

ACT 30

H.B. NO. 1396

A Bill for an Act Relating to Community Care Foster Family Homes.

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

SECTION 1. The legislature finds that there is an ever-increasing need for community care foster family homes to support the health and long-term care needs of an aging population and families. Community care foster family homes provide an essential function in the State by providing twenty-four-hour living accommodations, which include housing, supervision, personal care, and assistance with daily living activities for their residents. These homes provide individuals who are at a nursing facility level of care with living accommodations in a family-like setting, an alternative to living in an institutional setting.

Community care foster family homes are generally licensed to provide accommodations and services to 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. The department of health may certify a community care foster family home for a third adult who is at the nursing level of care and a medicaid recipient, provided certain requirements are met.

The legislature further finds that not only do medicaid clients have limited options for long-term care, so do individuals who do not rely on medicaid for long-term care. Besides providing accommodations to medicaid recipients, community care foster family homes also provide accommodations to private-pay individuals. There is also a recognized need to accommodate private-pay individuals who share a long-term relationship. As the cost of medical care continues to rise, it is becoming apparent that even those who do not rely on medicaid for their long-term care cannot afford the cost of private care, leaving this population also with limited options.

The purpose of this Act is to recognize the varied needs of the State's aging population by allowing the department of health flexibility to permit two private-pay individuals to be cared for in the same community care foster family home, provided they meet certain qualifying conditions.

SECTION 2. Section 321-481, Hawaii Revised Statutes, is amended by amending the definition of “community care foster family home” or “home” to read as follows:

““Community care foster family home” or “home” means a home that:

(1) Is regulated by the department in accordance with rules that are equitable in relation to rules that govern expanded adult residential care homes;

(2) Is issued a certificate of approval by 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, who are unrelated to the foster family, and who are receiving the services of a licensed home and community-based case management agency; provided that [the]:

(A) The department, in its discretion, may certify a home for a third adult who is at the nursing facility level of care and is a medicaid recipient; provided further that [the]:

[(A) Home] (i) The home has been certified and in operation for not less than one year;

[(B) Primary] (ii) The primary caregiver is a certified nurse aide, as defined in section 457A-1.5, who has completed a state-approved training program and other training as required by the department; and

[(C) Substitute] (iii) The substitute caregiver is a nurse aide, as defined in section 457A-1.5, who has completed a state-approved training program and other training as required by the department; [and]

(B) The department, in consultation with the department of human services, and in its discretion, and considering the past admission history and current client mix of the community care foster family home, may allow two private-pay individuals to be cared for in the same community care foster family home after considering the following relevant factors:

(i) The community care foster family home is certified for three beds;

(ii) The operator of the three-bed community care foster family home has had a vacant medicaid bed for at least six months; provided that the operator shall not transfer out a medicaid or private-pay client from the community care foster family home in order to accept a private-pay individual;

(iii) The two private-pay individuals are in a relationship with each other as a married couple or in a civil union and one of the private-pay individuals is currently residing in the community care foster family home for at least six months;

(iv) The department, in its discretion, determines that no other adult residential care home, expanded adult residential care home, or healthcare facility within the area has an available opening and is capable of providing care to both private-pay individuals; and

- (v) There are no medicaid recipients seeking placement in the community care foster family home that the married or civil union private-pay individuals are seeking to occupy;
 - (C) If the legal relationship of the marriage or civil union of the individuals ceases to exist, including but not limited to as a result of death or divorce, one of the two private-pay beds shall immediately, upon the death or the effective date of divorce, become a medicaid bed; and
 - (D) The department and its officers, employees, and agents, in exercising discretion and in considering any other factors that the department deems relevant to its decision, shall be immune from suit and liability in the exercise of its discretion under this section; and
- (3) Does not include expanded adult residential care homes or assisted living facilities.”

SECTION 3. The department of health shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2018 on the authorization to allow two private-pay individuals to be cared for in the same community care foster family home as provided under this Act, including its impact on the availability of space for medicaid clients.

SECTION 4. It is the intent of this Act not to jeopardize the receipt of any federal aid. If this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, this Act shall be deemed void.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 31, 2017.)