living (eating, dressing, bathing, toileting, transferring, and mobility), or because they have reduced mental capacity, and who are not residing in an institution.

Voluntary contributions to the service provider are welcome for any service provided and are used to support the cost of care of additional clients. In addition to the services provided to the elderly, kupuna care also offers services for the family

caregivers of their elderly clients. As Hawaii's population ages, many more families will be providing higher levels of long-term care to frail and disabled older adults at home. For many family caregivers, their role as family caregiver arises as suddenly as the care recipient's health declines, leaving the family caregivers with an immediate need for services, but little preparation or education regarding who to contact for assistance or what services are available to them. In addition, family caregivers may not know who is capable or qualified to provide them with the services that they or the care recipients need. Family caregivers themselves need support services, including training, education, and counseling in areas such as caregiving and dealing with end-of-life issues.

In addition, there are emotional, physical, and financial costs of being a family caregiver. Younger family caregivers are often in critical need of finding ways to reduce the stress caused by caregiving. Respite has been shown to reduce stress and other negative consequences of caregiving. The *State of Hawaii Caregivers Need Assessment (2007)* indicates that respite is something that family caregivers need. Besides the everyday stress that respite can relieve, there are times when a family caregiver may unexpectedly be unable to provide the needed caregiving services due to the family caregiver's own illness, accident, or other reasons. At these times, emergency respite care becomes critical.

The needs assessment also indicates that family caregivers need financial support as they carry the heavy financial burdens of caring for a loved one. In addition, both family caregivers and care recipients need financial assistance to make necessary home modifications that enable the care recipient to age in place.

The legislature finds that the kupuna care program can expand its services and incorporate progressive ways of meeting the growing needs of Hawaii's older adults and allow these individuals to age in place.

(b) In addition to current kupuna care operation and services, the purpose of this part is to:

- (1) Allow the kupuna care program to:
 - (A) Offer emergency, overnight, and weekend respite services;
 - (B) Provide grants for home modifications that facilitate aging in place pursuant to a care plan as part of a cash and counseling approach; and
 - (C) Provide grants to family caregivers pursuant to a care plan as part of a cash and counseling approach; and
- (2) Increase program funding for kupuna care to ensure that kupuna care continues to maintain the quality of life of Hawaii's older adults and their family caregivers.

SECTION 6. The kupuna care program, as administered by the executive office on aging, may, in addition to its current operation and services:

- (1) Offer emergency, overnight, and weekend respite services;
- (2) Provide grants for home modifications that facilitate aging in place pursuant to a care plan as part of a cash and counseling approach; and
- (3) Provide grants to family caregivers pursuant to a care plan as part of a cash and counseling approach.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of ~~500,000~~ \$0¹ or so much thereof as may be necessary for fiscal year 2008-2009 to address the kupuna care program waitlist and for the expansion of the kupuna care program, in general.

The sum appropriated shall be expended by the executive office on aging for the purposes of this part.

PART IV. GRANDPARENTS RAISING GRANDCHILDREN TASK FORCE

SECTION 8. (a) Act 204, Session Laws of Hawaii 2007 (Act 204), expanded the mandate of the joint legislative committee on family caregiving by including grandparents of children aged eighteen years and younger, or nineteen years of age or older with physical or cognitive limitations, in Act 204's definition of family caregiver. The revised definition is now more consistent with the scope of the National Family Caregiver Support Program. Act 204 also required the joint legislative committee to examine the issues facing this population of grandparents raising grandchildren.

Since then, numerous government agencies have testified before the joint legislative committee regarding how the agencies identify and address the needs of grandparents raising grandchildren. In addition, the executive office on aging presented the 2007 *Needs Assessment of Grandparents Raising Grandchildren in the State of Hawaii*, prepared by the University of Hawaii's department of family and consumer science.

The needs assessment indicates that, in Hawaii, more than 14,000 grandparents are the primary caregivers for more than 33,000 grandchildren, and that these numbers are expected to grow. While there is a wide range of service needs within this population, the most often-cited are those that relate to children's programs, financial assistance, respite, and grandparents' rights. Many of these services are available, but barriers are preventing grandparents from accessing them. Barriers may include:

- (1) A lack of information regarding the availability of services;
- (2) A lack of services in a particular county; or
- (3) Legal or financial impediments.

For instance, in focus groups, some grandparents expressed a fear of losing their grandchildren. Others identified a need for an advocate or case worker to help guide them to the services and through the various systems.

(b) The legislature finds that the needs assessment provides critical demographic information and feedback regarding what programs and services grandparents require to care for their grandchildren. The findings indicate that the population of grandparents raising grandchildren faces particular challenges, different in some ways from the general caregiver population, and should have a focused task force to specifically address those concerns. The legislature further finds that a comprehensive, coordinated effort is needed to identify:

- (1) The services that exist to meet the identified needs;
- (2) Any service deficiencies;
- (3) Barriers that prevent grandparents from accessing services; and
- (4) What can be done to facilitate the provision of services to grandparents raising grandchildren.

(c) The purpose of this part is to establish a task force to focus specifically on the needs and issues of grandparents raising grandchildren.

SECTION 9. (a) There is established a grandparents raising grandchildren task force to focus on the needs and issues of grandparents raising grandchildren. The task force shall consist of a representative of:

- (1) The University of Hawaii's college of tropical agriculture and human resources to serve as co-chair;
- (2) Queen Lili'uokalani Children's Center to serve as co-chair;
- (3) The University of Hawaii's center on aging research and education;
- (4) The department of education;
- (5) The department of human services;
- (6) The department of health's executive office on aging;

- (7) The department of public safety;
- (8) The judiciary;
- (9) The department of the attorney general's child support enforcement agency;
- (10) Each area office on aging;
- (11) The policy advisory board for elder affairs;
- (12) Na Tutu Coalition;
- (13) Legal Aid Society of Hawaii;
- (14) Volunteer Legal Services Hawaii;
- (15) Partners in Development; and
- (16) An individual who is a grandparent.

(b) In assessing the needs and issues of grandparents raising grandchildren, the task force shall, among other things:

- (1) Review the 2007 *Needs Assessment of Grandparents Raising Grandchildren in the State of Hawaii*, prepared by the University of Hawaii's department of family and consumer science;
- (2) Review the most recent *Four Year State Plan on Aging* submitted to the United States Administration on Aging by the executive office on aging and the area agencies on aging;
- (3) Review the testimony of the various agencies submitted to the joint legislative committee on family caregiving at its hearing on August 16, 2007, regarding issues facing grandparents raising grandchildren;
- (4) Review laws relating to issues of grandparents raising grandchildren, including:
 - (A) Section 302A-482, Hawaii Revised Statutes, regarding the affidavit for caregiver consent, which permits a caregiver, under certain circumstances, to enroll a minor in school and consent to participation in curricular and co-curricular activities;
 - (B) Chapter 571, Hawaii Revised Statutes, regarding child custody and support; and
 - (C) Chapter 587, Hawaii Revised Statutes, regarding child protective services;
- (5) Review the memorandum prepared by the department of education to guide school personnel when enrolling students who reside with caregivers;
- (6) Review the support and services offered to caregivers by the department of education through its comprehensive student support system;
- (7) Investigate whether a need arises when a minor residing, formally or informally, with a grandparent requires consent for medical service, including when a student needs consent for programs and services under the federal Individuals with Disabilities Act or Section 504 of the Rehabilitation Act of 1973;
- (8) Investigate the issues that arise when a minor residing formally or informally with a grandparent is returned to the custody of a parent;
- (9) Investigate any housing issues that may arise when a grandparent is raising a grandchild, particularly when the grandparent resides in senior housing, and identify any state or federal laws or rules that would render a grandparent cohabiting with a grandchild ineligible for housing under a particular scheme;
- (10) Review how each area office on aging allocates the federal funds it receives under the national family caregiver support program for grandparent programs;

- (11) Identify the agencies that collect data relating to grandparents raising grandchildren and determine whether the data can be more comprehensive, uniform, and readily available or exchanged; and
 - (12) Identify legal needs and whether these needs are being adequately addressed.
- (c) The task force shall submit an interim report to the legislature and the joint legislative committee on aging in place no later than twenty days prior to the convening of the 2009 regular session and a final report to the legislature and the joint legislative committee on aging in place no later than twenty days prior to June 30, 2009. The final report shall include, to the greatest extent possible:
- (1) A list of the services that exist in each county to meet grandparents' identified needs;
 - (2) A discussion of service deficiencies in each county;
 - (3) A discussion of identifiable barriers that prevent grandparents from accessing services;
 - (4) A summary of the task force's work and any findings regarding the task force's responsibilities as detailed in subsection (b); and
 - (5) Recommendations, including any proposed legislation.
- (d) The task force shall cease to exist on June 30, 2009.

PART V. RESPITE CARE

SECTION 10. The joint legislative committee on aging in place has been diligent in its role to strengthen support to family caregivers through respite care. The legislative reference bureau conducted a study pursuant to House Concurrent Resolution No. 187 (2007), regarding how other states address the issue of respite care. The report indicates that respite is beneficial in ameliorating stress and other negative consequences of caregiving. Additionally, a comprehensive family caregiver needs assessment conducted pursuant to Act 204, Session Laws of Hawaii 2007, indicated that respite care is one of the top choices of assistance that caregivers feel would be helpful.

Respite care can relieve the everyday stress of providing round-the-clock care. However, there are times when emergency respite care becomes critical in instances where a family caregiver is unexpectedly unable to provide care because of illness, an accident, or other reasons.

The legislature finds that more needs to be done to determine the full inventory of respite care providers and the specific types of respite care provided in the State. The types of respite care can include planned respite care, short-term respite, or emergency respite care. Additionally, although respite services may be available, caregivers are not always aware that these services are offered or may not know where to go to seek assistance.

The purpose of this part is to request the executive office on aging to continue its respite inventory project pursuant to House Concurrent Resolution No. 187 (2007), in collaboration with the University of Hawaii school of social work.

SECTION 11. The executive office on aging, in collaboration with the University of Hawaii school of social work, shall:

- (1) Continue to conduct an inventory of respite services in Hawaii;
- (2) Propose a definition of "respite care";
- (3) Establish more detailed descriptions of each of the various types of respite services provided in the State; and
- (4) Review the legislative reference bureau's 2007 report on respite policies in other states to identify the most promising approaches for Hawaii to support expanding respite services, including how much support is

financed, what types of respite are provided and to whom, and who performs the respite services.

PART VI. CARE HOME PAYMENTS

SECTION 12. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director, pursuant to chapter 91, shall determine the rate of payment for domiciliary care, including care provided in licensed developmental disabilities domiciliary homes, community care foster family homes, and certified adult foster homes, to be provided to recipients who are eligible for Federal Supplementary Security Income or public assistance, or both. The director shall provide for level of care payment as follows:

- (1) ~~[For] Beginning on July 1, 2008, for~~ adult residential care homes classified as facility type I, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, community care foster family homes as defined under section 346-331, and certified adult foster homes as defined under section 321-11.2, the state supplemental payment shall not exceed ~~[\$641.90;]~~ \$651.90; and
- (2) ~~[For] Beginning on July 1, 2008, for~~ adult residential care homes classified as facility type II, the state supplemental payment shall not exceed ~~[\$749.90;]~~ \$759.90. [and
- (3) ~~For skilled nursing facilities and intermediate facilities, the state supplemental payment shall not exceed \$20.]~~

If the operator does not provide the quality of care consistent with the needs of the individual to the satisfaction of the department, the department may 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 residential care home or other similar institution if the recipient does not desire to be removed and the operator is agreeable to the recipient remaining, except where the recipient requires a higher level of care than provided or where the recipient no longer requires any domiciliary care.”

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$289,000 or so much thereof as may be necessary for fiscal year 2008-2009 for increases in level of care payments as provided for in this part.

The sum appropriated shall be expended by the department of human services for the purposes of this part.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2008.

(Approved July 7, 2008.)

Note

1. Item vetoed, replaced with “\$0”, and initialed “LL”, but see Special Session Act 11 beginning on page 947 which overrode the item veto in this Act.