

Approved by the Governor

on JUL 7 2008

THE SENATE  
TWENTY-FOURTH LEGISLATURE, 2008  
STATE OF HAWAII

**ACT 220**  
**S.B. NO.** 2830  
S.D. 2  
H.D. 2  
C.D. 1

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**A BILL FOR AN ACT**

**VETO OVERRIDE**

ACT No. 11

RELATING TO CAREGIVING.

Approved: [Signature] / CSM

Dated: July 8, 2008

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1                                   **PART I. JOINT LEGISLATIVE COMMITTEE**

2                                   **ON FAMILY CAREGIVING**

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

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

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



1 (b) The purpose of this part is to:

2 (1) Extend the work of the joint legislative committee on  
3 family caregiving for one year and require the  
4 committee to submit a report of its findings and  
5 recommendations to the legislature prior to the  
6 convening of the 2009 regular session;

7 (2) Change the name of the joint legislative committee on  
8 family caregiving to the "joint legislative committee  
9 on aging in place"; and

10 (3) Require the aging and disability resource center to  
11 provide the joint legislative committee with an update  
12 on the physical site for the center in Hawaii county  
13 and the "virtual" site in the city and county of  
14 Honolulu.

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

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

21 (1) Four members of the house of representatives,  
22 consisting of three members from the majority party



1 and one member from the minority party, who shall be  
2 appointed by the speaker of the house of  
3 representatives; and

4 (2) Four members of the senate, consisting of three  
5 members from the majority party and one member from  
6 the minority party, who shall be appointed by the  
7 president of the senate.

8 The committee shall select a chairperson from its  
9 membership.

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

13 (1) A person, including a non-relative such as a friend or  
14 neighbor, who provides unpaid, informal assistance to  
15 a person age sixty and older with physical or  
16 cognitive disabilities; and

17 (2) A grandparent who is a caregiver for a grandchild who  
18 is age eighteen years or younger, or who is nineteen  
19 years of age or older with physical or cognitive  
20 limitations.

21 (c) The joint legislative committee shall:

22 (1) Consider providing support in categories including:



- 1 (A) Coordinated services and policies;
- 2 (B) Training and education;
- 3 (C) Respite services;
- 4 (D) Financial incentives; and
- 5 (E) Balancing work and caregiving; [~~and~~]
- 6 and

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

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

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

20 [~~(d)~~] (f) The joint legislative committee shall seek input  
21 from the department of health, the department of human services,  
22 the department of taxation, the University of Hawaii, the



1 executive office on aging, and the elderly, disability,  
2 business, and faith-based communities.

3 ~~[(e)]~~ (g) The joint legislative committee shall submit its  
4 findings and recommendations to the legislature no later than  
5 twenty days prior to the convening of the regular sessions of  
6 2007 ~~[and]~~, 2008, and 2010.

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

9 **PART II. FINANCIAL ASSISTANCE FOR CAREGIVING**

10 SECTION 3. The cash and counseling program is a national  
11 initiative sponsored by the Robert Wood Johnson Foundation; the  
12 United States Department of Health and Human Services, Office of  
13 the Assistant Secretary for Planning and Evaluation; and the  
14 Administration on Aging. Under the program, recipients of  
15 medicaid personal care services or home- and community-based  
16 services receive a flexible monthly allowance and can decide  
17 whom to hire and what services to receive. The program's  
18 innovative approach enables participants to direct and manage  
19 their personal assistance services according to their own  
20 specific needs. Participants can choose a family member or  
21 friend, in lieu of an agency worker, to provide the services.  
22 They receive counseling and fiscal assistance to help them



1 manage their allowance and responsibilities. The program was  
2 first implemented in Arkansas, New Jersey, and Florida, and has  
3 since expanded to include other states.

4 During the 2007 interim, the joint legislative committee on  
5 family caregiving received information and data related to the  
6 family caregiver needs assessment conducted by the executive  
7 office on aging, and cash and counseling research conducted by  
8 the executive office on aging and the University of Hawaii  
9 school of social work. The family caregiver needs assessment  
10 indicated that caregivers need more affordable services and  
11 financial assistance. The cash and counseling research  
12 demonstrated that those states that have cash and counseling  
13 programs reported high satisfaction by both caregivers and care  
14 recipients and allowed informal caregivers to receive financial  
15 recognition for their services.

16 In Hawaii, there are out-of-pocket costs for families to  
17 pay for home- and community-based programs that are available  
18 for elders and persons with disabilities. The government pays  
19 for services for those who have lower incomes and qualify for  
20 medicaid. However, a majority of Hawaii's families are  
21 ineligible for public assistance and have to carry the financial  
22 burdens of caregiving. This leaves a gap in services for those



1 elders of modest means. As a result, this group of individuals  
2 has the least coverage in terms of home- and community-based  
3 services.

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

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

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







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

10 Voluntary contributions to the service provider are welcome  
11 for any service provided and are used to support the cost of  
12 care of additional clients. In addition to the services  
13 provided to the elderly, kupuna care also offers services for  
14 the family caregivers of their elderly clients. As Hawaii's  
15 population ages, many more families will be providing higher  
16 levels of long-term care to frail and disabled older adults at  
17 home. For many family caregivers, their role as family  
18 caregiver arises as suddenly as the care recipient's health  
19 declines, leaving the family caregivers with an immediate need  
20 for services, but little preparation or education regarding who  
21 to contact for assistance or what services are available to  
22 them. In addition, family caregivers may not know who is



1 capable or qualified to provide them with the services that they  
2 or the care recipients need. Family caregivers themselves need  
3 support services, including training, education, and counseling  
4 in areas such as caregiving and dealing with end-of-life issues.

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

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



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

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

7           (1) Allow the kupuna care program to:

8                   (A) Offer emergency, overnight, and weekend respite  
9                   services;

10                   (B) Provide grants for home modifications that  
11                   facilitate aging in place pursuant to a care plan  
12                   as part of a cash and counseling approach; and

13                   (C) Provide grants to family caregivers pursuant to a  
14                   care plan as part of a cash and counseling  
15                   approach;

16           and

17           (2) Increase program funding for kupuna care to ensure  
18           that kupuna care continues to maintain the quality of  
19           life of Hawaii's older adults and their family  
20           caregivers.



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

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

11 SECTION 7. There is appropriated out of the general <sup>+ / copy</sup>  
 12 revenues of the State of Hawaii the sum of ~~\$500,000~~ <sup>-\$0-22</sup> or so much  
 13 thereof as may be necessary for fiscal year 2008-2009 to address  
 14 the kupuna care program waitlist and for the expansion of the  
 15 kupuna care program, in general.

Line item veto overridden

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

18 PART IV. GRANDPARENTS RAISING GRANDCHILDREN TASK FORCE

19 SECTION 8. (a) Act 204, Session Laws of Hawaii 2007 (Act  
20 204), expanded the mandate of the joint legislative committee on  
21 family caregiving by including grandparents of children aged  
22 eighteen years and younger, or nineteen years of age or older

1 with physical or cognitive limitations, in Act 204's definition  
2 of family caregiver. The revised definition is now more  
3 consistent with the scope of the National Family Caregiver  
4 Support Program. Act 204 also required the joint legislative  
5 committee to examine the issues facing this population of  
6 grandparents raising grandchildren.

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

14 The needs assessment indicates that, in Hawaii, more than  
15 14,000 grandparents are the primary caregivers for more than  
16 33,000 grandchildren, and that these numbers are expected to  
17 grow. While there is a wide range of service needs within this  
18 population, the most often-cited are those that relate to  
19 children's programs, financial assistance, respite, and  
20 grandparents' rights. Many of these services are available, but  
21 barriers are preventing grandparents from accessing them.

22 Barriers may include:



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

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

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

- 18 (1) The services that exist to meet the identified needs;
- 19 (2) Any service deficiencies;
- 20 (3) Barriers that prevent grandparents from accessing
- 21 services; and



1 (4) What can be done to facilitate the provision of  
2 services to grandparents raising grandchildren.

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

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

10 (1) The University of Hawaii's college of tropical  
11 agriculture and human resources to serve as co-chair;

12 (2) Queen Lili'uokalani Children's Center to serve as  
13 co-chair;

14 (3) The University of Hawaii's center on aging research  
15 and education;

16 (4) The department of education;

17 (5) The department of human services;

18 (6) The department of health's executive office on aging;

19 (7) The department of public safety;

20 (8) The judiciary;

21 (9) The department of the attorney general's child support  
22 enforcement agency;



- 1 (10) Each area office on aging;
  - 2 (11) The policy advisory board for elder affairs;
  - 3 (12) Na Tutu Coalition;
  - 4 (13) Legal Aid Society of Hawaii;
  - 5 (14) Volunteer Legal Services Hawaii;
  - 6 (15) Partners in Development; and
  - 7 (16) An individual who is a grandparent.
- 8 (b) In assessing the needs and issues of grandparents
- 9 raising grandchildren, the task force shall, among other things:
- 10 (1) Review the 2007 *Needs Assessment of Grandparents*
  - 11 *Raising Grandchildren in the State of Hawaii*, prepared
  - 12 by the University of Hawaii's department of family and
  - 13 consumer science;
  - 14 (2) Review the most recent *Four Year State Plan on Aging*
  - 15 submitted to the United States Administration on Aging
  - 16 by the executive office on aging and the area agencies
  - 17 on aging;
  - 18 (3) Review the testimony of the various agencies submitted
  - 19 to the joint legislative committee on family
  - 20 caregiving at its hearing on August 16, 2007,
  - 21 regarding issues facing grandparents raising
  - 22 grandchildren;





- 1           (4) Review laws relating to issues of grandparents raising  
2           grandchildren, including:
- 3           (A) Section 302A-482, Hawaii Revised Statutes,  
4           regarding the affidavit for caregiver consent,  
5           which permits a caregiver, under certain  
6           circumstances, to enroll a minor in school and  
7           consent to participation in curricular and  
8           co-curricular activities;
- 9           (B) Chapter 571, Hawaii Revised Statutes, regarding  
10          child custody and support; and
- 11          (C) Chapter 587, Hawaii Revised Statutes, regarding  
12          child protective services;
- 13          (5) Review the memorandum prepared by the department of  
14          education to guide school personnel when enrolling  
15          students who reside with caregivers;
- 16          (6) Review the support and services offered to caregivers  
17          by the department of education through its  
18          comprehensive student support system;
- 19          (7) Investigate whether a need arises when a minor  
20          residing, formally or informally, with a grandparent  
21          requires consent for medical service, including when a  
22          student needs consent for programs and services under



- 1 the federal Individuals with Disabilities Act or  
2 Section 504 of the Rehabilitation Act of 1973;
- 3 (8) Investigate the issues that arise when a minor  
4 residing formally or informally with a grandparent is  
5 returned to the custody of a parent;
- 6 (9) Investigate any housing issues that may arise when a  
7 grandparent is raising a grandchild, particularly when  
8 the grandparent resides in senior housing, and  
9 identify any state or federal laws or rules that would  
10 render a grandparent cohabiting with a grandchild  
11 ineligible for housing under a particular scheme;
- 12 (10) Review how each area office on aging allocates the  
13 federal funds it receives under the national family  
14 caregiver support program for grandparent programs;
- 15 (11) Identify the agencies that collect data relating to  
16 grandparents raising grandchildren and determine  
17 whether the data can be more comprehensive, uniform,  
18 and readily available or exchanged; and
- 19 (12) Identify legal needs and whether these needs are being  
20 adequately addressed.
- 21 (c) The task force shall submit an interim report to the  
22 legislature and the joint legislative committee on aging in



1 place no later than twenty days prior to the convening of the  
2 2009 regular session and a final report to the legislature and  
3 the joint legislative committee on aging in place no later than  
4 twenty days prior to June 30, 2009. The final report shall  
5 include, to the greatest extent possible:

6 (1) A list of the services that exist in each county to  
7 meet grandparents' identified needs;

8 (2) A discussion of service deficiencies in each county;

9 (3) A discussion of identifiable barriers that prevent  
10 grandparents from accessing services;

11 (4) A summary of the task force's work and any findings  
12 regarding the task force's responsibilities as  
13 detailed in subsection (b); and

14 (5) Recommendations, including any proposed legislation.

15 (d) The task force shall cease to exist on June 30, 2009.

16 **PART V. RESPITE CARE**

17 SECTION 10. The joint legislative committee on aging in  
18 place has been diligent in its role to strengthen support to  
19 family caregivers through respite care. The legislative  
20 reference bureau conducted a study pursuant to House Concurrent  
21 Resolution No. 187 (2007), regarding how other states address  
22 the issue of respite care. The report indicates that respite is



1 beneficial in ameliorating stress and other negative  
2 consequences of caregiving. Additionally, a comprehensive  
3 family caregiver needs assessment conducted pursuant to Act 204,  
4 Session Laws of Hawaii 2007, indicated that respite care is one  
5 of the top choices of assistance that caregivers feel would be  
6 helpful.

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

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

20 The purpose of this part is to request the executive office  
21 on aging to continue its respite inventory project pursuant to



1 House Concurrent Resolution No. 187 (2007), in collaboration  
2 with the University of Hawaii school of social work.

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

6 (1) Continue to conduct an inventory of respite services  
7 in Hawaii;

8 (2) Propose a definition of "respite care";

9 (3) Establish more detailed descriptions of each of the  
10 various types of respite services provided in the  
11 State; and

12 (4) Review the legislative reference bureau's 2007 report  
13 on respite policies in other states to identify the  
14 most promising approaches for Hawaii to support  
15 expanding respite services, including how much support  
16 is financed, what types of respite are provided and to  
17 whom, and who performs the respite services.

18 **PART VI. CARE HOME PAYMENTS**

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

21 "(c) The director, pursuant to chapter 91, shall determine  
22 the rate of payment for domiciliary care, including care



1 provided in licensed developmental disabilities domiciliary  
2 homes, community care foster family homes, and certified adult  
3 foster homes, to be provided to recipients who are eligible for  
4 Federal Supplementary Security Income or public assistance, or  
5 both. The director shall provide for level of care payment as  
6 follows:

7 (1) [~~For~~] Beginning on July 1, 2008, for adult residential  
8 care homes classified as facility type I, licensed  
9 developmental disabilities domiciliary homes as  
10 defined under section 321-15.9, community care foster  
11 family homes as defined under section 346-331, and  
12 certified adult foster homes as defined under section  
13 321-11.2, the state supplemental payment shall not  
14 exceed [~~\$641.90,~~] \$651.90; and

15 (2) [~~For~~] Beginning on July 1, 2008, for adult residential  
16 care homes classified as facility type II, the state  
17 supplemental payment shall not exceed [~~\$749.90,~~]  
18 \$759.90. [~~and~~

19 ~~(3) For skilled nursing facilities and intermediate~~  
20 ~~facilities, the state supplemental payment shall not~~  
21 ~~exceed \$20.]~~



1           If the operator does not provide the quality of care  
2 consistent with the needs of the individual to the satisfaction  
3 of the department, the department may remove the recipient to  
4 another facility.

5           The department shall handle abusive practices under this  
6 section in accordance with chapter 91.

7           Nothing in this subsection shall allow the director to  
8 remove a recipient from an adult residential care home or other  
9 similar institution if the recipient does not desire to be  
10 removed and the operator is agreeable to the recipient  
11 remaining, except where the recipient requires a higher level of  
12 care than provided or where the recipient no longer requires any  
13 domiciliary care."

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

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

21

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

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

