

## ACT 21

S.B. NO. 415

A Bill for an Act Relating to Home Care Agencies.

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

SECTION 1. The health care environment is dynamic, with changes occurring constantly due to new products and services and changing demands of the market. The public must be assured of quality in the care that is offered by providers. Standards of quality for the growing home care industry must also be ensured.

Home care is a component of the health care continuum that is quickly expanding. The expansion is largely due to the rising demand by disabled elderly individuals for care in their homes when possible, rather than in institutional settings. In addition, many other non-elderly individuals with illnesses, injuries, and disabilities also prefer to receive care in the privacy of their own homes.

Since different types of home care clients have a variety of needs, home care agencies provide a broad range of services, both professional and nonprofessional including private-duty nursing services, rehabilitation therapy services, social services, personal care services, and companion services. Home care is usually purchased directly by clients or their families with personal funds since it is not a routine benefit of health insurance plans.

Because a home care worker is often the only other person in the home of a client, who may be mentally or physically disabled, it is essential to ensure that home care workers are adequately trained and ethically responsible. However, home care agencies in Hawaii are not currently required to meet standards of quality and responsibility.

The legislature finds it is necessary to license home care agencies to ensure the public that minimum standards are being met. For example, licensure should

require criminal background checks of home care staff that work in the homes of clients to provide personal care services.

The purpose of this Act is to protect consumers of home care services by requiring home care agencies to be licensed by the department of health.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§321- Home care agencies; licensing.** (a) Beginning July 1, 2010, each home care agency shall be licensed by the department of health to ensure the health, safety, and welfare of clients.

(b) The department of health shall adopt rules in accordance with chapter 91 to:

- (1) Protect the health, safety, and civil rights of clients of home care agencies; and
- (2) Provide for the licensure of home care agencies.

(c) A service provider agency under contract for services with the city and county of Honolulu elderly affairs division shall be exempt from the licensing requirement of this section.

(d) For purposes of this section:

“Home care agency” means a public or proprietary agency, a private, non-profit organization, or a subdivision of an agency or organization, engaged in providing home care services to clients in the client’s residence. The term “home care agency” does not apply to an individual, including an individual who is incorporated as a business, or is an unpaid or stipended volunteer.

“Home care services” include but are not limited to:

- (1) Personal care, including assistance with dressing, feeding, and personal hygiene to facilitate self-care;
- (2) Homemaker assistance, including housekeeping, shopping, and meal planning and preparation; and
- (3) Respite care and assistance and support provided to the family.”

SECTION 3. Section 321-11, Hawaii Revised Statutes, is amended to read as follows:

**“§321-11 Subjects of health rules, generally.** The department of health pursuant to chapter 91 may adopt rules that 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 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 hu-

- man 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 bath-houses, 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 laundering, sanitation, and sterilization by those conducting any of 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, home care agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, and therapeutic living programs, 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 ~~[manu-  
facturers are]~~ manufacturing is 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:]~~ that:
    - (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 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, and commerce, and the 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 manu-

- factured, 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, 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 medical examination, vaccination, revaccination, or immunization, whose parent or guardian objects in writing thereto on grounds that the requirements are not in accordance with the religious tenets of an established church of which the parent or guardian is a member or adherent, but no 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, including the process by which substances emit or liberate gases, fumes, or vapors ~~which~~ that 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;
  - (26) Development, review, approval, or disapproval of management plans submitted pursuant to the Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519; and
  - (27) Development, review, approval, or disapproval of an accreditation program for specially trained persons pursuant to the Residential Lead-Based Paint Hazard Reduction Act of 1992, Public Law 102-550.

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

SECTION 4. Section 321-11.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All fees paid and collected pursuant to this section and rules adopted in accordance with chapter 91 from facilities seeking licensure or certification by the department of health, including hospitals, nursing homes, home health agencies, home care agencies, intermediate care facilities for the mentally retarded, freestanding outpatient surgical facilities, adult day health care centers, rural health centers, laboratories, adult residential care homes, expanded adult residential care homes, developmental disability domiciliary homes, assisted living facilities, therapeutic living programs, and special treatment facilities, shall be deposited into the office of health care assurance special fund created under section 321-1.4. Any other entities required by law to be licensed by the department of health shall also be subject to reasonable fees established by the department of health by rules adopted in accordance with chapter 91.”

SECTION 5. Section 321-15.2,<sup>1</sup> Hawaii Revised Statutes, is amended by amending the definition of “healthcare facility” to read as follows:

““Healthcare facility” means a facility or setting where a frail, elderly, or disabled adult receives care or is provided living accommodations such as a skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, home care agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center, and rehabilitation agency.”

SECTION 6. The department of health shall report to the legislature, no later than twenty days prior to the convening of the regular session of 2010, any recommended proposals to ensure the prevention of financial exploitation of home care agency clients and to improve the home care licensing program.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 8. This Act shall take effect on July 1, 2009, and shall be repealed on June 30, 2014; provided that sections 321-11 and 321-11.5(b), Hawaii Revised Statutes, and the definition of “healthcare facility” in section 321-15.2, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.