

# **Hawaii's Adult Residential Care Program: An Evaluation of Selected Concerns**

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## **FOREWORD**

In 1991 a special interim subcommittee on Adult Residential Care Homes was appointed to conduct a comprehensive examination of the issues and concerns of those involved in the operation and monitoring of Hawaii's Adult Residential Care Homes (ARCHs). The subcommittee issued its report in October 1991 and developed a legislative package for consideration during the 1992 legislative session.

The subcommittee's legislative package included the three resolutions that are addressed in this report:

House Concurrent Resolution No. 5, requesting a review of issues related to special care needs;

House Resolution No. 8, requesting a study of the feasibility of amending the provisions concerning care provided by ARCH operators to their relatives; and

House Resolution No. 11, requesting an examination of the concerns of Molokai's ARCH operators.

Related issues were also directed to the Department of Health, the Department of Human Services and the University of Hawaii Community Colleges. The responses of these agencies should be considered in conjunction with the material covered in this study.

We wish to express our appreciation for the cooperation and assistance provided by the staff of the Department of Health and the Department of Human Services, the State Long Term Care Ombudsman, and Hawaii's ARCH operators and their professional organizations.

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## **Chapter 1**

### **INTRODUCTION**

This report has been prepared in response to three requests of the 1992 Regular Session of the Legislature and addresses specific issues raised by those who operate Hawaii's Adult Residential Care Home (ARCH) program. ARCHs are community-based facilities that provide living accommodations and assistance in activities of daily living, personal care, protection and health care services to elderly and disabled adults. Most of the State's ARCHs are small, family-operated businesses. While ARCHs are licensed by the State, they receive no direct state or federal funds although many ARCH residents are recipients of federal Supplemental Security Income (SSI) and state income supplements.

House Concurrent Resolution No. 5 (see Appendix A) asks that the administrative rules for Adult Residential Care Homes (ARCHs) be evaluated to determine if they support state policy with regard to housing, health and human services for the elderly and handicapped, and if an excessive financial burden has been placed on care home operators. It further requests a feasibility assessment of expanding the state supplement for ARCH residents with special care needs including restructuring the level of care system of payments to ARCH residents to include a special needs category.

House Resolution No. 8 (see Appendix B) requests that the feasibility and ramifications of amending the law to allow ARCH operators to have relatives as residents in their facilities be examined.

House Resolution No. 11 (see Appendix C) identifies a number of specific concerns presented by the ARCH operators on Molokai.

The findings and recommendations in this report were developed following a series of interviews with program administrators as well as representatives of the ARCH operators. Related research and reports were reviewed, and, with regard to the issues raised by Molokai's ARCH operators, a questionnaire was used to identify their priority concerns and needs.

Chapter 2 of the report provides a basic overview of the ARCH program including current public policy, state law and the administrative responsibilities of various government agencies with regard to the program.

Chapter 3 summarizes the Department of Health's proposed new rules for the ARCH licensing and monitoring program. It should be noted that, as of this writing, the rules are in draft form and have not been adopted. This report does not examine the administrative rules that are to be replaced.

Basic data on Hawaii's 500 ARCHs are presented in Chapter 4 and recent research and reports that address the issues under review are summarized in Chapter 5.

Chapters 6 through 9 present findings and recommendations for each subject area.

- The Special Care Needs Supplement;
- Admission of an operator's relatives as residents of the ARCH;
- The concerns of Molokai Arch operators; and
- An evaluation of the rules and administrative practices that impact ARCH operations.

## **Chapter 2**

### **OVERVIEW**

#### **Federal Policy**

National policy regarding board and care homes for adults was established with passage of the Keys Amendment to the Social Security Act in 1976.<sup>1</sup> This legislation permitted Supplemental Security Income (SSI) payments to persons in community residential facilities that serve sixteen or fewer residents. It also required the states to certify that facilities that serve or were likely to serve a significant number of SSI recipients met appropriate standards.

The move during the 1960's to deinstitutionalize patients in state mental hospitals who did not present a threat to themselves or others, medical expense cost containment efforts, and growing public support for community-based health and social services stimulated the development of small residential board and care homes as alternatives to state institutional care facilities. A series of fires in boarding homes during the early 1970's and the growing number of confirmed reports of neglect and abuse of board and care home residents highlighted the need to monitor and regulate these facilities. The Keys amendment reflects Congress' effort to address the issue. State board and care home regulations implement the federal policy thus established.<sup>2</sup>

#### **State Policy**

In Hawaii, the State's responsibility to ensure the health and safety of those least able to care for themselves is reflected in the State's Constitution as well as its laws. Article IX, Section 2, provides that, "The State shall have the power to provide for the treatment and rehabilitation of handicapped persons." Section 3 says that, "The State shall have the power to provide financial assistance, medical assistance, and social services for persons who are found to be in need of and are eligible for such assistance and services and provided by law." The needs of the elderly are acknowledged in Section 4, which states that, "The State shall have the power to provide for the security of the elderly by establishing and promoting programs to assure their economic and social well-being."

Prior to 1986, the State's involvement in community-based, non-institutional residential care of adults with mental or physical disabilities lay in the Department of Health's responsibility to license care homes. The Department of Social Services and Housing (DSSH) (now the Department of Human Services) licensed adult family boarding homes. The licensed boarding homes provided room, and minimal personal assistance to DSSH clients, primarily elderly recipients of federal SSI assistance. In 1986, the two types of adult homes were combined and renamed Adult Residential Care Homes (ARCHs) and the Department of

Health given responsibility for their licensing and monitoring. The licensing requirements for ARCHs were more stringent than those previously applicable to boarding homes.<sup>3</sup>

The state statute specifically covering community-based residential facilities for adults is Chapter 321, *Hawaii Revised Statutes*. The current provisions define an adult residential care home as:<sup>4</sup>

. . . 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, but who do not need the professional health services provided in an intermediate, skilled nursing, or acute care facility.

The law further requires that the Department of Health adopt rules for ARCHs and license such facilities. The rules must protect the health, safety, and civil rights of ARCH residents. ARCH licensing must provide for two types of facilities. Those with five or fewer residents are Type I, and those with six or more are Type II. Residents may include the mentally ill, elders, the handicapped, the developmentally disabled, or totally disabled persons who are not related to the facility operator. The rules must comply with applicable federal law and provide penalties for failure to comply with any rule. The Department's rules must also ensure that care home operators have the skills needed to provide proper care and supervision of the residents.<sup>5</sup> Anyone who operates an unlicensed ARCH is guilty of a misdemeanor.<sup>6</sup>

Thus, the ARCH is a key element of the overall policy of meeting the basic needs of Hawaii's mentally, physically or economically needy adults. Hawaii's ARCHs provide community-based, non-institutional domiciliary care facilities for this segment of the population.

### **ARCH Regulation**

ARCH regulation is required by the Keys Amendment and Hawaii law. The Department of Health developed its rules in accordance with the requirements of Chapter 321, *Hawaii Revised Statutes*, and they were formally adopted June 30, 1986, as Chapter 11-100 of the Hawaii Administrative Rules.

The Department's regulatory responsibility with regard to ARCHs is twofold. One is to ensure the basic health and safety of ARCH residents. The second is to support the development of community-based non-institutional residential homes throughout the State.<sup>7</sup> The 1986 rules address both aspects by setting forth requirements for ARCH licensing including provisions for temporary waivers for boarding homes that did not meet the new requirements.



## OVERVIEW

As of this writing, the Department of Health is considering major revisions to the Chapter 11-100 which, when approved, will replace Chapter 11-100 with a new Chapter 11-103. The September 17, 1992, draft of Chapter 11-103 is discussed in Chapter 3 of this report.

### Funding

Type I ARCHs (those serving five or fewer residents) are private, for-profit businesses licensed by the State. While most of their residents receive financial assistance from the State and/or federal governments, ARCH operators receive no direct government payments. Some Type II ARCHs are nonprofit entities but they, also, are private businesses and receive no direct government payments. As a result, the amounts charged by facility operators and their fee policies are not government controlled.<sup>8</sup> However, the vast majority of ARCH residents are clients of the Departments of Health or Human Services, and, as such, have limited financial resources.<sup>9</sup> This effectively caps the fees that can be charged by ARCH operators to most of their residents. When combined with the five-or-fewer limit on residents for Type I ARCHs, this establishes a de facto income ceiling for most of the smaller ARCH operators. The Type II operator has somewhat more control due to the greater number of residents allowed.

Determining and administering payments to eligible ARCH residents is the responsibility of the Department of Human Services. The resident must meet income eligibility requirements and is then assigned to one of three Level of Care (LOC) service categories based on their case worker's assessment of the degree of assistance the individual requires. LOC determinations address three functional areas: (1) activities of daily living, (2) supervision and behavioral management, and (3) health-related services. Identified services in each functional area are assigned numerical points and the total determines an individual's LOC.<sup>10</sup>

Payments consist of federal SSI for the low-income elderly and disabled, and a series of state supplements that have been authorized over the years. As of July 1992, the maximums available based on LOC and whether the client is living in a Type I or Type II ARCH are as follows:<sup>11</sup>

	<u>LOC I</u>	<u>LOC II</u>	<u>LOC III</u>
Federal SSI	\$422.00	\$422.00	\$422.00
Basic State Supp.	79.90	129.90	191.90
State Supp. #1	115.00	115.00	115.00
State Supp. #2	70.00	105.00	145.00
State Supp. #3	20.00	20.00	20.00
Type II ARCH Supp.	54.00	108.00	108.00
Special Care Needs	Not Avail.	Not Avail.	100.00

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### Maximum Available State Assistance

	<u>LOC I</u>	<u>LOC II</u>	<u>LOC III</u>
Type I ARCH	\$284.90	\$369.90	\$471.90
(With Special Care Needs Supplement)			571.90
Type II ARCH	338.90	477.90	579.90
(With Special Care Needs Supplement)			679.90

Indexed adjustments are made annually to the federal SSI payments based on Social Security cost-of-living increases. Changes to the state supplements must be enacted by the Legislature.

### **Nonfinancial State Support**

#### **Residents**

ARCH residents receiving government assistance are each assigned a case worker. The mentally ill or developmentally disabled each have a Department of Health case worker. The Department of Human Services is responsible for all other low-income clients. The case worker is responsible for placement in an appropriate facility, determination of LOC, and monitoring the resident's care and condition after placement.<sup>12</sup>

The State's Long Term Care Ombudsman, located in the Governor's Executive Office on Aging, handles disputes and problems in all areas of long-term care including the non-elderly. The Long Term Care Ombudsman focuses on client problems, but also accepts cases brought by facility operators.<sup>13</sup>

#### **ARCH Operators**

Department of Health. Services available to ARCH operators that are provided through the Department of Health include:

- (1) Nutritionists and dieticians to help operators plan both regular and special diets that are appropriate to the age, condition, and cultural background of their residents;
- (2) Public health nurses, who work independently of the licensing personnel, are on call to assist operators with basic health and sanitation issues that may arise;

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- (3) Two in-service classes per year that address problems not adequately covered by the required training modules for operators; and
- (4) Special assistance is available for new operators to insure compliance with the various regulatory requirements of the State and counties.<sup>14</sup>

**Community Colleges.** The community colleges in each county offer courses that fulfill the training requirements for ARCH operators. Operators are responsible for the registration fees for these classes.<sup>15</sup>

**Other.** Additional assistance is available to eligible businesses and individuals, including ARCH operators, through certain loan and business management programs offered by the State Department of Business, Economic Development and Tourism as well as the federal Small Business Administration.

The Office of the State Ombudsman will help resolve specific conflicts between ARCH operators and state agencies or officials.

## Endnotes

1. P.L. 94-566, sec. 505(d).
2. U.S., General Accounting Office, Board and Care, Insufficient Assurances that Residents' Needs are Identified and Met, GAO/HRD-89-50 (Washington D.C.: February 1989), p. 8.
3. Interview with Dr. Elisabeth Anderson, Hilda Kaneshiro and Maryrose Rolden, Hospital and Medical Facilities Branch, Department of Health, June 22, 1992.
4. Hawaii Rev. Stat., §321-15.1.
5. Hawaii Rev. Stat., §321-15.6.
6. Hawaii Rev. Stat., §321-15.7.
7. Anderson interview.
8. Interview with Pat Snyder and Robert Ng, Program Development Adult Services, Department of Human Service, July 14, 1992.
9. Anderson interview.
10. Hawaii, Legislative Auditor, A Study of the Adequacy of Adult Residential Care Home Payments and problems of Vacancy, Admission, and Demand, Report No. 89-13 (Honolulu: January 1989), pp. 3-4; and Snyder and Ng interview.
11. Telephone interview with Ernest Acopan, Income Maintenance Section, Department of Human Services, October 23, 1992.

## HAWAII'S ADULT RESIDENTIAL CARE PROGRAM: AN EVALUATION OF SELECTED CONCERNS

12. Snyder and Ng interview.
13. Interview with Sandy S. Rongitsch, MSW, Long Term Care Ombudsman, Governor's Executive Office on Aging, July 23, 1992.
14. Anderson interview.
15. Anderson interview.

## **Chapter 3**

### **ARCH REGULATIONS**

State law requires the Department of Health (DOH) to establish rules for licensing ARCH facilities. These rules must cover the physical aspects of ARCHs as well as their operation and management. The Department is currently developing revised rules which, when adopted, will replace the 1986 rules (Chapter 11-100, Hawaii Administrative Rules) with a new Chapter 11-103. The following summary is based on post-hearing Draft #8, dated September 17, 1992. The rules cover both Type I and Type II ARCHs.

#### **Purpose**

The draft rules state the purpose of Chapter 11-103 as follows:

This chapter establishes minimum requirements for the licensure of adult residential care homes in order to protect the health, safety, and civil rights of residents in adult residential care homes and shall not be construed as lowering the standards, ordinances, codes, and rules established by other government agencies. In all instances, the more stringent rule shall apply. (Emphasis added.)

#### **Requirements for Licensees and Operators/Administrators**

ARCH licenses are issued to applicants based on their financial ability to operate a facility according to the standards set forth in the rules. The licensee must provide an operator (Type I) or administrator (Type II) that meets the following requirements:

Type I ARCH operators must:

- (1) Reside on the premises;
- (2) Be at least eighteen years of age;
- (3) Be a nurse aide with no substantiated record of abuse;
- (4) Have one year's experience as a nurse aide in a nursing facility or hospital;
- (5) Have completed Department approved modules of ARCH training;
- (6) Have no outside responsibilities that will interfere with care of the ARCH residents, and notify the Department of regular outside activities or employment prior to engaging in such activities; and
- (7) Have current certification in first aid and cardiopulmonary resuscitation.

Type II ARCH administrators and those operating more than one Type I facility must:

- (1) Have a bachelor's degree or be a licensed registered nurse; and
- (2) Have one year's administrative and management experience in a licensed nursing facility, hospital, Type II ARCH or similar facility.

### **Facility Requirements**

The draft rules provide minimum structural standards for ARCHs that include compliance with county building and fire codes; require accessibility for wheelchair users; set minimum square footage for dining, living, and bedroom areas on a per resident basis; and require facilities to have access to utilities, transportation, and other such services.

### **License Denial, Waivers, Provisional Licenses**

ARCH licenses must be renewed annually. Four bases for denial of a license are set forth:

- (1) Failure to meet the requirements of the rules;
- (2) Failure to document financial ability to operate pursuant to the rules;
- (3) Misstatement of facts or a fraudulent response on the application; or
- (4) Prior felony or abuse conviction.

The Department reserves the right to deny a license for reasons other than those specified.

A waiver, or temporary exemption from a specific rule, may be granted by the director. Waivers of structural requirements will not be allowed unless all residents are ambulatory and able to protect themselves in an emergency situation, no health or safety hazard is created, and the cost of structural changes would place an undue burden on the licensee. Structures used as ARCHs prior to adoption of the rules are "grandfathered" unless a hazard to health and safety exists. Waivers cannot be transferred from one licensee or one location to another.

A provisional license may be issued if additional time is needed to correct a deficiency. It can be valid for up to one year after which the Department can either issue a second provisional license valid for up to one year, or refuse to renew the license. Provisional licenses may not be issued to applicants for an initial license.

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The rules also provide for boarding home operators licensed by the Department of Human Services before July 1, 1986, when all adult care homes were reclassified under the Adult Residential Care Home rules. Operators of these facilities who did not meet ARCH training requirements by December 31, 1988, may not admit any new resident. They may continue to care for their "grandfathered" residents unless or until a need for nurse aide care develops at which time the resident must be transferred to an appropriate facility.

### **Facility Operating Requirements**

#### **DOH Inspections**

The DOH conducts annual inspections of all licensed ARCHs and may conduct additional inspections to determine whether previously noted deficiencies have been corrected as scheduled or to investigate complaints. Prior notice is not required but inspections must take place between 8:00 a.m. and 5:00 p.m. unless a specific complaint warrants otherwise.

#### **Coverage When Operator Absent, Type I ARCH**

When an operator is engaged in outside activity or employment for thirty or more hours per week or absent more than thirty-one consecutive days, a person meeting the minimum education, experience, and training requirements for operators must be present in the ARCH. At least one week's notice must be given to responsible agencies and ARCH residents when an operator plans to be absent more than two days. Coverage during such an absence shall be by a "responsible adult" subject to the Department's approval. A responsible adult is defined in the rules as, "an adult who takes charge of an adult residential care home during the temporary absence of the operator." They must be able to provide all necessary services and be capable of managing any emergency that may arise.

If the operator is absent no more than three hours, the responsible adult must be able to: (1) communicate in English, (2) make medications available to residents and properly record such actions, and (3) provide appropriate care. For an absence of more than three but less than six hours additional requirements for the responsible adult are:

- (1) Certification in cardiopulmonary resuscitation and first aid;
- (2) Ability to cook and serve a meal, follow planned and special menus, and provide necessary feeding assistance;
- (3) Ability to give other personal care including dressing and bathing of residents, and continuation of recreational programs;

- (4) Ability to transport residents to out-of-home events;
- (5) Taking and recording residents' pulse and respiration;
- (6) Do necessary shopping; and
- (7) Knowledge and experience regarding the personal care needs of the residents.

### **Staff Requirements, Type II ARCHs**

Staffing requirements for Type II ARCHs include one full-time licensed registered nurse, at least one nurse aide on all shifts at all times, and services of a qualified dietitian. In evaluating Type II ARCH license applications, the Department reviews the organizational chart, employee job descriptions, and general operating procedures for each facility to ensure that the number and qualifications of the staff are appropriate for the number and types of residents to be served.

### **Safety**

The rules establish specific requirements for emergency care of residents and for fire safety, including quarterly fire drills. Detailed provisions for food handling, storage, and preparation, as well as storage and dispensing of medications are also covered.

### **Written Policies**

All ARCHs must have written operating policies and procedures that address:

- (1) Services provided;
- (2) Admission, transfer, and discharge policies;
- (3) Residents' rights;
- (4) Payment policy and the services/supplies covered;
- (5) Visiting hours;
- (6) Grievance procedures for both residents and staff;
- (7) Policies regarding use of physical and chemical restraints; and
- (8) Infection control.



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The policies must prohibit mistreatment, abuse, and neglect; and the operator must ensure that abuse and misappropriation of money or property do not occur. Measures must be taken during any investigation of abuse to prevent further potential abuse, and procedures must be established for reporting all allegations of abuse or misappropriation to the appropriate officials.

### **Record Keeping**

Detailed confidential records must be kept for each ARCH resident. These records include the physician's report and tuberculosis clearance which is required upon admission. A standardized form is suggested that identifies the level of care; the physician's physical examination and diagnosis, including mental, functional and behavioral status; and orders for diet, medication, and special care or activities. Following admission, the records must also include:

- (1) Copies of any subsequent medical examinations and laboratory reports;
- (2) Monthly progress notes regarding response to medications and treatments, changes in behavior, and actions taken, if any;
- (3) Description of treatments and services rendered,
- (4) Physician's signed orders for changes in diet, medication, or treatments;
- (5) Records of temperature, pulse, and respiration, if needed;
- (6) Monthly record of weight and annual record of height;
- (7) Notation of visits and consultations with other professionals;
- (8) Correspondence relating to physical or mental status;
- (9) Current inventory of all valuables;
- (10) Key personal information including any legal documents and the names of medical and social service professionals currently involved with the resident;
- (11) Medication records; and
- (12) Reports of unusual incidents or accidents involving the resident.

The conditions under which the licensee is responsible for a resident's valuables and funds must be documented in the individual's record, and all income and disbursements recorded on an ongoing basis.

### **Residents' Rights**

Each ARCH must have written policies describing residents' rights. They must be posted and made available to residents or their guardian and the responsible agency, and shall include the right to:

- (1) Be fully informed of their rights and all rules relating to conduct;
- (2) Be informed of the services available and any charges that are in addition to the basic per diem rate;
- (3) Have not less than two weeks' notice of transfer or discharge;
- (4) Be encouraged to exercise their rights; be free from interference, coercion, discrimination or reprisal; and be provided with the address and phone number of their case manager, the Long Term Care Ombudsman, and the licensing agency;
- (5) Have explained the conditions under which their financial affairs may be managed by the facility;
- (6) Be free from humiliation, harassment, threats, and restraints; provided that restraints may only be used when necessary to protect the resident or others from injury, and that orders of the resident's physician for restraints are obtained immediately;
- (7) Have access to their own records and have all personal and medical records kept confidential;
- (8) Be treated with understanding and respect including privacy in treatment and care of personal needs;
- (9) Not be required to perform services for the facility or staff;
- (10) Associate and communicate privately in person, by unopened mail, and by phone;
- (11) Participate in social, religious, health, and community programs unless medically contraindicated;

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- (12) Retain and use personal items unless prohibited by the physician or when such use would infringe upon the rights of other residents;
- (13) If married, be assured privacy for visits by the spouse, and if both are residents, allowed to share a room;
- (14) Have reasonably flexible daily visiting hours;
- (15) Refuse to live in a particular facility;
- (16) Not suffer dietary restrictions as a form of punishment;
- (17) Have a right to locked storage space;
- (18) Be free from mental, financial, verbal, sexual, and physical abuse, exploitation, and neglect;
- (19) Manage their personal funds; and
- (20) Retain their personal physician.

### **Departmental Action for Noncompliance**

If a licensee is found in noncompliance with any rule, the Department is required to notify them in writing and cite the specific area or areas of noncompliance. One or more of the following actions may be taken by the Department:

- (1) Impose fines;
- (2) Impose restrictions;
- (3) Revoke the license;
- (4) Issue a provisional license;
- (5) Establish deadlines for correction of citation;
- (6) Approve or disapprove a written plan of correction submitted by licensee;
- (7) Suspend admissions.

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If the citation is not corrected as specified in the notice or the approved plan of correction, the Department may impose fines or restrictions, revoke the license, or issue a provisional license. Major citations that can result in fines, restrictions, or license revocation include:

- (1) Mental, financial, verbal, sexual or physical abuse, or neglect;
- (2) Misappropriation of funds or property;
- (3) *Failure to obtain departmental approval for activity or employment outside the ARCH;*
- (4) Absence of the operator without providing coverage by a responsible adult;
- (5) Admitting residents in excess of the licensed capacity;
- (6) Admitting residents who need intermediate, skilled, or acute care;
- (7) Failure to safeguard medications and comply with physician's orders;
- (8) *Failure to correct deficiencies as specified by the Department;*
- (9) Failure to conduct fire drills;
- (10) Failure to inform residents of their rights on or before admission; and
- (11) Violations that threaten the health and safety of residents.

Decisions of the Department are final twenty days after service unless a hearing is requested in writing.

### **County Regulations**

While the Department of Health rules include certain structural requirements for safety and accessibility, the county fire and building codes also apply to ARCH facilities. In case of a conflict, the Department of Health rules require that the stricter provision be imposed. *Approval and inspection for compliance with county codes is the responsibility of the administering county agency.*

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### Administration<sup>1</sup>

The ARCH licensing and inspection program is the responsibility of the Licensing Section of the Department of Health's Hospital and Medical Facilities Branch. This unit has a staff of fifteen and one-half. Three and one-half are clerical and twelve are nursing or other health professionals. The section is located on Oahu and staff travel to the neighbor islands as needed. The neighbor island district health offices provide support by conducting the initial screening of applicants for new licenses. Sanitation, fire, and building code compliance is the responsibility of the county in which facilities are located.

The basic procedure for Department of Health facility inspection consists of a first inspection about six months after a license is first issued. This is a "teaching" inspection and citations are not usually issued. After the first inspection, regular annual inspections are made. A written deficiency list is presented to the operator who is responsible for preparing a deficiency correction plan. This plan is submitted to the Department for approval. A follow-up inspection may be made to confirm corrections. Alternatively, the operator's word that deficiencies have been corrected may be accepted in lieu of a physical inspection. A Department of Health nutritionist visits each facility approximately once a year.

The case workers assigned to each resident receiving public assistance also conduct periodic visits to review their clients' status and ensure that proper care is being given.

The Department of Human Services assigns each client a Level of Care designation based on the recommendation of the Department of Health or Department of Human Services case worker. The client's income, LOC designation and the type of facility in which the client resides determine the total payments the client can receive. The Department of Human Services is responsible for administering payments to individuals.<sup>2</sup>

### Endnotes

1. Interview with Dr. Elisabeth Anderson, Hilda Kaneshiro, and Maryrose Roldan, Hospital and Medical Facilities Branch, Department of Health, June 22, 1992.
2. Interview with Pat Snyder and Robert Ng, Program Development, Adult Services, Department of Human Services, July 14, 1992.

## **Chapter 4**

### **RECENT ARCH RESEARCH**

Hawaii's ARCH program has been in a state of transition and development since the consolidation of adult boarding homes and adult care homes in 1986.<sup>1</sup> The 1986 legislation shifted licensing responsibility for the former boarding homes from the Department of Social Services and Housing (now Department of Human Services) to the Department of Health. In implementing the new law, DOH had to ensure the continued care of the then current residents of care facilities and, at the same time, begin to apply more stringent requirements for both facilities and operators. The new rules also had to provide adequate time and guidance for operators to comply with the new system while continuing to care for their residents.

It is understandable that the transition has been difficult at times. It involved thousands of citizens, many of whom were not always able to represent their own interests. Hundreds of facility operators, most of whom were running small family businesses, had to up-grade their facilities, meet new training and experience requirements, and learn to work with new rules as well as with new regulators. The Department of Health experienced a significant workload increase with the new licensing and inspection responsibilities.

Under these circumstances it was to be expected that questions would be raised regarding the purpose and need for certain requirements, the manner in which they were to be implemented and enforced, what the program's costs would be, and how to pay for it. Many of these issues have been brought before the Legislature since 1986. In response, several studies and a special interim report of the House Subcommittee on Adult Residential Care Homes were undertaken. The following summarizes the findings and recommendations of these efforts as they relate to this study.

#### Report of the Subcommittee on Adult Residential Care Homes<sup>2</sup>

In 1991 the Hawaii House of Representatives' Subcommittee on Adult Residential Care Homes conducted a series of four monthly meetings from July through October. Individuals involved in all aspects of the ARCH program participated in the round-table discussions held by the Subcommittee. Two of the meetings focused on identifying the needs of ARCHs, one on the obstacles and problems of ARCH operators, and one on developing recommendations and proposals to address the needs and problems identified by the group.

The Subcommittee's report identified specific concerns, recommended actions to address them, and was submitted to the Speaker of the House of Representatives October 31, 1991. The report and a legislative package to implement the recommendations was considered by the Legislature during the 1992 Regular Session. Legislative action on the report's recommendations included resolutions requesting further study on some issues

including those covered in this report. In 1992 the Legislature also appropriated funds for a \$20 per month across-the-board increase in state payments to eligible ARCH residents.

The recommendations for administrative and regulatory action were referred to the appropriate agencies. A comprehensive revision of the Department of Health's ARCH rules was undertaken in 1992. The new rules are responsive to a number of issues raised in the Subcommittee's report. The new rules, which are in draft form as of this writing, are discussed in Chapter 3.

A Study of the Adequacy of Adult Residential Care Home  
Payments and Problems of Vacancy, Admission, and Demand<sup>3</sup>

The Office of the Legislative Auditor conducted this study in response to a 1988 legislative request. The report was prepared under contract by Research Information Services.<sup>4</sup> The portion of the study that examines payments to ARCH residents relates directly to one of the topics of this report.

Prospective cost estimates were developed for Type I and Type II ARCHs and those estimates were compared with the total assistance provided to ARCH residents receiving state and federal assistance. (A key assumption of the analysis was that domiciliary care payments should cover domiciliary care costs.<sup>5</sup>) The report identified costs and determined the value of the operators time needed to perform activities required by the ARCH rules, e.g., housekeeping, food preparation, and personal care assistance.

With regard to payments, the report recommended that:<sup>6</sup>

- (1) The three Level of Care (LOC) payment categories and certification procedures be modified to reflect care time requirements;
- (2) The \$108 payment differential between Type I and Type II ARCHs be retained, and include LOC I residents in the coverage;
- (3) The \$100 special care needs supplement be retained;
- (4) The state supplements be consolidated and increased as follows:

## RECOMMENDED STATE SUPPLEMENT INCREASE

1989

<u>LOC</u>	<u>Type I ARCH</u>	<u>Type II ARCH</u>
LOC-I	\$140	\$248
LOC-II	210	210
LOC-III	290	290

The estimated cost of the recommended revisions was \$2.1 to \$2.8 million. The Legislature funded payment adjustments of approximately one-half that recommended in the Auditor's study.<sup>7</sup>

#### Department of Health and Department of Human Services Reports

Both the Department of Health and Department of Human Services have examined several of the issues that are topics of this study. In response to a request of the 1987 Legislature (H.R. No. 204, Requesting a Study of the Ways in Which the State Can Assist the Operations of Adult Residential Care Homes), DOH examined ways to improve the ARCH licensing program on the neighbor islands. The report recommended that three additional DOH staff positions (including clerical support, space and equipment) be located on Hawaii, Kauai, and Maui/Molokai. The Department felt that on-island staff would improve response time and allow better follow-up and monitoring, including complaint investigation.<sup>8</sup>

House Resolution No. 204 also requested the then-Department of Social Services and Housing to examine and submit recommendations to improve the reimbursement system for state-assisted ARCH residents. The Department's response outlined the history of Hawaii's current system and summarized those used by other states. It concluded with the following recommendations:

- (1) Consolidate all payments to LOC III;
- (2) Add any new state supplement to the existing SSI supplement which is funded by the State but administered by the Social Security Administration;
- (3) Retain the existing \$55<sup>9</sup> state supplement but have it administered by the Social Security Administration (currently, DHS issues separate checks because the Social Security system cannot accommodate any more separate state supplements);
- (4) Retain the \$108 differential for Type II ARCH residents;



## RECENT ARCH RESEARCH

- (5) Eliminate the \$100 special care needs supplement and apply the funds to the cost of consolidating LOCs; and
- (6) Provide for regular review of the reimbursement rate to ensure payments are adjusted to meet cost-of-living increases.<sup>10</sup>

The DOH and DHS have also developed a joint position on the issue of the Special Care Needs Payment program (see Appendix D). This report was prepared as part of the Subcommittee on Adult Residential Care Homes' interim report and is an attachment to the final report.<sup>11</sup>

The report finds that the basic problem of too few Intermediate Care Facility (ICF) beds should not be addressed by expanding a program that places ICF level patients in ARCHs which are not licensed to provide ICF level care. The departments proposed a limited program to ensure adequate care for ARCH residents who deteriorate while in a care home. While such individuals are awaiting appropriate placement, a special unit would work directly with the affected ARCH operators to identify and provide for the person's special care needs. The program would require additional department staff.<sup>12</sup>

### A Model Act Regulating Board and Care Homes: Guidelines for States<sup>13</sup>

This model legislation offers a comprehensive and detailed system of regulation for care homes (see Appendix E). Under the model, detailed regulations would be established by statute rather than departmental rules as is the practice in Hawaii. However, the level of detail and areas covered are comparable to those proposed by the Department of Health in its September 17, 1992, draft of Chapter 11-103, Hawaii Administrative Rules, the proposed ARCH rules summarized in Chapter 3 of this report.

## Endnotes

1. 1985 Haw. Sess. Laws, Act 212.
2. Hawaii, Legislature, House of Representatives, Subcommittee on Adult Residential Care Homes, Report of the Subcommittee on Adult Residential Care Homes, to Speaker Daniel J. Kihano and Representative James Shon, Chairperson, Committee on Health, October, 1991.
3. Hawaii, Office of the Legislative Auditor, A Study of the Adequacy of Adult Residential Care Home Payments and Problems of Vacancy, Admission, and Demand, Report No. 89-13 (Honolulu: January 1989).
4. Ibid., Introduction.
5. Ibid., p. 7.
6. Ibid., pp. 24-25.

HAWAII'S ADULT RESIDENTIAL CARE PROGRAM: AN EVALUATION OF SELECTED CONCERNS

7. Telephone interview with Ernest Acopan, Hawaii Department of Human Services, Income Maintenance Section, October 23, 1992.
8. Hawaii, Department of Health, Report in Response to House Resolution Number 204, Entitled "Requesting a Study of the Ways in Which the State Can Assist the Operations of Adult Residential Care Homes" (Honolulu: 1988), p. 5.
9. This supplement has since been increased to \$115. *Acopan interview.*
10. Hawaii, Department of Social Services and Housing, Report transmitted from the Governor's Office to the House of Representatives, November 13, 1987, p. 30.
11. Hawaii, Department of Health and Department of Human Services, Report from DOH and DHS on ARCH Special Care Needs Payment Program, August 22, 1991.
12. Ibid.
13. Prepared for the United States Department of Health and Human Services by the American Bar Association Commission on Legal Problems of the Elderly and Commission on the Mentally Ill.

## Chapter 5

### HAWAII'S ADULT RESIDENTIAL CARE HOMES

As of July 1992, there were 94 Type I and 14 Type II licensed ARCHs in Hawaii providing a total of 2,620 beds. Some 400 (15 percent) of these beds were vacant in mid-1992.<sup>1</sup> Eighty-three percent (2,184) of ARCH beds are in Type I facilities serving five or fewer residents. While facility closures have ranged between twenty and twenty-five per year since 1989,<sup>2</sup> this has been off-set by the opening of new facilities thus maintaining a stable, but not growing, inventory of ARCH beds over the past three years.<sup>3</sup>

Similarly, the facility and bed-count on each island has also been stable during this period. Oahu, while losing four Type I ARCHs between 1989 and 1992, maintained a total of ten Type II ARCHs. The Oahu 1992 bed-count of 2,164 reflected an increase of thirty-three beds over the 1989 total. The island of Maui has no Type II facilities but has seventeen Type I ARCHs providing seventy-three beds. This is unchanged from the 1989 inventory. Kauai experienced a small decrease in total beds with the loss of two Type I ARCHs but has 134 beds provided by twenty-three Type I and three Type II ARCHs. Molokai has ten Type I and one Type II ARCHs providing fifty-six beds. This is a small increase over 1989 due to a net gain of one Type I ARCH. Hawaii County experienced the greatest loss of inventory between 1989 and 1992. The island's single Type II facility closed and the total number of Type I ARCHs dropped from fifty-two to forty-eight. As a result, the overall bed inventory dropped from 220 to 193.<sup>4</sup>

There is a significant variation in the ratio of ARCH beds to population among the islands. It ranges from 1:615 (one ARCH bed for every 615 residents) on the island of Hawaii, to 1:119 on Molokai. There are no ARCH facilities on either Lanai or Niihau. On Maui the ratio is 1:233, on Oahu 1:371, and on Kauai 1:375. If Lanai and Niihau are added to Maui and Kauai, respectively, the ratios are Maui 1:267, and Kauai 1:377. The overall state ratio is 1:409.<sup>5</sup>

#### ARCH FACILITIES AND BEDS

##### By Island - 1992

	<u>Facilities</u>	<u>Beds</u>	<u>Ratio</u> <u>Beds to 1990 Pop.</u>
Hawaii	48	193	1:615
Maui	17	73	1:233
Lanai	0		
Molokai	11	56	1:119
Oahu	406	2,164	1:371
Kauai	26	134	1:375
Niihau	<u>0</u>	<u>      </u>	<u>      </u>
State Total	508	2,120	1:409

# HAWAII'S ADULT RESIDENTIAL CARE PROGRAM: AN EVALUATION OF SELECTED CONCERNS

ARCH residents receiving government assistance are divided about equally between those whose cases are managed by the Department of Human Services (DHS) and those with case management by the Department of Health (DOH).<sup>6</sup> The DHS clients are primarily the low income elderly. About one-half of the DOH clients have developmental disabilities and one-half have chronic mental illness.<sup>7</sup>

The case workers determine the Level of Care (LOC) for each client. The LOC, in turn, is the basis for the payments to clients. Since 1987, the proportion of state-assisted ARCH residents in the highest LOC category appears to be increasing. The percentage figures in the following table represent all state-assisted ARCH residents for 1987 and 1989. The 1991 data include only DHS clients because the clients-by-LOC data breakdown is no longer tabulated. However, DHS clients represent about one-half of the total case load and may be assumed to be reasonably representative of the overall LOC distribution.

## STATE-ASSISTED ARCH RESIDENTS By Level of Care<sup>8</sup>

<u>DOH/DHS</u>	<u>LOC I</u>	<u>LOC II</u>	<u>LOC III</u>	<u>TOTAL</u>
1987	263 (15%)	231 (13%)	1,246 (72%)	1,740
1989	146 (8%)	237 (13%)	1,439 (79%)	1,822
<u>DHS Only</u>				
1991	26 (3%)	62 (7%)	863 (90%)	951

As of July 1992 the maximum payments available to ARCH residents were:<sup>9</sup>

## MAXIMUM PAYMENTS AVAILABLE

	<u>LOC I</u>	<u>LOC II</u>	<u>LOC III</u>
Federal SSI	\$422.00	\$422.00	\$422.00
<u>Maximum State Assistance</u>			
Type I ARCH	\$284.90	\$369.90	\$471.90
Type II ARCH	338.90	477.90	579.90
Special Care Needs Supp.			100.00

## Endnotes

1. Letter from Maryrose Roldan, R.N., Unit Supervisor, Hospital and Medical Facilities Branch, Department of Health, to Nell Cammack, June 25, 1992.
2. Ibid.
3. Ibid.
4. Ibid.
5. Based on 1990 population data. The State of Hawaii Data Book, 1991, A Statistical Abstract, Department of Business, Economic Development and Tourism, State of Hawaii, Table 28 (Honolulu: November 1991), p. 47.
6. Interview with Pat Snyder and Robert Ng, Program Development, Adult Services, Department of Human Services, July 14, 1992.
7. Interview with Dr. Elisabeth Anderson, Hilda Kaneshiro and Maryrose Rolden, Hospital and Medical Facilities Branch, Department of Health, June 22, 1992.
8. 1987 data from Department of Human Services, Report to the Legislature on H.R. 204, Requesting a Study of Adult Residential Care Homes, State of Hawaii (Honolulu: November 13, 1987), p. 9; 1989 data from Hawaii, Office of the Legislative Auditor, A Study of the Adequacy of Adult Residential Care Homes Payments and Problems of Vacancy, Admission, and Demand, State of Hawaii (Honolulu: January 1989), p. 4; and 1991 data from telephone interview with Pat Snyder, Program Development, Adult Services, Department of Human Services, October 23, 1992.
9. Telephone interview with Ernest Acopan, Income Maintenance Section, Department of Human Services, October 23, 1992.

## **Chapter 6**

### **SPECIAL CARE NEEDS ISSUES**

#### **Discussion**

The State's domiciliary and medical care delivery system is a continuum designed to place clients in the appropriate setting based upon the type and level of care most appropriate to their needs. In order for the system to work properly, each client's care needs must be accurately identified and monitored to note significant changes that call for a reevaluation and possible change of placement. Equally important is ensuring that sufficient beds are available in facilities that provide the care required by the client population. This is a complex task that relies heavily upon the judgment of case workers who determine client care needs, and the ability of the public and private sectors to anticipate and provide the facilities to deliver needed care services.

Four types of care facilities are licensed in Hawaii.

**Adult Residential Care Homes** are primarily community-based domiciliary care facilities that offer assistance in activities of daily living, personal care services, protection, and certain basic health services. They are not licensed to provide intermediate, skilled, or acute care services.<sup>1</sup>

**Intermediate Care Facilities (ICF)** offer domiciliary care and health care normally provided by licensed nursing personnel, but not skilled care on a 24-hour basis.<sup>2</sup>

**Skilled Nursing Facilities (SNF)** are primarily health care facilities providing care and services ordinarily rendered or supervised by registered nurses on a twenty-four-hour basis.<sup>3</sup>

**Acute Care Facilities** provide intensive twenty-four-hour care by skilled medical personnel.

*The issue of a Special Care Needs Supplement (SCNS) arises from two factors. One is that there are not enough ICF beds available for all persons needing ICF level care. Some of these clients are currently wait-listed in ARCHs, although only twenty-six ARCH residents were formally designated as ICF eligible under the SCNS program as of August 1992.*<sup>4</sup>

The second issue is related to the fact that, prior to 1986, an SCNS was available to ARCH residents who had specific conditions such as incontinence. These conditions while, not in themselves the basis for ICF designation, create additional time requirements for operators and may cause placement difficulties.<sup>5</sup> When the Department of Human Services changed the SCNS eligibility criteria to limit eligibility to those requiring ICF care, it "grandfathered in" those in ARCH residents receiving the supplement under the previous specific condition criterion. Of the 132 ARCH residents receiving the supplement as of

## **SPECIAL CARE NEEDS ISSUES**

August 1992, 106 are grandfathered under the previous rules.<sup>6</sup> As a result, ARCH residents with the same or comparable conditions receive different levels of assistance depending upon which rules were applicable when they were placed in the ARCH. ARCH operators see this as inequitable.<sup>7</sup>

ARCH operators believe that consideration should be given to adding a fourth LOC payment category for those residents with special needs.<sup>8</sup> The DHS cites the difficulty of objectively identifying the types and levels of needs that should qualify if the program were to be expanded to cover non-ICF conditions. Additionally, they are concerned about the current program because it supports placement of clients in facilities that are not licensed to provide the services that the client requires.<sup>9</sup> In fact, DHS is actively trying to terminate the SCNS by seeing that ICF level ARCH residents are moved into ICFs as soon as possible.<sup>10</sup>

On May 21, 1992, the State Health Planning and Development Agency announced conditional approval of six certificate of need applications for long-term care facilities. While the agency estimates a need for 881 long-term beds by 1995, the conditional approvals, if constructed, will provide 772 beds. All the approved facilities are to be located on Oahu.<sup>11</sup> When these beds become available, the shortage of ICF beds will be significantly relieved.

### **Findings and Recommendations**

House Concurrent Resolution No. 5 requests a feasibility assessment of: (1) expanding the current SCNS to include payments to ARCH residents whose condition deteriorates while in an ARCH, and (2) restructuring the LOC classification system to include a special care needs category.

1. Hawaii's ARCH program is one element of the State's system of care for low-income adults. It provides community-based residential care, usually in a family setting. ARCHs are primarily domiciliary facilities and are licensed to provide only minimal health monitoring and care. While the lack of sufficient ICF beds results in temporary placement of some ICF clients in those ARCHs able to care for them, establishing this practice as an integral part of the care system would mean accepting inappropriate placement as an alternative to meeting the real need of those clients, which is additional ICF beds. Furthermore, while the impact on participating operators' liability insurance rates has not been determined, providing care for which one is not licensed could have an impact on both the costs and availability of needed coverage.

The DOH and DHS have recommended that the State take steps to ensure that ICF clients in ARCH facilities receive the additional care they require until appropriate placement can be arranged. This proposal relieves the ARCH operator of the responsibility for providing care which they are not licensed to provide.

## HAWAII'S ADULT RESIDENTIAL CARE PROGRAM: AN EVALUATION OF SELECTED CONCERNS

**Recommendation.** The Legislature should consider implementing the program proposed by the Department of Health and the Department of Human Services to establish a special unit to monitor and provide care for ICF clients who must be placed in ARCHs while awaiting appropriate placement (see Appendix D). However, priority should be given to providing sufficient ICF beds, and the recommended program considered temporary. It should be phased out as more ICF beds become available.

The estimated cost of the DOH and DHS program is \$233,000.<sup>12</sup>

2. ARCH operators have suggested that a fourth Level of Care be established to accommodate the additional time and costs associated with residents who have problems such as incontinence, Alzheimer's disease, or behavior problems. This would be similar to the previous Special Care Needs Program that provided an additional \$100 per month to ARCH residents with such conditions but who were not otherwise classified as ICF level clients. This proposal reflects the willingness of operators to accept this type of resident if they can be fairly compensated for the additional work and expense.

The current system for classifying residents by LOC is admittedly subjective<sup>13</sup> and, as pointed out by the Auditor<sup>14</sup> does not fully account for the value of the operator's time. The Auditor recommended that the LOC three category system be retained but restructured to account for the value of the operator's time. The report also recommended that payments for all three LOCs be increased. Following the report, the Legislature appropriated funding for the LOC payment increases. However, the amounts are less than those recommended.

Because ARCH operators are largely dependent upon the resources of SSI supported residents, any short-fall between the costs of care and funds available to pay those costs will be borne by the residents through reduced services. The primary responsibility of the State is to see that ARCH residents have sufficient funds to pay for the types of care they need.

**Recommendation.** Rather than creating a new LOC category, the Legislature should appropriate funds to bring all state supplements for ARCH residents up to the amount recommended by the 1989 Legislative Auditor's Report. If possible, the recommended amounts should also be adjusted by a cost-of-living factor.

This across-the-board adjustment would provide substantial additional funds for residents with special problems. Assuming that these persons are considered LOC III under the present system, they would receive increased payments of \$57 per month or \$684 per year.

The increases for LOCs I and II should help reduce any tendency on the part of case workers to over-classify clients as a way to get payments in line with costs.



## SPECIAL CARE NEEDS ISSUES

### RECOMMENDED PAYMENT INCREASES

	<u>Type I ARCH</u>	<u>Type II ARCH</u>
LOC I	\$ --	\$36
LOC II	17	17
LOC III	57	57

Based on the estimate in the Auditor's report the cost of this recommendation would be \$1 million to \$1.5 million.

An additional Level of Care for special needs should not be established. Departmental efforts should be focused on reviewing and refining the existing three level system to reflect the costs of providing appropriate care.

### Endnotes

1. Hawaii Rev. Stat., §321-15.1.
2. Section 11-103-1, Hawaii Administrative Rules (September 17, 1992, proposed draft).
3. Ibid.
4. Hawaii, Department of Health and Department of Human Services, Report from DOH and DHS on ARCH Special Care Needs Payment Program, August 22, 1992, prepared in response to a request from the House Subcommittee on Adult Residential Care Homes.
5. Hawaii, Office of the Legislative Auditor, A Study of the Adequacy of Adult Residential Care Home Payments and Problems of Vacancy, Admission, and Demand, Report No. 89-13 (Honolulu: January 1989), pp. 22-28.
6. Ibid.
7. Interview with Roy Pillen and Eugene Cachola, President and Vice President, United Group of Home Care Operators, July 17, 1992.
8. Hawaii, Legislature, House of Representatives, Subcommittee on Adult Residential Care Homes, Report of the Subcommittee on Adult Residential Care Homes, to Speaker Daniel J. Kihano and Representative James Shon, Chairperson, Committee on Health, October 1991.
9. Interview with Pat Snyder and Robert Ng, Program Development, Adult Services, Hawaii Department of Human Services, July 14, 1992.
10. DOH and DHS Report of August 1991.
11. Letter from Kina'u Boyd Kamali'i, Administrator, State Health Planning and Development Agency, to Jeanette C. Takamura, Director, Executive Office on Aging, May 21, 1992.
12. DOH and DHS Report of August 1991.

## **HAWAII'S ADULT RESIDENTIAL CARE PROGRAM: AN EVALUTATION OF SELECTED CONCERNS**

13. Snyder and Ng interview.
14. Legislative Auditor's Report, p. 20.

## **Chapter 7**

### **CARE OF ARCH OPERATORS' FAMILY OR RELATIVES**

House Resolution No. 8 (see Appendix B) requests a review of the feasibility and ramifications of allowing ARCH operators to take in relatives or family members as residents of their ARCH. The Resolution states that, "... Section 321-15.1 of the Hawaii Revised Statutes prohibits ARCH operators from admitting any person who is related to their family into their care home. . . ." This statement is inaccurate in that the provision simply defines those facilities that must be licensed to include:

. . . 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, but who do not need the professional health services provided in an intermediate, skilled nursing, or acute care facility.<sup>1</sup>

This does not prohibit ARCH operators from caring for relatives or family members. Nor does it prohibit them from charging a fee for such care.<sup>2</sup> It does require that, if care is provided to nonrelatives for a fee, the facility must be licensed. However, since Type I ARCHs are limited to serving five or fewer paying residents, a family member who lives in the part of the home that is designated as an ARCH would, in all likelihood, be counted toward the legal maximum of five.<sup>3</sup>

A related issue is whether ARCH residents being cared for in a relative's facility should be eligible for state Level of Care payments. Level of Care payments are payments for domiciliary care.<sup>4</sup> The law defines domiciliary care as:

. . . the provision of twenty-four-hour living accommodations and personal care services and appropriate medical care, as needed, to adults unable to care for themselves by persons unrelated to the recipient in private residences or other facilities.<sup>5</sup>

This is the type of care that can usually be provided by one's family. (The Executive Office on Aging estimates that eighty to eighty-five percent of long-term care in Hawaii is provided informally by family and friends.<sup>6</sup>) The LOC payment system is for those who have no alternative but to pay for the care they need. State LOC payments ensure that low-income adults have access to the type of care they need by providing the financial resources required when the individual must pay for such care.

If the intent of H.R. No. 11 is to propose that persons residing in a relative's ARCH be eligible for LOC payments, the basic purpose of the program must be considered. Such a

change would establish a precedent for direct financial assistance for domiciliary care provided by relatives, and create an incentive for them to charge a fee for care. While payments could be limited to care offered in a licensed facility, a major question of equity arises with regard to comparable care being provided in an informal setting.<sup>7</sup> This could involve up to an estimated 27,000 to 34,000 of Hawaii's impaired elderly receiving informal care<sup>8</sup> plus non-elderly persons who are disabled and in informal care settings. Alternatively, ARCH licensing requirements could be eased to allow informal care givers to qualify as licensed ARCH operators.

## Recommendations

H.R. No. 8 requests:

- (1) A cost analysis where appropriate;
- (2) The impact on entitlements such as Medicaid or Medicare; and
- (3) *Proposed implementing legislation.*

1. The ARCH licensing provisions do not prohibit ARCH operators from admitting relatives as residents in their facilities and there are no direct state costs associated with this practice. However, were LOC payments to be allowed for these residents, additional program costs could be expected. The amounts cannot be estimated because the number of persons who would become eligible is not known.

To the extent that the relatives of ARCH operators are receiving payments as residents of other facilities, there would be no new costs if they were transferred to a relative's ARCH. Again, the number of ARCH residents who might be eligible is not known.

With regard to persons who might become eligible (those currently receiving informal care who might be admitted as paying residents if eligible for LOC payments), maximum annual LOC payments per resident would amount to \$3,418.80 for LOC I, \$4,439.80 for LOC II, and \$5,662.80 for LOC III in Type I facilities. (LOC III clients eligible for the special care needs supplement would receive an additional \$1,200 annually.) If one-half of the state's 500 operators had one relative that became eligible at LOC II, the annual cost would total approximately \$900,000.

2. The ARCH program does not directly involve Medicare or Medicaid entitlements. Were the proposal implemented, SSI payments might be reduced if recipients were deemed to be members of an operator's household rather than a paying resident.

## CARE OF ARCH OPERATORS' FAMILY OR RELATIVES

3. ARCH operators may admit relatives as residents of their facilities under current law and regulatory provisions.

The Level of Care payment provisions should not be amended to allow domiciliary care payments to persons living in an ARCH operated by a relative unless the Legislature is prepared to consider extending the program to all persons receiving care from relatives, whether in a licensed or unlicensed setting.

However, if the change is to be considered, section 346-1 should be amended as follows:

"Domiciliary care" means the provision of twenty-four-hour living accommodations and personal care services and appropriate medical care, as needed, to adults unable to care for themselves by persons unrelated to the recipient in private residences or other facilities[.]; provided that assistance may be granted for domiciliary care provided in a licensed adult residential care home operated by a relative of the recipient if the recipient is otherwise qualified. "Domiciliary care" does not include the provision of rehabilitative treatment services provided by special treatment facilities.

## Endnotes

1. Hawaii Rev. Stat., §321-15.1 (definition of "adult residential care home").
2. Department of Health testimony before the House Committee on Health and Human Services, February 18, 1992.
3. Hawaii Rev. Stat., §321-6(b)(2), states that Type I homes shall allow "...group living by five or fewer unrelated persons. . . ." I could be argued that a relative of the operator does not have to be counted toward the maximum even if the relative is charged a fee. However, this is an unlikely interpretation.
4. Hawaii Rev. Stat., §346-53(c).
5. Ibid., §346-1 (definition of "domiciliary care").
6. Hawaii, Executive Office on Aging, Long Term Care Plan for Hawaii's Older Adults-A First Step in Planned Care (Honolulu: Revised July 1988), p. 9.
7. A Type I ARCH operator who operates at a full capacity of five residents serving only state-assisted clients can expect an annual income on the order of \$50,000 (based on two LOC II residents and three at LOC III). An annual income at this level does not reflect a financial basis for special consideration with respect to the cost of caring for a relative.
8. Hawaii, Legislative Reference Bureau, Tax Credits and Care for the Elderly: The Public Policy Issues, Report No. 10 (Honolulu: November 1989), p. 8.

## **Chapter 8**

### **MOLOKAI**

House Resolution No. 11 (1992) (see Appendix C), requests a review of the concerns of Molokai's ARCH operators. The resolution notes the higher cost-of-living and lack of expedient and efficient access to support services with which ARCH operators on Molokai must contend relative to those in more urban areas and those on Oahu. While the following analysis is limited to Molokai, as requested in H.R. No. 11, it is generally applicable to most Type I ARCH facilities serving remote, rural communities on all the neighbor islands.

There are ten private ARCHs on Molokai and one operated by the Department of Health at Kalaupapa. These eleven facilities provide fifty-six beds giving Molokai the State's highest ratio of beds to population with one bed for every 119 residents.<sup>1</sup> A questionnaire (see Appendix F) was sent to all ARCH operators on Molokai asking them: (1) to indicate which three of the eight concerns listed in H.R. No. 11 were most important to them, and (2) a few general questions about their business. Nine of the ten privately operated ARCHs responded.

#### **Molokai Arch Questionnaire Findings**

##### **Operations**

The questionnaire responses show that Molokai's ARCHs are family businesses that are physically part of the operator's home. Most are operating at capacity with one-third reporting a vacancy at the time the questionnaire was answered. They have no regular paid employees working twenty or more hours per week, and are members of one of Hawaii's professional organizations for care home operators. They are satisfied with the services the organization offers but would be willing to pay higher dues for additional services.

##### **Interaction with DOH and DHS**

In dealing with the Department of Health and Department of Human Services, they report seeing a staff member more than twice a year, and telephoning as needed. The staff of both departments are considered to be polite, knowledgeable, helpful and supportive.

##### **Concerns**

When asked to identify their top three concerns from the eight listed in H.R. No. 11, the responses were separated into four groups.

## MOLOKAI

<b>Unanimous</b>	H.R. No. 11, Concern No. 8. Across-the-board level of care pay increases.
<b>Majority</b>	H.R. No. 11, Concern No. 6. Access to group rates for medical, liability and business insurance; sliding fee accounting; and legal services.  H.R. No. 11, Concern No. 4. Grants, low-interest loans, and tax break incentives to reduce business start-up costs.
<b>Minority</b>	H.R. No. 11, Concern No. 5. Establish government liaison office for assistance with permits, zoning, and regulations.  H.R. No. 11, Concern No. 7. Increase residents' personal allowance.
<b>Zero-Two</b>	H.R. No. 11, Concern No. 1. Increase staff at Molokai General Hospital. (While this item received little support, three respondents identified a need for an on-island nutritionist.)  H.R. No. 11, Concern No. 2. Additional DOH and DHS on-island support staff  H.R. No. 11, Concern No. 3. Create incentives for new and expanded business ventures for ARCH operators in the area of care giving.

A series of questions about financial issues affirmed the strong support for financial assistance and help in reducing the costs of insurance and professional services. While most operators had not taken out commercial loans for facility improvements or operations, all were interested in the possibility of financial help through the federal Small Business Administration (SBA) and the Department of Business, Economic Development and Tourism (DBEDT). For most, this is related to their existing ARCH rather than expanding into other areas of business or employment.

The major problems facing Molokai's ARCH operators are a function of the fact that they are running small family businesses, and not specifically due to the type of business. They perceive access to financial resources and ways to reduce business costs as their priority concerns. The Department of Health and the Department of Human Services are not equipped to provide support in these areas. However, state assistance is available through the Department of Business, Economic Development and Tourism's small business and loan programs. Support at the federal level may be available through the Small Business Administration.

The unanimous support for an across-the-board increase in level of care payments similarly indicate Molokai ARCH operators concerns with financial matters. The Legislature

appropriated additional funds in 1992 (effective July 1, 1992), that allowed a \$20 per month across-the-board increase for all state-assisted ARCH residents.<sup>2</sup> This amounts to an additional \$240 per year per recipient. If this is passed through to ARCH operators by way of rate increases, it will provide more than \$1,000 additional annual income to Type I facilities serving the maximum allowable number of five residents.

ARCH operators on Molokai are members of the State's home care professional organizations. These organizations could expand the services they presently offer and, if necessary, increase their current dues to cover the costs of the new services.

## Recommendations

1. The ARCH operators professional organizations (United Group of Home Operators and Alliance of Residential Care Administrators) should:
  - a. Work with the Department of Business, Economic Development and Tourism and the federal Small Business Administration to determine the specific business assistance programs through which ARCH operators can obtain low interest loans and business management training;
  - b. Notify their memberships by newsletter or through special on-island meetings, of the types of assistance available and any eligibility requirements; and
  - c. Serve as the liaison between the operators and government agencies for those operators who want to apply for such assistance.
2. The ARCH operators' professional organizations should work with the various insurance companies to *negotiate group medical and liability coverage for their members*. Similarly, prepaid accounting and legal services could be established if there is sufficient interest among operators. These programs should be offered to the entire membership.
3. The Department of Health should evaluate the request by Molokai's ARCH operators for a resident nutritionist. If the probable workload justifies the position, a request should be made to the Legislature. Alternatively, consideration should be given to scheduling more frequent trips to Molokai by the current Department nutritionists. Other staff increases do not appear warranted at this time.
4. Support for an on-island government liaison office for permit, zoning, and assistance with regulations does not justify establishing the service.



## Endnotes

1. See Chapter 4.
2. 1992 Haw. Sess. Laws, Act 300, §26(d).

## **Chapter 9**

### **EVALUATION OF PROGRAM RULES AND ADMINISTRATION**

House Concurrent Resolution No. 5 (1992) (see Appendix A) requests that the administrative rules of the Department of Health and Department of Human Services be evaluated to determine whether they conflict with state policy or hinder the provision of services to the elderly and disabled by imposing excessive financial burdens on ARCH operators. This discussion is limited to the regulation of ARCHs by the Department of Health. The Department of Human Services does not regulate ARCH facilities or operations.

#### **Administrative Rules**

##### **Discussion**

The purpose of administrative rules is to put in writing specific procedures to implement laws. The rules, once formally adopted, have the force and effect of law, and they are equally binding upon the government and those being regulated. They establish the framework within which government and the public interact at the practical day-to-day level.

This evaluation uses the following criteria to determine whether the Department of Health rules for ARCHs support and implement state policy as established by chapter 321 of the *Hawaii Revised Statutes*. Do the rules:

- (1) Implement the law without exceeding its provisions or distorting its intent;
- (2) Define key terms in plain language;
- (3) Identify those authorized to enforce the rules and the conditions under which penalties may be imposed;
- (4) Minimize reliance on subjective assessment and personal judgment by establishing sufficiently specific and detailed provisions; and
- (5) Provide an opportunity for grievances to be heard and redressed.

The September 17, 1992 draft rules summarized in Chapter 3 of this report generally meet these criteria.

The specific provisions do not exceed the mandate of chapter 321, *Hawaii Revised Statutes*, which is to establish standards for ARCH facilities and operators that protect the health, safety and civil rights of ARCH residents.<sup>1</sup> Minimum standards for facilities and qualifications for operators are set, operational requirements are established to protect

residents health and safety, and penalties are provided for failure to comply with the rules. All of these elements are required by state law.

The draft rules define the special terms used in plain English. Enforcement officials are not specified beyond the designation of the Department of Health and its director. The rules require that licensees be notified in writing of conditions that are not in compliance with requirements and the penalties that may be imposed.

The rules are comprehensive and quantify requirements where appropriate. For example, physical space is defined by minimum square footage, training requirements are established in terms of the number of modules required, and coverage requirements are based upon the number hours the operator is absent. While the level of detail may initially appear excessive, it is comparable to that provided in the model legislation developed by the American Bar Association (see Appendix E.)

Licensees cited for noncompliance are given the right to a hearing before the director. No specific provision is made in the rules for disputes or complaints regarding issues other than citations.

House Concurrent Resolution No. 5 also requests an evaluation of whether the rules place an excessive financial burden on ARCH operators. In this review of the Department of Health's draft rules, and in discussions with representatives of ARCH operators no specific provisions that would impose excessive costs were identified. However, Chapter 6 examines the adequacy of current state income supplements for ARCH residents and recommends that they be increased. The basis for the recommended increase is the cost of providing the level of care required by the Department's rules.

### **Recommendations**

The draft rules do not specify the officials who may conduct unannounced inspections nor those empowered to issue citations. Technically, this gives any Department of Health employee the right to enter and inspect an ARCH facility. Most ARCHs are also the operator's home, and an unrestricted right to enter and inspect is unnecessarily broad.

- (1) The rules should provide that only those authorized by the Director of Health may conduct inspections and that they be required to carry and produce upon request appropriate identification.
- (2) The rules should specify that inspections shall be limited to that portion of the facility used as an ARCH, including joint-use areas such as the kitchen, and that the private quarters of the operator and their family may not be entered.
- (3) The Department should retain the right to make unannounced inspections.

The draft rules provide that a hearing may be requested with regard to citations issued for noncompliance. Operators may have substantive complaints and concerns regarding issues other than citations, and should be given the opportunity to request a hearing on such matters.

- (4) The right to request a hearing should apply to all matters covered by the rules.

The section of the rules that lists the records to be maintained by operators includes detailed medical records. ARCHs are not medical facilities and the rationale for this requirement is not apparent. The decision as to what medical information is to be maintained on-site should be left to the resident's physician, case worker and the ARCH operator.

- (5) The Department should consider revising the rules to provide that each resident's records include such medical information as determined to be necessary by the resident's physician, case worker and the operator.

## **Program Administration**

### **Discussion**

The way in which a program is administered is as important as its implementing rules. Program administration determines which elements of a program are to be emphasized and the style of interaction between program staff and those being regulated. Administrative policies establish whether this interaction is formal or informal, adversarial or collaborative.

Many of the concerns expressed by ARCH operators relate to the way the program is administered rather than to particular requirements established by the administrative rules. For example, while accepting the need for on-site inspections, operators want to be notified in advance. Some operators feel that their right to personal privacy is being violated by some inspections. They state that the Department is not always consistent in its determinations of compliance and noncompliance, and that the possibility of license revocation intimidates some operators.<sup>2</sup>

These concerns arise from two features of ARCHs in Hawaii:

- (1) Most of Hawaii's ARCHs are small family-run businesses that are physically part of the operator's home. An unannounced inspection can be perceived as an invasion of the family's privacy.
- (2) ARCH operators are aware of the fact that inspectors have the power to revoke their license and, in effect, put them out of business. This can be a major constraint when inspectors need to discuss specific situations or attempt to

resolve misunderstandings or disagreements with operators. The operator may be afraid to disagree or openly discuss problems with the person who holds such power over their livelihood.

### **Recommendations**

The Department of Health's proposed new administrative rules for ARCH's do not appear to conflict with the State's policy of providing community-based care for eligible low-income adults in a manner that protects their health, safety and civil rights. However, the manner in which the rules are enforced should be examined to ensure that the intent and purpose of the law is achieved.

- (1) Implementation of new rules - When the new administrative rules for ARCHs are implemented, the Department of Health should notify all ARCH operators and provide them with a summary of the major changes that may affect their operations. They should be given the name and phone number of a person who is available to answer any questions they may have regarding the new provisions. The Department should consider working with the operators' professional organizations on this matter. At the same time, Department staff who are in regular contact with operators should have orientation sessions so that the new rules will be interpreted and implemented uniformly.
- (2) Inspections - Program administrators should monitor the manner in which inspections are undertaken to ensure that procedures do not infringe upon the personal privacy of operators and their families.
- (3) Other considerations - Department personnel who deal or work with ARCH operators directly should be particularly sensitive to the possibility that they are seen as persons who wield extraordinary power over the operator's livelihood. In such a situation a suggestion may be interpreted as a directive, and an open, honest discussion of problems quite difficult to achieve. Efforts should be made to minimize this factor. In monitoring facility operations, the inspection staff should be encouraged to coordinate their work with the case workers who visit the same facilities in a capacity that is less threatening than an official inspection.

### **Endnotes**

1. Hawaii Rev. Stat., §321-15.6.
2. Interview with Roy Pillen and Eugene Cachola, President and Vice President, United Group of Home Operators, July 17, 1992.



HOUSE OF REPRESENTATIVES  
SIXTEENTH LEGISLATURE, 1992  
STATE OF HAWAII

H.C.R. NO. 5

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## HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A  
COMPREHENSIVE REVIEW OF ISSUES RELATED TO THE SPECIAL CARE  
NEEDS OF ADULT RESIDENTIAL CARE HOME OPERATORS.

WHEREAS, the Legislature finds that there is an urgent need to expand the provision of affordable, accessible, and high-quality health, housing, and human services to the people of the State of Hawaii; and

WHEREAS, until the 1960s, it was the accepted practice for state governments to place individuals with disabilities, the elderly, and the mentally ill into large public institutions for the provision of medical and custodial care with little regard for the patient's developmental potential or community integration; and

WHEREAS, however, after media reports, patient-consumer advocacy, and litigation exposed the dehumanizing conditions in state-run institutions, many residents were moved to "community-based" residential arrangements; and

WHEREAS, as the result, adult residential care homes were established by caring individuals and families to create a stable living environment for residents, and provide a reasonably safe place for the elderly and the disabled to live; and

WHEREAS, since those developments, the State has attempted to establish minimum regulations for nursing homes and related facilities in response to the need to protect vulnerable individuals from harm; and

WHEREAS, however, it has come to the Legislature's attention that many of Hawaii's adult residential care home operators are declining to continue the provision of services to the elderly and the handicapped; and

WHEREAS, despite recent attempts to deregulate residential care home facilities, it appears that current administrative rules are forcing many care home operators out of business; and

WHEREAS, for example, while a portion of adult resident care home operators receive compensation for the provision of intensive care services, a significant number of care home operators are unable to receive compensation for similar services because of the restrictive language of administrative rules and reimbursement schedules; and

WHEREAS, inasmuch as it is the State's responsibility to promote the accessibility, affordability and quality of health, housing, and human services to all citizens, there is a desperate need for Hawaii's elected officials to enhance the efficiency and development of residential care homes in the State of Hawaii; now, therefore,

BE IT RESOLVED by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, the Senate concurring, that this body requests the Legislative Reference Bureau to conduct a comprehensive review of issues related to the special care needs of adult residential care home operators that shall include, but not be limited to:

- (1) An evaluation of whether current administrative rules by the Department of Health and the Department of Human Services:
  - (A) Conflict with State policy relating to the provision of health, housing, and human services to the elderly, and the handicapped; and
  - (B) Hinder the provision of services to the elderly and the handicapped by placing excessive financial burdens on residential care home operators;
- (2) A determination of the reimbursement needs of adult residential care home operators for specialized services;
- (3) Feasibility assessments of:
  - (A) Expanding compensation for special care services to include patients whose conditions have deteriorated while under the supervision of an adult residential care home facility; and



- (B) Restructuring the levels of care as set forth by the Department of Health and the Department of Human Services to include a level designated for specialized care;

and

- (4) Proposed legislation it deems necessary to enhance the efficiency of the reimbursement process;

and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau submit a report of its findings and recommendations to the Legislature at least twenty days prior to the convening of the 1993 Regular Session; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Director of the Legislative Reference Bureau, the Director of Health, the Director of Human Services, the Director of Commerce and Consumer Affairs, the Alliance of Residential Care Administrators, and the United Group of Home Operators.

OFFERED BY:

John L. Meddler  
Samuel A. Brown  
Bernard C. Sullivan  
David K. Brown  
Daniel A. Brown  
Timothy  
Henry M. Schuch  
Steven A. Cusick

HOUSE OF REPRESENTATIVES  
SIXTEENTH LEGISLATURE, 1992  
STATE OF HAWAII

H.R. NO. 8

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## HOUSE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO STUDY THE  
FEASIBILITY AND RAMIFICATIONS OF AMENDING THE CURRENT  
DEFINITION OF AN ADULT RESIDENTIAL CARE HOME TO ALLOW  
OPERATORS TO TAKE IN A FAMILY MEMBER OR RELATIVE AS A PATIENT  
IN THE CARE HOME.

WHEREAS, Adult Residential Care Homes (ARCHs) were created  
in the 1960s as an effort to quash the dehumanizing practice of  
institutionalizing the mentally ill, the disabled, and the  
elderly; and

WHEREAS, today, ARCHs provide affordable, accessible, and  
high-quality health, housing, and human services to the people of  
Hawaii; and

WHEREAS, the success of these care homes is due to the hard  
work, dedication, and compassion of certain benevolent  
individuals who have dedicated their lives as operators of ARCHs;  
and

WHEREAS, a typical day for an ARCH operator will start  
before the residents awake (which is before dawn) and then must  
perform duties such as preparing meals, hand-feeding certain  
residents, attending to residents' special medical needs, washing  
clothes and beds, and transporting residents to medical  
facilities or activities--to mention only a few--and end the day  
only after all the patients have gone to sleep; and

WHEREAS, this arduous routine is performed by the operators  
on a 7 day a week, 365 day a year basis; and

WHEREAS, yet there is another challenge that these operators  
are willing to add to their seemingly never-ending list of  
commitments in providing care to their fellow human beings; and

WHEREAS, the majority of these care homes, particularly Type  
I ARCHs (homes with five or less residents), are currently  
operated by individuals of Filipino ancestry; and

WHEREAS, due to their cultural heritage, Filipinos pride  
themselves in their belief of having a strong, loving, and  
respecting family; and

WHEREAS, this includes the conviction of personally taking care of the health and welfare of all relatives of the family, especially the elderly members; and

WHEREAS, however, Section 321-15.1 of the Hawaii Revised Statutes, prohibits ARCH operators from admitting any person who is related to their family into their care home; and

WHEREAS, thus, the familial obligations of these operators has created an intolerable situation--pitting the duty of taking care of elderly relatives against the desire of remaining in operation as ARCH providers; and

WHEREAS, to remedy this, many individuals have had to place their relatives in other care facilities--adding yet another burden on an already strained life-style; and

WHEREAS, the Legislature must acknowledge this unusual predicament that these ARCH operators are facing, and realize that cultural beliefs, practices, and duties are imperatives that the people of Hawaii cannot do without; and

WHEREAS, the State cannot afford to lose the valuable service being provided by such individuals whose familial duties are beginning to outweigh their commitment to providing services to others, and therefore must examine the current ARCH regulations on patient admission, specifically the practice of disallowing family members or relatives of the operators to reside in the same care home; now, therefore,

BE IT RESOLVED by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, that this body hereby requests the Legislative Reference Bureau to study the feasibility and ramifications of amending the current definition of an Adult Residential Care Home to allow operators to take in a family member or relative as a patient in the care home; and

BE IT FURTHER RESOLVED that the study shall include, but not be limited to:

- (1) Cost analysis, wherever appropriate;
- (2) Impacts on the proposed amendment on benefit entitlements such as Medicaid or Medicare, if any; and

(3) Proposed statutory language to effectuate the revision;  
and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau shall report its findings and recommendations to the Legislature no later than twenty days before the convening of the Regular Session of 1993; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be sent to the Director of the Legislative Reference Bureau, the Director of the Department of Health and the Director of the Department of Human Services.

OFFERED BY:

John R. Ladd  
Charles Allen  
David A. Hargrave  
Scott K. Hargrave  
James W. Hargrave  
Timothy Hargrave  
Henry M. Hargrave  
James A. Hargrave

HOUSE OF REPRESENTATIVES  
SIXTEENTH LEGISLATURE, 1992  
STATE OF HAWAII

H.R. NO. 11

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## HOUSE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO REVIEW, EVALUATE,  
AND OFFER PROPOSALS TO ADDRESS THE CONCERNS OF ADULT  
RESIDENTIAL CARE HOME OPERATORS ON MOLOKAI.

WHEREAS, adult residential care homes serve a vital and necessary function in the State by providing room, board, and a multitude of care services to the elderly and disabled; and

WHEREAS, a fundamental aspect of the adult residential care home (ARCH) is to ensure the health, safety, and civil rights of individuals residing in these licensed facilities; and

WHEREAS, to uphold this standard, it is imperative that every effort be made to provide ample support and staff services to assist ARCH operators in providing quality care to their residents; and

WHEREAS, although ARCHs are scattered throughout the State, the majority of care homes are located on the island of Oahu, particularly in the Kalihi-Palama and Waipahu communities; and

WHEREAS, as a result, the bulk of state agency staff, medical and educational resources, and financial support related to ARCHs is centered on the island of Oahu, thereby requiring neighbor island care homes to rely on ARCH resources and support on Oahu; and

WHEREAS, despite the basic function of ARCHs statewide, the needs and concerns of care homes differs from island to island; and

WHEREAS, residents living on Molokai in particular, face higher electrical, food, gas, and construction costs, that is, a higher cost of living; and

WHEREAS, because of the lack of expedient and efficient access to support services and resources on Oahu, ARCH operators on Molokai have often had to function under a time lag or under minimum functional support; and

WHEREAS, it is important that the concerns of ARCH operators on Molokai be identified and addressed so that these operators will be better able to respond to ARCH resident needs; now, therefore,

BE IT RESOLVED by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, that this body requests the Legislative Reference Bureau to review, evaluate, and offer proposals to address the concerns of adult residential care home operators on Molokai; and

BE IT FURTHER RESOLVED that the study address the following concerns:

- (1) Increasing the medical staff at Molokai General Hospital to provide more regular and efficient medical and support services for ARCHs;
- (2) Providing additional Department of Health (DOH) and Department of Human Services (DHS) administrative support staff--which may be permanent or contractual staff--on Molokai;
- (3) Creating incentives so that ARCH operators can pursue new business ventures and expand existing businesses related to community care-giving;
- (4) Establishing grants, low interest business loans, and other tax break incentives to reduce start-up business costs related to ARCHs;
- (5) Establishing a government liaison office to handle permits, zoning, and regulations related to ARCH licensing and operations;
- (6) Opening access to group rates for personal medical coverage, liability and business insurance, and lawyer and accountant services on a sliding fee basis;
- (7) Increasing the monthly personal allowance fee for residents; and
- (8) Making across-the-board level of care pay increases for State ARCH payments;

and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau submit a report of its findings and recommendations taken pursuant to this Resolution to the Legislature no later than twenty days prior to the convening of the Regular Session of 1993; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Director of the Legislative Reference Bureau, the Director of Health, the Director of Human Services, the administrator of Molokai General Hospital, the Alliance of Residential Care Administrators, and the United Group of Home Operators.

OFFERED BY.

*Julie A. Luculao*  
*Carolyn Porter*  
*Emilio Alon*  
*Della Chayalana*  
*Samuel Kapa*  
*James W. Hon*  
*Tracy E. Hon*  
*Randy M. Kauhale*  
*Arthur A. Auekahi*

## Appendix D

*August 22, 1991*

### REPORT FROM DOH AND DHS ON ARCH SPECIAL CARE NEEDS PAYMENT PROGRAM

#### Purpose

Staff from the Department of Health Hospital and Medical Facilities Branch and from the Department of Human Services Adult Services Program Development and the Health Care Administration Division met on August 7, 1991 and August 13, 1991 to discuss the possibility of having a Special Care Needs Payment Program. The task was to identify a program which would pay care home operators to care for higher level patients (generally ICF) yet provide assurance that the care to the individual patient was not being jeopardized by residing in a facility licensed to provide care at a lower level.

#### General Considerations

It was agreed by both departments that there is definitely a problem in Hawaii with a shortage of ICF beds, but that this cannot readily be solved by focusing on care homes. Any attempt to provide ICF level patients with care in care homes is fraught with problems because 1) the operators do not have the necessary training; 2) there are no additional support services (e.g. P.T. and O.T. consultation); 3) there is no system to ensure that once an operator is trained, the skills do not diminish or the needs of the patient change; and 4) the door is opened for many abuses by hospitals and social agencies trying to place ICF level people into care homes when they really need more comprehensive care.

#### Proposal

In order to address as many of these problems as possible, it was decided that the program should focus only on those patients who deteriorate while in a care home. It would not include the 330 patients in acute hospitals or the unknown number in the community who are waiting for ICF beds.

It was also decided that the program would handle each case individually. In keeping with the current system to determine levels of care (i.e. SNF or ICF or care home), individuals who the operator and/or the case manager think should be referred for possible placement in an ICF, would be referred to HCAD physicians via the HMS 1147 form for a level of care determination. If the person is deemed ICF (or SNF) level, the individual would be wait-listed at all available facilities on the island.

The case would then be referred to a special unit consisting of an RPN IV for each caseload of 40 and a Social Worker IV for each caseload of 50. This unit would go to the care home and attempt to train the operator in whatever skill might be required to sustain the patient until placement in a higher level care



facility could be arranged. The unit would also make quality assurance monitoring visits at whatever interval is determined necessary to ensure the safety and well-being of the client.

#### Estimated Cost

It is difficult to arrive at an accurate count of how many patients might be considered ICF level in care homes because operators, social workers, and licensing staff all have different views on this depending upon their own role in the long-term care placement system. If we use 30-40 as a rough estimate, and assume that the \$100/month special care payment is a fair compensation, it would cost \$48,000 per year to compensate the operators.

To establish a unit of 2 RPN IV, 1 SW IV, and 1 Clerk Typist III, it would cost approximately \$185,000 in FY 93. One RPN position would be used to contract for neighbor island services and to provide a part-time person on Oahu with flexibility for increasing services as needed. The equipment costs would be eliminated in future years, but the salaries would increase.

The total estimated cost for FY 93 would be \$233,000 to cover approximately 40 clients in care homes.

#### Potential Problems

One problem is that if it becomes apparent that some operators cannot learn the necessary skills, the patient will need to be moved into another care home, and eventually it is likely that there will be a group of specialized homes which will become identified by hospitals and quickly filled with borderline care home/ICF level patients.

Secondly, it can be expected that some hospitals will quickly learn that it is best to state that a person is care home level in order to place them and encourage the operator to apply later for special care needs on the basis that the client has deteriorated. This would most likely happen with borderline or hard-to-place individuals.

Thirdly, the program would need to be able to limit admissions so that the numbers of clients do not exceed the monitoring capability of the Special Care Needs staff. Since the client is already in a care home, failure to be admitted means that the operator is not reimbursed for care similar to that which another operator is paid in the program. The patient would also possibly not receive the care he or she requires, and there is no indication that this patient would be accepted quickly by an ICF (or SNF). In order to have an open program there would need to be funding and authorization to hire additional staff or purchase additional nursing services from a private agency (which tends to be very expensive) when the numbers of clients exceed the optimum case loads.

A related problem is that recruitment and retention of staff may be difficult, especially if the positions are temporary.

Fourthly, DHS has been unsuccessful in terminating special care needs payments and moving residents to an ICF when an opening becomes available. In two fair hearings, the clients' private physicians stated that moving the client would be detrimental since the individual did not wish to leave the care home. The hearings officer ruled, therefore, that the ICF opening was not "more appropriate" and the department must continue the special care needs payments in the care homes.

Lastly, the program proposed above would benefit only a few clients and not serve the 330 ICF/SNF level clients currently wait-listed in hospitals nor those wait-listed in the community. If the program is misused as a way of providing ICF level care in care homes, the program may grow instead of being an interim measure.

Although a similar program was initiated in 1980, it did not provide the training nor the intensive monitoring which both departments have come to realize is necessary. The numbers of individuals in the program have gradually declined with every effort being made to discourage ICF level persons from residing in care homes. As of 8/91 132 clients are in the program. Of these approximately 26 are certified as ICF level. (The others are eligible under a grandfather clause and are not in need of care outside a care home.)

#### Additional Considerations

DOH and DHS staff do not think it is appropriate to develop more levels of care in care homes (e.g. level III+ or level IV) because these levels would exceed the scope of services for which care homes have been developed and for which they are licensed. Both departments, however, would support the development of more ICFs and community-based alternatives to nursing facilities.

Perhaps some of the 300 ICF level patients in acute hospitals could enter a community-based program which provides ICF services outside of a large institutional facility. Currently there are small programs such as Nursing Home Without Walls and the Queen's Foster Care Program which are designed to accommodate ICF and SNF patients. These programs, however, are more costly than care homes, require more contracts for skilled services, and necessitate considerable quality assurance/monitoring staff in DHS.

# **A Model Act Regulating Board and Care Homes: Guidelines for States**

Written by:  
Jane Beyer  
Josephine Bulkley  
Paula Hopkins

A Report Prepared for the  
U.S. Department of Health and Human Services  
by

American Bar Association  
Commission on Legal Problems of the Elderly  
Staff Director: Nancy Coleman

and

Commission on the Mentally Disabled  
Staff Director: John Parry

This model act has not been approved by the House of Delegates or the Board of Governors and therefore does not constitute the policy of the American Bar Association.

Reprinted from *A Model Act for Regulating Board and Care Homes: Guidelines for States* by permission of the American Bar Association's Commission on Legal Problems of the Elderly and the American Bar Association's Commission on the Mentally Disabled.

## SECTION 1. PURPOSE.

The purposes of this Act are to:

- (A) encourage the establishment and maintenance of privately and publicly operated board and care homes that provide a humane, safe, and homelike environment for elderly, disabled, or other persons who need some personal assistance, but who do not need institutional residential care;
- (B) establish standards for regulating board and care homes in order to adequately protect residents without unnecessarily discouraging the establishment and continued operation of such homes;
- (C) encourage the development of small board and care homes by establishing standards that are consistent with the needs and resources of a small home and by permitting those homes to meet certain requirements of the Act by obtaining variances from the agency;
- (D) provide for appropriate placement of individuals in board and care homes by requiring that each resident has a board and care plan, *or, if the resident prefers, a physician's certification*;
- (E) encourage the development of board and care plans for residents in order to assist homes in providing personal assistance appropriate for each resident and to encourage the use of supportive services in the surrounding community to meet the needs of residents;
- (F) accord each resident the right to participate in the development of the board and care plan and in other major decisions involving the resident's care;
- (G) ensure that board and care home administrators and staff have the training and other resources they need in order to understand and comply with the Act or regulations promulgated pursuant to the Act;
- (H) monitor a board and care home's compliance with the Act through routine inspections and provide to homes in violation of the Act consultation and an opportunity to correct violations before administrative enforcement sanctions are imposed;
- (I) provide the agency and residents with alternative mechanisms to enforce compliance with the Act's provisions;
- (J) promote the location of licensed board and care homes in appropriate residential neighborhoods and avoid overconcentration of homes in any one residential district; and
- (K) provide information to consumers, providers, and the public and encourage their full participation in developing and enforcing standards under the Act in order to *ensure support for board and care homes and residents*.

## SECTION 2. DEFINITION OF BOARD AND CARE HOME, RELATED SERVICES, AND EXEMPTIONS.

### Section 2.1. Board and Care Home.

"Board and care home" means a publicly or privately operated residence that provides personal assistance, lodging, and meals to two (2) or more adults who are unrelated to the licensee or administrator.

### Section 2.2. Provides.

"Provides" means that the home makes personal assistance available to the residents. A home that holds itself out by advertising or word of mouth to provide personal assistance is deemed to make personal assistance available to its residents for the purposes of this Act.

### Section 2.3. Personal Assistance.

"Personal assistance" means the provision by the staff of the home of one or more of the following services, as re-

quired by the board and care plan or the physician's certificate or as reasonably requested by the resident, including:

- (A) helping the resident with activities of daily living;
- (B) assisting the resident with the daily living activities such as making appointments and arranging transportation that are necessary in order for the resident to receive the supportive services required in the board and care plan;
- (C) being aware of the resident's general whereabouts, although the resident may travel independently in the community; and
- (D) monitoring the activities of the resident while on the premises of the residence to ensure his or her health, safety, and well-being.

### Section 2.4. Daily Living Activities.

"Daily living activities" means:

- (A) walking;
- (B) bathing, shaving, brushing teeth, combing hair;
- (C) dressing;
- (D) eating;
- (E) getting in or getting out of bed;
- (F) laundry;
- (G) cleaning room;
- (H) managing money;
- (I) shopping;
- (J) using public transportation;
- (K) writing letters;
- (L) making telephone calls;
- (M) obtaining appointments;
- (N) self-administration of medication;
- (O) recreational and leisure activities; and
- (P) other similar activities.

### Section 2.5. Supportive Services.

"Supportive services" means specific services that are provided to the resident in the community and that are required by the board and care plan or reasonably requested by a resident. Supportive services include:

- (A) mental health services;
- (B) habilitation services;
- (C) rehabilitation services;
- (D) social services;
- (E) medical, dental, and other health care services;
- (F) educational services;
- (G) financial management services;
- (H) legal services;
- (I) vocational services;
- (J) transportation;
- (K) recreational and leisure activities; and
- (L) other services required to meet a resident's needs.

### Section 2.6. Unrelated.

"Unrelated" means [to be defined by state law.]

### Section 2.7. Adults.

"Adults" means persons who have attained the age of eighteen (18) years.

### Section 2.8. Exemptions.

The following residential facilities shall be exempt from the application of this Act:

- (A) a facility that houses individuals under the jurisdiction of the criminal justice system;
- (B) a hospice that serves terminally ill persons;
- (C) a residential facility in which the licensee, administrator, or staff of the facility provides supportive services as provided in section 2.5(A), (B), (C), (D), and (E) to residents whose health, safety, or personal welfare-related needs make them unable to live in a residential setting in which the service is not provided; and

- (D) temporary shelters.

### SECTION 3. OTHER DEFINITIONS.

As used in this Act:

- (A) "administrator" means any person who has responsibility for day-to-day administration or operation of a board and care home;
- (B) "advocate" means a public or private officer, agency, or organization designated by state legislation, state plan, or the governor to represent the interests of residents and speak on behalf of residents of a board and care home, or on behalf of any categories of persons who may be residents of a board and care home;
- (C) "agency" means the state agency delegated exclusive authority by the legislature for carrying out the purposes and requirements of this Act, as provided in section 5;
- (D) "board and care council" means the interdisciplinary group appointed by the governor to advise the agency on matters of policy relating to board and care homes, as provided in section 16;
- (E) "board and care plan" means a written description of the functional capabilities of an individual, the individual's need for personal assistance, and the services to be provided to meet the individual's needs, as provided in section 8;
- (F) "conditionally permitted use" means a use that may not be appropriate as a matter of right throughout a zoning district, but which may be permitted consistent with the public health, safety, morals, and general welfare if regulated through conditions as to number, location, area, and conformity to building, fire, health, and safety standards;
- (G) "imminent danger" means a danger which could reasonably be expected to cause death or serious physical harm to residents or staff immediately or before the imminence of such danger can be eliminated through the enforcement procedures as provided in sections 20 through 38;
- (H) "licensee" means the holder of a license to operate a board and care home under this Act;
- (I) "permitted use" means a use by right which is specifically authorized in a zoning district;
- (J) "political subdivision" means a municipal corporation, township, or county;
- (K) "resident" means an adult who resides in a board and care home and who receives lodging, meals, or personal assistance as provided in section 2. A resident does not include the licensee, administrator, or staff of a home or a member of the family of the licensee, administrator, or staff; and
- (L) "service coordinator" means the person, responsible for coordination of the board and care plan, as provided in section 8.4.

### SECTION 4. SIZE AND CATEGORIES OF HOMES BASED UPON SIZE.

#### Section 4.1. Maximum Size [optional].

No board and care home shall house more than [thirty(30)] persons; except that, the maximum size requirements is waived for board and care homes with more than thirty (30) persons which were licensed as board and care homes prior to the effective date of this Act. Such homes shall be subject to the provisions of the Act upon the effective date of the Act.

### Section 4.2. Categories of Homes Based upon Size and Minimum Size.

- (A) Board and care homes shall be categorized as:
  - (1) small homes, with two (2) to eight (8) persons;
  - (2) medium homes, with nine (9) to sixteen (16) persons;
  - (3) large homes, with seventeen (17) to thirty (30) persons; and
  - (e) homes with more than thirty (30) persons, as provided in section 4.1.
- (B) As used in this section, the term "persons" means individuals who live in a board and care home. "Persons" include the licensee, administrator, staff, and their family members if they live in the home.

### SECTION 5. DELEGATION OF RULEMAKING, ADJUDICATIVE, AND INVESTIGATIVE AUTHORITY TO AGENCY.

- (A) The agency shall have authority to carry out the purposes and requirements of this Act through:
  - (1) rulemaking; (2) adjudication; and (3) investigation.
- (B) The agency shall exercise its authority to make rules by promulgating regulations as specified in this Act and to carry out the purposes and requirements of the Act.
- (C) The agency shall exercise its authority to adjudicate as specified in this Act, by granting variances, imposing administrative sanctions and holding hearings, and whenever necessary to carry out the purposes and requirements of the Act.
- (D) The agency shall exercise its authority to investigate as specified in the Act, by investigating applications for a license and renewal of a license, inspecting homes, and necessary subpoenas for persons and records, and whenever necessary to carry out the purposes and requirements of the Act.
- (E) The agency may request from any other agency such information as the agency may require for proper and effective exercise of its rulemaking, adjudicative and investigative authority under this section.

### SECTION 6. PROCEDURES FOR RULEMAKING AND ADJUDICATION.

- (A) Except where provided otherwise in this Act, agency rulemaking and adjudication procedures shall be governed by the state Administrative Procedure Act.
- (B) During the initial stages of development of proposed regulations:
  - (1) the agency shall provide notice of the development of proposed regulations to the board and care council and other groups that the agency may find appropriate. The notice shall state the subject of the regulations under consideration and solicit written recommendations regarding their form and content.
  - (2) Upon receiving recommendations as provided in paragraph (1), the agency shall either adopt the recommendations or issue a concise statement to the board and care council or other group that provided the recommendations setting forth the reasons for not adopting the recommendations.

### SECTION 7. STATE LICENSING TO SUPERSEDE LOCAL REGULATION.

This Act and the regulations promulgated pursuant to this Act shall supersede any program of any political subdivision of the state which licenses or sets standards for board and care homes.

## **SECTION 8. BOARD AND CARE PLAN.**

### **Section 8.1. Requirements.**

- (A) The board and care plan shall describe in lay terms the following:
  - (1) the resident's specific strengths and limitations in performing daily living activities;
  - (2) any medical or health problems of the resident which are relevant to the services needed by the resident;
  - (3) any physical disabilities or impairments of the resident which are relevant to the services needed by the resident;
  - (4) any emotional or mental health problems of the resident which are relevant to the services needed by the resident;
  - (5) any other problems of the resident which are relevant to the services needed by the resident.
- (B) The plan shall describe the needs of the resident for personal assistance by identifying the specific daily living activities with which the resident needs assistance and by stating the other types of personal assistance which are needed by the resident.
- (C) The plan shall state the needs of the resident for supportive services as provided in section 2.5.
- (D) The plan shall identify the name, address, and telephone number of the provider of each supportive service which is described in the plan.
- (E) The plan shall be in writing and shall be written in language that can be easily understood by a lay person.
- (F) The board and care plan shall be signed by the resident and the service coordinator.
- (G) A copy of the board and care plan shall be given to the resident.

### **Section 8.2. Preparation.**

- (A) The board and care plan shall be prepared by the service coordinator, the resident, and, at the resident's request, the resident's attorney, advocate, family member, or person designated by the resident to assist with the plan.
- (B) The description of the functional abilities of the resident as provided in section 8.1 shall be prepared from evaluations, records, and all other information from past and current service providers of the resident. If the service coordinator determines that there is insufficient data from which to describe the functional abilities of the resident, the coordinator shall obtain, with the consent of the resident, further evaluation(s) in the area(s) in which data are required, taking into account any evaluation requirements for the individual under state or federal law.
- (C) In preparing the board and care plan, the service coordinator must contact the following persons to obtain the evaluations, records, and other information as provided in subsection (B) about the functional abilities of the resident, the services which have been provided to the resident currently or within the past three (3) years, and the services which may be available to the resident currently or in the future:
  - (1) all agencies, persons, or organizations currently providing services to the individual or who have provided services to the resident within the past three (3) years;
  - (2) all agencies, persons, or organizations which have evaluated, examined medically, or assessed the needs of the resident within the past three (3) years;
  - (3) the administrator of any licensed home if the resident presently resides in a board and care home; and

- (4) any other persons, organizations, or agencies with information that may be important to the preparation of the plan.

### **Section 8.3. Information to be Given to the Resident.**

Prior to development of a board and care plan, the service coordinator shall explain to the resident the following:

- (A) the process for development of the board and care plan;
- (B) the reasons for development of the board and care plan;
- (C) the resident's role as decision maker in development of the board and care plan;
- (D) the resident's right to consent or to refuse to consent to preparation of a board and care plan and the effect of the resident's refusal to consent;
- (E) how to contact the service coordinator;
- (F) the resident's right to request a change in the service coordinator if the resident reasonably believes the relationship between the resident and the coordinator is ineffective in meeting the resident's needs; and
- (G) eligibility criteria including financial eligibility criteria and a written statement of any fees or charges to the resident in preparation of the board and care plan.

### **Section 8.4. Service Coordinator.**

- (A) The agency shall designate a person to serve as service coordinator for each resident. The service coordinator may be either an employee of the agency or may be a person outside of the agency who has contact with the resident by reason of other services which are provided to the resident or who has acted or is acting in the capacity of a service coordinator; [except that the service coordinator shall not be the employee or agent of a person, agency, or organization currently providing supportive services to the resident.]
- (B) Each person acting as a service coordinator shall have the following minimum qualifications:
  - (1) an understanding and familiarity with the problems of the special disability group, if any, to which the resident belongs;
  - (2) a knowledge of the services which are available to meet the resident's particular needs;
  - (3) the capability of analyzing evaluation and assessment data to determine the needs of the resident;
  - [(4) a license, degree, or certification that the person is qualified as a social worker, or professional in another related field, or is a graduate of a specialized training program.]
- (C) The agency shall change the service coordinator upon the request of either the resident or the coordinator if the request is based upon the reasonable belief that the relationship between the resident and the service coordinator is ineffective in meeting the needs of the resident.

### **Section 8.5. Placement.**

- (A) After preparation of the initial board and care plan, the service coordinator will explore placement alternatives available to the individual. The decision on placement shall be made only with the consent of the resident and after consideration of the following factors:
  - (1) the availability in the surrounding community of supportive services needed by the resident and accessibility to those services;
  - (2) the least restrictive alternative appropriate to meet the needs of the resident;
  - (3) placement in an area in which the resident has family or friends; and
  - (4) placement in a home which can provide personal assistance required by the resident and in which

the house rules and lifestyle are compatible with the resident and the resident's needs.

- (B) If the resident is residing presently in a board and care home at the time the plan is prepared, the resident may remain in that home if the resident wishes and the home consents to the resident remaining there regardless of consideration of the factors provided in paragraphs (1) through (4) of subsection (A).
- (C) After placement of the resident has been made, a copy of the board and care plan should be provided to the home, and a follow-up conference involving the resident, the administrator of the home, and the service coordinator shall take place at the facility.
- (D) Adjustments in the plan shall be made with the consent of the resident if such adjustments are required.

#### **Section 8.6. Periodic Review.**

- (A) The service coordinator shall meet once every three (3) months with the resident and the administrator of the home in order to review the plan. The service coordinator shall confer privately with the resident prior to meeting.
- (B) The service coordinator and the resident shall prepare a new plan annually following the procedures set out in sections 8.1 through 8.6.

### **SECTION 9. ADMISSIONS.**

#### **Section 9.1. Admissions.**

- (A) Except as provided in subsection (B), each resident shall have either a board and care plan or physician's certification on file at the board and care home:
  - (1) prior to admission to a board and care home, or
  - (2) if a resident is admitted to the home without a board and care plan or physician's certification, within forty-five (45) days after admission.
- (B) Each individual who is a resident of a board and care home as of the effective date of this Act shall have a board and care plan or physician's certification within one hundred and eighty (180) days of the effective date of this Act. The agency shall assist homes and residents in complying with this subsection.

#### **Section 9.2. Physician's Certification.**

A physician's certification shall state the following:

- (A) the resident does not need care provided by the board and care home which is greater than personal assistance;
- (B) a description of the functional abilities of the resident including his or her specific strengths and limitations; and
- (C) the specific needs of the individual for personal assistance.

#### **Section 9.3. Responsibilities of Licensee.**

The home shall be responsible for informing residents and persons seeking admission to a board and care home of the requirement of a board and care plan or a physician's certification as provided in section 9.1.

#### **Section 9.4. Admission Agreements.**

- (A) Prior to admission to a board and care home or no later than forty-five (45) days after admission, the home and the resident shall enter into an admission agreement. The agreement shall be in writing, shall be signed by both parties, and shall include the following:
  - (1) the resident's board and care plan or physician's certification attached to the agreement and incorporated by reference;
  - (2) the agreement of the home to provide personal assistance, lodging, and meals as provided in the

board and care plan or physician's certification;

- (3) the charges, expenses, and other assessments for personal assistance, lodging, and meals and the method of payment by the resident;
  - (4) the agreement of the resident to make payment of the charges, expenses, and other assessments in accord with the method of payment specified in the admission agreement;
  - (5) the names, addresses, and telephone numbers of the resident's next of kin and, if applicable, the person designated as the responsible party to be notified in the event of an emergency or transfer of the resident; and
  - (6) the house rules as provided in section 10.15.
- (B) The agency shall provide a standard form for an admission agreement which may be used in preparation of the agreement by the home or resident.
  - (C) The home shall give one copy of the agreement signed by the resident and the home to the resident, and one copy to the agency. The home shall keep the original in the resident's records.

#### **Section 9.5. Termination of Admission Agreements.**

- (A) No board and care home shall terminate the admission agreement of any resident of the home except for the following reasons:
  - (1) behavior of the resident which poses an imminent danger to such resident or any other persons in the home;
  - (2) failure of the resident to make payment of the charges, expenses, and other assessments in accord with the method of payment as specified in the admission agreement; except that, if the failure to make payments is related to an interruption of the resident's receipt of possible benefits to which the resident is entitled, the home shall retain the resident without payment pending resolution of the action which resulted in the interruption of the benefit payments unless the home assists the resident in obtaining such benefits or any other supplemental benefits in the period prior to discharge of the resident;
  - (3) repeated behavior of the resident which directly impairs the well-being, care, or safety of the resident or any other resident or which substantially interferes with the orderly operation of the home;
  - (4) the home has its license revoked, not renewed, or has voluntarily surrendered its license;
  - (5) upon transfer of the resident by the agency as provided in section 27; or
  - (6) the resident has been removed from the home, for medical treatment or care, to a hospital, nursing home, or residential health care or treatment facility; except that the home may not discharge the resident under this subsection if the resident has paid the charges, expenses, and assessments due to the home during the period in which he or she has been removed from the home.
- (B) No board and care home may terminate the admission agreement of any resident for one of the grounds stated in section (A) until the following requirements have been met:
  - (1) the home gives at least thirty (30) days written notice, on a form prescribed by the agency, to the resident, the resident's next of kin, and the person designated in the admission agreement as the responsible party, if any, that the resident's admission agreement will be terminated;
  - (2) such notice contains the reason for the termination

- of the admission agreement and a statement that the resident has a right to object to the termination of the resident's admission agreement;
- (3) the home furnishes to the resident a list of free legal services within the home's geographical area and a list of other available community resources which provide resident advocacy services. The agency shall provide the list to all licensed board and care homes.
- (C) Nothing in this section shall prohibit:
- (1) the removal of a resident from a home, for medical treatment or care, to a hospital, nursing home, or residential health care facility; or
  - (2) the removal from a home of a resident whose behavior poses an imminent danger to that resident or any person, by a peace officer, acting pursuant to his special duties, or a police officer, who is a member of an authorized police department or force or a sheriff's department; or
  - (3) the removal from a home of a resident whose behavior poses an imminent danger to a location which ensures the resident's safety, pursuant to regulations of the agency.
- (D) Removal of a resident as provided in section 9.5 (C) shall not be deemed to be a termination of the admission agreement. In order to terminate the admission agreement of a resident removed from the home as provided in section 9.4 (C) the home must proceed to terminate the admission agreement pursuant to sections 9.4-9.5; except that in addition to the requirements stated in sections 9.4-9.5, the written notice required to be given to the resident by section 9.4 (B) shall be personally delivered to the resident at the location to which he or she has been removed. If personal delivery is not possible, then such notice shall be served upon the resident by any method permitted by the rules of civil procedure.
- (E) Upon termination of an admission agreement the agency shall assist the resident in relocating to another home or community placement as provided in section 9.8.

#### **Section 9.6. Special Proceedings for Termination of an Admission Agreement.**

The proceeding to terminate the admission agreement of a resident of a board and care home shall be brought in a court of competent jurisdiction in accordance with the rules of civil procedure.

#### **Section 9.7. Availability of Other Rights and Remedies to Enforce Agreement.**

Notwithstanding the provisions of sections 9.4-9.6, the parties to the admission agreement shall have the rights and remedies available to them under state law to enforce that agreement.

### **SECTION 10. RESIDENT RIGHTS.**

#### **Section 10.1. Resident Records.**

- (A) Each home shall keep a record of the following information for each resident:
- (1) the resident's name;
  - (2) the resident's last address;
  - (3) the name of the person or agency referring the resident to the home;
  - (4) the name, specialty (if any), telephone number, and emergency telephone number of each physician who has treated the resident during the preceding twelve (12) months;
  - (5) the date the resident began residing in the home;
  - (6) a copy of the resident's current board and care plan or certification by a physician;
  - (7) a list of medications taken by the resident including the dosage;

- (8) written acknowledgements that the resident has received copies of the rights as provided in section 10.12, and the house rules if such rules have been developed pursuant to section 10.15;
  - (9) a record of all personal property and funds which the resident has entrusted to the home, including copies of receipts of the property referred to in section 10.4;
  - (10) information about any specific health problems of the resident which may be useful in a medical emergency;
  - (11) the name, address, and telephone number of a person identified by the resident who should be contacted in the event of an emergency or death of the resident;
  - (12) any other health-related, emergency, or pertinent information which the resident requests the home to keep on record; and
  - (13) the current admission agreement between the resident and the home.
- (B) The agency shall assist small and medium homes in complying with the requirements of subsection (A). The agency shall provide forms to these homes upon which the information required by subsection (A) can be recorded.
- (C) Each resident shall have the right subject to state and federal law, at reasonable times, or during ordinary business hours to inspect and copy (or have a copy provided for him or her by the home) any or all of the records referred to in subsection (A) of this section and any records used in the development of the board and care plan as provided in section 8. The home may charge the resident the cost of copies made pursuant to this section.
- (D) The home or agency shall not disclose the name of any resident except as may be necessary, or disclose any resident's records to any person or agency other than the personnel of the home or the agency for their exclusive use except upon express written consent of the resident or court order unless the disclosure is required by state or federal law.
- (E) No inspection or investigative report or written complaint which is accessible to the public shall disclose the identity of a resident of a board and care home.

#### **Section 10.2. Privacy.**

- (A) Each resident's privacy shall be respected in every aspect of daily living, including but not limited to the following:
- (1) in any medical examination or health-related consultations the resident may have at the home;
  - (2) during visits with other persons;
  - (3) in oral communications, in writing, or by telephone;
  - (4) in the resident's room or the resident's portion of the room. The staff of the home may not enter a resident's room without first requesting the permission of the resident to enter his or her room, except when a condition presents an imminent danger, or as required by the resident's board and care plan;
  - (5) in the conduct of the resident's personal affairs unless otherwise provided for in the resident's board and care plan;
  - (6) visual privacy in tub, shower, and toilet rooms; and
  - (7) in intimate personal hygiene.
- (B) Spouses shall be permitted but not required to share a room where both are residents of the home. The wishes of residents who are not spouses to share a room shall be strongly considered in making room assignments.
- (C) Each resident shall be permitted to have guests or other



residents in his or her room.

- (D) Each resident shall be permitted to close the door of his or her room at any time including during visits with guests or residents in his or her room.
- (E) In the event that a resident expresses the wish for privacy in a particular daily living activity, the home shall take all reasonable steps to comply with the wishes of the resident.

#### **Section 10.3. Humane Care and Environment. Dignity and Respect.**

- (A) Each resident shall have the right to humane care and a humane environment, including but not limited to the following:
  - (1) the right to a diet which is consistent with any religious or health-related restrictions;
  - (2) the right to refuse a restricted diet; and
  - (3) the right to a safe and sanitary living environment.
- (B) Each resident shall have the right to be treated with dignity and respect, including but not limited to:
  - (1) the right to be treated in a courteous manner by staff; and
  - (2) the right to receive a response from the home to any request of the resident within a reasonable time.

#### **Section 10.4. Personal Possessions.**

- (A) Each resident shall have the right:
  - (1) to wear his or her own clothing;
  - (2) to determine his or her own dress, hair style, or other personal effects according to individual preference; and
  - (3) to retain and use his or her own personal property in the resident's own living area so as to maintain individuality and personal dignity.
- (B) Each resident shall have a separate storage area in his or her own living area and at least one locked cabinet or drawer for keeping personal property.
- (C) Each home shall provide a place and written procedures for safekeeping of valuable personal possessions of each resident. A copy of these written procedures shall be given to a resident at the time of his or her admission. If the home has adopted house rules as provided in section 10.5, these written procedures may be included in the house rules of the home. Each resident shall have the option of permitting the home to hold valuable personal possessions in trust according to the written procedures of the home. The home shall give the resident a receipt listing each of the items which it is holding in trust for the resident. A copy of the receipt shall be placed in the records of the residents as described in section 10.1.
- (D) The agency shall assist small and medium homes in complying with this section including but not limited to assistance in developing procedures and the provision of forms or receipts.

#### **Section 10.5. Resident Funds.**

- (A) Each resident shall have the right to manage his or her personal funds unless the rights of the residents are otherwise restricted by state or federal law.
- (B) The home shall at the time of admission provide each resident with a written statement explaining the resident's rights regarding personal funds and listing the services regarding the safekeeping and management of funds for which the resident will be charged. The home shall obtain a signed acknowledgement from each resident that the resident has received this statement. A copy of this acknowledgement shall be placed in the resident's records as provided in section 10.1.
- (C) If the resident wishes to entrust funds to the home to

protect the resident's funds, the home:

- (1) may accept funds from a resident for safekeeping and managing, if the home receives written authorization from the resident. The authorization shall be attested to [by] a witness who has no pecuniary interest in the home or its operations, and who is not connected to the home in any manner whatsoever;
  - (2) shall maintain and allow each resident access to a written record of all financial arrangements and transactions involving the individual resident's funds;
  - (3) shall provide each resident with a written itemized statement, at least quarterly, of all financial transactions involving the resident's funds;
  - (4) shall purchase a surety bond to guarantee the security of residents' funds and the security of any personal property entrusted to the home pursuant to this section; the agency shall promulgate regulations setting the amount of the surety bond;
  - (5) shall keep any funds received from a resident for safekeeping in an account separate from all other funds of the home;
  - (6) shall deposit any funds received from a resident in excess of \$100 in an interest-bearing account insured by agencies of, or corporations chartered by, the state or federal government. The account shall be in a form which clearly indicates that the home has only a fiduciary interest in the funds and any interest from the account shall accrue to the resident. The home may keep up to \$100 of a resident's money in a non-interest bearing account or petty cash fund, to be readily available for the resident's current expenditures. Upon written request of the resident, the home may increase the amount of that resident's money in a non-interest-bearing account or petty cash fund, up to \$200;
  - (7) shall return to the resident upon written request, all or any part of the resident's funds given to the home for safekeeping, including the interest accrued from deposits;
  - (8) shall place any monthly allowance to which a resident is entitled in that resident's personal account, or give it to the resident, unless the home has written authorization from the resident to handle it differently;
  - (9) unless otherwise provided by state law, upon the death of a resident, shall provide the executor or administrator of the resident's estate with a complete accounting of all the resident's funds and personal property, including any funds and personal property of the resident being held by the home; and
  - (10) if the home is sold, shall provide the buyer with a written verification by a public accountant of all residents' monies and properties being transferred, and obtain a signed receipt from the new owner.
- (D) Small and medium homes which are unable to comply with subsection (B) because of the financial burden compliance would impose on the home may apply to the agency for a variance from compliance with subsection (B) as provided in the following procedures:
    - (1) as a condition to receiving a variance, the home must agree to cooperate with the agency by any alternative means of compliance developed by the agency;
    - (2) if a home applies for a variance under this section, the agency shall develop an alternative procedure to protect resident funds entrusted to the home;

- (3) if no satisfactory alternative procedure can be developed, the home will not be permitted to accept funds from the resident pursuant to this section;
- (4) a variance of this section shall not be granted until the home and the agency have agreed to an alternative procedure to meet the requirements of this section, or the home and the agency have agreed that the home shall not accept resident funds pursuant to this section. The variance shall state the conditions upon which the variance has been granted; and
- (5) the agency shall prepare a written summary of the alternative procedures or a statement that the home may not accept funds from the residents. A copy of the summary or statement shall be distributed to the residents by the home as provided in subsection (B).

#### **Section 10.6. Social Interaction and Communication.**

Each resident shall have the right to interact freely with others both within the home and the community including but not limited to the following:

- (A) the right to receive and send unopened correspondence and to be provided with pen, paper, envelopes, and stamps at the resident's own expense if the resident is unable to obtain them for himself or herself;
- (B) the right to access to a telephone for outgoing and incoming calls, to a private telephone at the resident's own expense, and to privacy in telephone conversations;
- (C) the right to unrestricted communication including personal visits with any person of the resident's choice and to have each visitor of the resident treated with courtesy and respect;
- (D) the right to make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;
- (E) the right to leave and return freely to the home unless specifically restricted by the board and care plan; and
- (F) the right to private visits with the resident's lawyer, doctor, advocate, or guardian.

#### **Section 10.7. Access by Advocates and Community Organizations.**

A board and care home shall permit advocates, members of community organizations, and representatives of community legal services programs, whose purposes include rendering assistance without charge to board and care home residents, to have access to the home at reasonable times in order to:

- (A) visit, talk with, and make personal, social, and legal services available to all residents;
- (B) inform residents of their rights and entitlements, and their corresponding obligations under state, federal, and local laws by distribution of educational materials and discussion in groups and with individuals;
- (C) assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and Social Security benefits, as well as in all other matters in which residents are aggrieved, which may be provided individually, or [on] a group basis, and may include organizational activity, counseling, and litigation; and
- (D) engage in all other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights.

#### **Section 10.8. Employment.**

Each resident shall have the right to refuse to perform services for the home except as contracted for by the resident and the operator or as provided in the board and care plan. If

the resident is hired by the home to perform services as an employee of the home, the wage paid to the resident shall be consistent with state and federal law.

#### **Section 10.9. Freedom of Religion.**

The resident shall have the right to practice the religion of his or her choice or to abstain from religious practice. Residents shall also be free from the imposition of the religious practices of others.

#### **Section 10.10. Control and Receipt of Health-Related Services.**

Each resident shall have the right to control his or her receipt of health-related services including but not limited to the following:

- (A) the right to retain the services of his or her own personal physician and dentist. Each resident shall have the right to confidentiality and privacy concerning his or her medical or dental condition and treatment; and
- (B) the right to select the pharmacy or pharmacist of the resident's choice. Each resident shall have the right to administer his or her own pharmaceuticals unless specifically provided otherwise in the resident's board and care plan.

#### **Section 10.11. Prohibitions Against Abuse, Neglect, and Restraints.**

- (A) The home shall take reasonable actions to insure that residents are not physically, sexually, or otherwise abused.
- (B) The home shall not neglect the needs of the residents as specified in the board and care plan or physician's certification.
- (C) Physical restraints shall not be used on a resident by the staff of a board and care home, except when a resident's actions present an imminent danger to himself or herself, or others, and only until appropriate action can be taken by medical, emergency, or police personnel. It is the responsibility of the home to seek assistance immediately.
- (D) Chemical restraints shall not be used on a resident by the staff of a board and care home, except that this section shall not prohibit a resident from voluntarily taking tranquilizers or other medication which is prescribed by a licensed physician.

#### **Section 10.12. Notice of Rights.**

- (A) The agency shall give each home licensed under this Act a copy of all the resident rights enumerated in this section and the names, addresses, and telephone numbers of the advocates who are available to assist the resident in understanding and enforcing these rights.
- (B) The home shall be responsible for making copies of such rights and distributing them to each resident.
- (C) If a resident is unable to read the list of rights, the rights shall be read to the resident in a language the resident understands. The licensee or administrator shall explain to the resident any portions of the rights which the resident does not understand and shall answer any questions the resident may have regarding the rights.
- (D) After a copy of the rights has been given or read to the resident, the resident shall sign and date a written acknowledgement that the resident has read or has been read the rights, that the resident understands the rights, and that any questions which the resident has regarding the rights have been answered by the home. A copy of the written acknowledgement signed and dated by the resident shall be placed in the resident's records as provided in section 10.1.
- (E) A copy of the list of resident rights shall be conspicuously posted in the home at all times.

- (F) The home shall ensure that the staff is familiar with and observes the rights and responsibilities enumerated in this Act.
- (G) Any policy, procedure, or rule of the home which is inconsistent with or contrary to a right enumerated in this Act shall be null and void.

**Section 10.13. Residents' Representative.**

- (A) The residents of each home shall elect annually one (1) or more resident representatives. The agency shall prescribe the procedures for the election of the first representatives of the home. The number of resident representatives in each home shall be determined by the classification of the home as follows:
  - (1) medium homes—two (2) representatives; or
  - (2) large homes and homes with more than thirty (30) residents—one representative for each six (6) residents.
- (B) The resident representatives shall have the following duties:
  - (1) to assist the home in developing grievance procedures for the home;
  - (2) to develop, with the assistance of the staff, procedures for their election after the first election at the home;
  - (3) to communicate resident opinions and concerns to the home;
  - (4) to obtain information from the home and disseminate the information to the residents; and
  - (5) to identify problems and participate in the resolution of those problems.
- (C) This section shall not apply to small homes.

**Section 10.14. Grievance Procedures.**

- (A) After election of resident representatives, each home shall establish written grievance procedures. All resident representatives shall be actively involved in development of these procedures. The grievance procedures shall include the following elements:
  - (1) a resident shall have an opportunity to present an oral explanation of his or her complaint;
  - (2) at least one resident representative shall be permitted to participate in the review of the complaint and shall be permitted to give an advisory opinion;
  - (3) the resident shall be permitted to be assisted in the presentation of the complaint by any person including but not limited to a relative, advocate, or attorney;
  - (4) the resident shall be notified of the final decision of the home concerning the resident's complaint within thirty (30) days from the date of the resident's initial complaint; and
  - (5) a copy of the grievance procedures shall be given to each resident and posted conspicuously in the same manner as the notice of [resident's] rights in section 10.12 of this Act.
- (B) No action shall be taken against a resident for taking steps to enforce the rights of a resident enumerated in this section or to enforce any other section of this Act.
- (C) The agency shall assist medium homes in complying with this section upon request of the home.
- (D) This section shall not apply to small homes.

**Section 10.15. House Rules.**

- (A) Each home may have house rules pertaining to the following rights of residents:
  - (1) the use of tobacco and alcohol;
  - (2) the times and frequency of use of the telephone;
  - (3) visitors;

- (4) hours and volume for viewing and listening to television, radio, and phonographs;
- (5) movement of residents in and out of the home;
- (6) use of personal property; and
- (7) other areas approved by the agency by regulation.
- (B) House rules must be in writing and posted in the facility.
- (C) Prior to placement in or admission to a home, a resident shall be given a copy of the house rules of the home to which he or she is seeking admission.
- (D) Any house rules which unreasonably restrict the rights of a resident as provided in this Act or any other state statute shall be null and void.

**Section 10.16. Information Required to be Given to Residents.**

- (A) At the time of admission or within thirty (30) days from the effective date of this Act, each resident shall receive, at no cost to the resident, the following:
  - (1) the notice of rights and names, addresses, and telephone numbers of advocates in the manner provided in section 10.12;
  - (2) a copy of the written procedures for safekeeping of valuable personal possessions of each resident as provided in section 10.4;
  - (3) a written statement explaining the [resident's] rights regarding personal funds and listing the services regarding the safekeeping and management of funds for which the resident will be charged as provided for in section 10.5;
  - (4) if applicable, a written summary of the alternative procedures for safekeeping and management of funds or, if applicable, a statement that the home may not accept funds from the residents in section 10.5;
  - (5) a copy of the grievance procedures as provided in section 10.14; and
  - (6) a copy of the house rules as provided in section 10.15.
- (B) An individual considering admission to a board and care home shall receive, at no cost to that individual, copies of the items listed in subsection (A) upon request to the home. Other interested persons may receive copies of the items upon request to the home.
- (C) The requirements of this section shall be in addition to any other requirements for notice to the resident as specified in other sections of this Act.

**Section 10.17. Discrimination Prohibited.**

Each resident shall be free from discrimination as provided by state and federal law.

**Section 10.18. Regulations**

The agency shall promulgate regulations as necessary to implement and clarify the rights provided in section 10.

**SECTION 11. QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATOR AND STAFF.**

**Section 11.1. Qualifications of Administrator**

An administrator of a board and care home shall have the following minimum qualifications:

- (A) 18 years of age or older;
- (B) good moral and responsible character and reputation;
- (C) adequate education, training, or experience to carry out the requirements of this Act;
- (D) literacy;
- (E) management or administrative ability to carry out the requirements of this act; and
- (F) sufficient physical, emotional, and mental capacity to

carry out the requirements of this Act.

#### **Section 11.2. Qualifications of Staff.**

The staff of a board and care home shall have the following minimum qualifications:

- (A) good moral and responsible character and reputation;
- (B) adequate education, training, or experience to carry out the requirements of this Act; and
- (C) sufficient physical, emotional, and mental capacity to carry out the requirements of this Act.

#### **Section 11.3. Requirements of Administrator and Staff.**

- (A) A board and care home shall have a staff/resident ratio which is adequate to carry out the requirements of this Act for each category of homes as provided in section 4.2.
- (B) The administrator or a staff person shall be responsible for developing leisure activities for residents of large homes and homes with more than thirty (30) residents.
- (C) The administrator or a staff person shall be present in a board and care home whenever a resident is present in the home.
- (D) In large homes and homes with more than thirty (30) residents, the administrator or a staff person is required to be on duty at all times in which a resident is present in the home.
- (E) The administrator and staff of a board and care home shall participate in training programs sponsored by the agency as provided in section 15.

#### **Section 11.4. Regulations.**

The agency shall promulgate regulations concerning:

- (A) qualifications of the administrator and staff;
- (B) staff/resident ratio for each category of homes as provided in section 4.2;
- (C) duties of administrator or staff in developing leisure activities and types of leisure activities to be developed; and
- (D) any other requirements of an administrator and staff necessary to carry out the purposes and requirements of this Act.

### **SECTION 12. REQUIREMENTS FOR LOCATION AND PHYSICAL ENVIRONMENT OF HOMES.**

#### **Section 12.1. Location.**

Board and care homes shall be located in geographical areas which are accessible to supportive services as provided in section 2.5.

#### **Section 12.2 Physical Structure.**

- (A) Board and care homes shall be maintained internally and externally in good repair and condition.
- (B) Board and care homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, elevators, artificial and natural light, ventilation, or any other feature of the home.

#### **Section 12.3. Health and Sanitation.**

Board and care homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

#### **Section 12.4. Fire Safety.**

- (A) The state fire marshal shall promulgate fire safety regulations for board and care homes.
- (B) During the initial [stages] of development of the fire safety regulations:
  - (1) the fire marshal shall notify the agency in writing at the time development of fire safety regulations is initiated;

- (2) the agency shall submit written recommendations in response to the notification provided in paragraph (1); and
- (3) upon receiving recommendations as provided in paragraph (2), the fire marshal shall either adopt the recommendations or issue a concise statement to the agency setting forth the reasons for not adopting the recommendations.

#### **Section 12.5. Household Items and Furnishings.**

Board and care homes shall have clean, functioning, and safe household items and furnishings.

#### **Section 12.6. Diet.**

Board and care homes shall provide a nutritious and balanced diet and shall recognize a resident's need for a special diet.

#### **Section 12.7. Medications.**

- (A) Residents shall be permitted to self-administer medications, unless otherwise indicated in writing in the resident's board and care plan or physician's certification.
- (B) Homes shall ensure that medications are self-administered in a safe and accurate manner.

#### **Section 12.8. Rooms.**

- (A) Board and care homes shall have bedrooms which are of adequate size.
- (B) Bedrooms shall sleep no more than two (2) residents; except that bedrooms may sleep up to four (4) residents upon request of each of the occupants as long as the room is of adequate size.
- (C) Board and care homes shall have distinct living and sleeping areas.
- (D) There shall be no more than [six (6)] residents per full bathroom.
- (E) For medium homes, large homes, and homes with more than thirty (30) persons, there shall be:
  - (1) one or more rooms for private meetings between residents and other persons, according to the size of the home; and
  - (2) one or more rooms, in addition to a living room, for social activities, according to the size of the home.

#### **Section 12.9 Regulations.**

The agency shall promulgate regulations concerning physical structure, health and sanitation, household items, and furnishings, diet, self-administered medications, and rooms.

### **SECTION 13. BOARD AND CARE HOME REGISTRY ESTABLISHMENT AND AVAILABILITY.**

- (A) The agency shall establish and maintain a statewide registry of licensed board and care homes. For each home listed, the registry shall include, but not be limited to:
  - (1) the name of the home;
  - (2) the name of the licensee of the home;
  - (3) the address and telephone number of the home;
  - (4) the number of residents the home is licensed to serve; and
  - (5) if the home limits the populations it serves, the populations served in the home.
- (B) The agency shall make copies of the registry available upon request to:
  - (1) federal, state, county, or municipal agencies;
  - (2) private placement or referral agencies; and
  - (3) any other interested individual, group, or agency.

### **SECTION 14. CONSULTATION BY AGENCY.**

- (A) The agency shall provide consultation to the following persons upon request:

- (1) any licensee of a board and care home; and
  - (2) any person interested in obtaining a license to operate a board and care home under this Act.
- (B) As used in this section, consultation includes:
- (1) an explanation of the requirements of this Act and regulations promulgated under the Act;
  - (2) an explanation of license application and renewal procedures; and
  - (3) any other information necessary to promote compliance with the requirements of this Act.

## SECTION 15. TRAINING.

### Section 15.1. Training of Administrator and Staff.

- (A) The agency, directly or through alternative means, shall provide a training program to the licensee, administrator, or staff of each board and care home at the time the home is first issued a license under this Act.
- (B) If a board and care home is in violation of this Act in an area specified in subsection (C), the agency may require the licensee, administrator, or staff to attend the training program in the deficient area.
- (C) The training program shall include but not be limited to thorough coverage of the following areas:
  - (1) implementation of the board and care plan;
  - (2) characteristics of client disabilities;
  - (3) recognition of resident health care and mental health problems;
  - (4) identification and use of community resources;
  - (5) social and recreational activities;
  - (6) nutrition, basic hygiene, and dental care;
  - (7) first aid;
  - (8) management of medications;
  - (9) home management, administration, and record-keeping;
  - (10) maintenance of the home in a safe and sanitary manner; and
  - (11) residential rights, including management of resident funds and awareness of federal and state laws prohibiting discrimination.
- (D) The agency shall cooperate with persons providing voluntary continuing education to board and care home licensees, administrators, and staff by:
  - (1) responding to reasonable requests for assistance in the development of course curricula from persons sponsoring continuing education programs; and
  - (2) providing notice of continuing education programs to all licensed board and care homes.

### Section 15.2. Regulations.

The agency shall promulgate regulations in the following areas to carry out the requirements of this section:

- (A) curriculum for each subject area of training; and
- (B) any other regulations necessary to carry out the requirements of this section.

## SECTION 16. BOARD AND CARE COUNCIL.

### Section 16.1. Membership.

- (A) The licensing agency shall establish a state level board and care council consisting of [eighteen (18)] members appointed by the governor.
  - (1) The director of the licensing agency shall serve as chairman of the council.
  - (2) The members of the council shall be:
    - (a) the director of the [state social services agency] or his or her designee;
    - (b) the director of the [state health department] or his or her designee;
    - (c) the director of the [state mental health agency] or his or her designee;

- (d) the director of the [state developmental disabilities agency] or his or her designee;
- (e) the director of the state office on aging or his or her designee;
- (f) the state fire marshal or his or her designee;
- (g) the state long term care ombudsman or his or her designee;
- (h) the director of the state protection and advocacy system for developmentally disabled persons or his or her designee;
- (i) an advocate for mentally ill citizens in the state;
- (j) an advocate for physically disabled citizens in the state;
- (k) four (4) administrators or licensees of licensed board and care homes; and
- (l) four (4) residents of board and care homes.

- (B) In appointing the first members of the council who are not state agency representatives, the governor shall appoint five (5) members for a term of two (2) years and five (5) members for a term of three (3) years. After the initial appointment, members who are not state agency representatives shall serve three (3) year terms. A vacancy shall be filled for the remainder of the unexpired term from the same class of persons represented by the outgoing member.

### Section 16.2. Powers and Duties.

The board and care council shall have the following powers and duties:

- (A) to make policy recommendations regarding the coordination of licensing and enforcement standards in board and care homes and the provision of services to board and care homes residents;
- (B) to advise the agency regarding methods for identification of unlicensed board and care homes;
- (C) to advise the agency during development and revision of regulations as provided in section 6; and
- (D) to review and comment upon proposed regulations.

### Section 16.3. Meetings.

- (A) The Board and Care Council shall meet quarterly.
- (B) Meetings of the council shall be open to the public. Notice of the time, date, and place of the meetings shall be published in the administrative bulletin and major newspapers of the state.
- (C) The agency shall provide:
  - (1) staff necessary to assist the council in performing its duties; and
  - (2) space for meetings and council.

### Section 16.4. Reimbursement of Expenses.

Members of the board and care council shall be reimbursed by the agency for their actual expenses incurred in the performance of their duties.

## SECTION 17. LICENSING.

### Section 17.1. License Requirement.

A license issued by the agency as provided in this Act is required to operate a board and care home.

### Section 17.2. Application for License.

- (A) An application for a license to operate a board and care home shall be made to the agency on forms furnished by the agency.
- (B) All applications shall be accompanied by the license application fee established by the agency. The license fee schedule shall be based upon the size of the home.
- (C) The application shall be under oath and shall contain the following information:
  - (1) the name and address of the applicant;
    - (a) If the applicant is an agency, corporation, part-

nership, association, or any other form of organization, the application shall include the name, address, and official position of all persons who have an ownership interest in the board and care home.

- (b) If the applicant is a political subdivision of the state, the application shall include the name and address of the political subdivision's chief executive officer.
- (c) If the applicant is the lessee of the premises in which the home will be operated, the application shall include the name and address of the lessor of the premises and any direct or indirect interest that the applicant has in the lease other than as a lessee.
- (2) sufficient evidence that each person with an ownership interest of ten (10) percent or more in the home meets the qualifications specified in section 17.3 (A) (1);
- (3) the name and address of the home for which the license is sought;
- (4) the name and address of the administrator of the home;
- (5) sufficient evidence that the administrator of the home meets the requirements specified in section 17.3(A)(2); and
- (6) the number and type of residents that will be served in the home.
- (D) The agency shall have the authority to investigate any information included in the application for a license.

**Section 17.3. Issuance of a License; Right to Contest License Denial.**

- (A) The agency shall issue a license to a board and care home if, after inspection as provided in section 20 and any discretionary investigation as authorized in section 17.2, the agency finds that:
  - (1) the applicant meets the following qualifications:
    - (a) age not less than eighteen (18) years old;
    - (b) reputable and responsible character;
    - (c) sufficient education, business, or professional experience to carry out the requirements of the Act;
    - (d) sufficient financial resources to carry out the requirements of the Act;
    - (e) no convictions for crimes that have a bearing upon the applicant's suitability to operate a board and care home, unless the applicant shows that:
      - (1) the crime occurred more than five (5) years ago; and
      - (2) he or she has been sufficiently rehabilitated; and
    - (f) no prior violations of this Act relating to this or any other home or of any other law regulating residential care facilities within the past five (5) years which resulted in revocation or non-renewal of a license;
  - (2) the administrator named in the license application meets the minimum requirements for an administrator of a board and care home as provided in section 11.1; and
  - (3) the home is in substantial compliance with the requirements of the Act.
- (B) The agency shall serve a copy of the decision granting or denying an application for a license which includes the findings in support of the decision and notice of the right to contest the decision as provided in subsection (c) upon the applicant personally or by certified mail.
- (C) A license applicant shall have the right to contest denial

of his or her application for a license in accordance with the adjudication procedures as provided in section 6.

- (D) If a license applicant intends to contest denial of his or her application for a license, the license applicant shall request a hearing in writing within ten (10) days after receipt of notice of the denial.

**Section 17.4. Content of License.**

A license to operate a board and care home shall state:

- (A) the date the license was issued;
- (B) the name of the licensee;
- (C) the address of the home to which the license applies;
- (D) the number of residents the home is licensed to serve; and
- (E) the expiration date of the license.

**Section 17.5. Posting of License and Availability of Inspection Reports for Public Inspection.**

- (A) A board and care home shall post conspicuously in an area of the home accessible to the residents, staff, and visitors:
  - (1) its license to operate; and
  - (2) a notice that a copy of each inspection report received by the home from the agency for the past three (3) years is available for public inspection.
- (B) A board and care home shall retain for public inspection a complete copy of each inspection report received by the home from the agency for the past three (3) years.

**Section 17.6. Annual Renewal of a License.**

- (A) A license shall be valid for one (1) year.
- (B) At least ninety (90) days prior to expiration of the license, the licensee shall submit an application for renewal of a license.
- (C) The agency shall have the authority to investigate any information included in the application for renewal of a license.
- (D) The agency shall conduct an inspection of the applicant home at least sixty (60) days prior to expiration of the license as provided in section 20.
- (E) If the agency finds that the applicant home is not in compliance with this Act, it shall require the home to correct any violations and submit a report of compliance as provided in section 22.
- (F) If the agency finds that the applicant home is in compliance with this Act, the agency shall renew the license of the home.

**Section 17.7. Non-Transferability of License.**

A license shall be issued only for the premises, persons, or organizations named in an application for a license and shall not be transferable or assignable.

**Section 17.8. Transfer of Ownership.**

- (A) Whenever ownership of a board and care home is to be transferred from the person named in the license to any other person, the transferee must obtain a new license as provided in sections 17.2 to 17.4.
- (B) The transferee shall notify the agency of the intended transfer and file an application for a license as provided in section 17.2 at least thirty (30) days prior to the final transfer.
- (C) The transferor shall notify the agency of the intended transfer at least thirty (30) days prior to the final transfer. The transferor shall remain responsible for the operation of the home until the date a new license is issued to the transferee.
- (D) The parties to the sale shall meet with the agency at least thirty (30) days prior to the final transfer to obtain a determination of the items of noncompliance with this

Act. Each item of noncompliance shall be corrected as a condition of issuance of a license to the transferee.

- (E) The transferor shall remain liable for all penalties assessed against the home as provided in section 25 for violations occurring prior to the transfer of ownership.

#### **Section 17.9. Notice to Agency of Change of Address and Intent to Close.**

- (A) A licensee shall provide written notice to the agency of a change of address at least fourteen (14) days prior to the date of the change of address.
- (B) A licensee shall provide written notice to the agency of its intent to voluntarily close a board and care home at least sixty (60) days prior to the date of closure of the home.
- (C) The agency shall begin to provide the residents of the home that is closing with transfer assistance as provided in section 27 upon receipt of the notice provided in subsection (B).

#### **Section 17.10. Regulations.**

The agency shall promulgate regulations relating to licensing in the following areas;

- (A) license application fees;
- (B) license application forms and procedures;
- (C) license applicant investigation procedures;
- (D) license issuance procedures;
- (E) license renewal forms and procedures;
- (F) transfer of ownership procedures; and
- (G) any other regulations necessary to carry out the requirements of this section.

### **SECTION 18. UNLICENSED BOARD AND CARE HOMES.**

#### **Section 18.1. Procedures for Identification.**

The agency shall promulgate regulations governing the identification of unlicensed board and care homes in cooperation with the board and care council as provided in section 16.2.

#### **Section 18.2. Prohibition on Placement into Unlicensed Homes and Reporting Requirements.**

- (A) No service coordinator or other public agency employee shall place, refer, or recommend placement of a person into a board and care home that is operating without a license.
- (B) Any service coordinator or other public agency employee who knows or should know that a board and care home is operating without a license shall report the name and address of the home to the agency. Any service coordinator or other public agency employee who fails to comply with this subsection shall be subject to a criminal penalty as provided in section 38.1.
- (C) The agency shall investigate any report filed under subsection (B). If the agency has probable cause to believe that a board and care home is operating without a license, it shall conduct an inspection as provided in section 20.

### **SECTION 19. VARIANCE.**

#### **Section 19.1. Temporary Variance. Application.**

- (A) A licensee of a board and care home may apply to the agency for a temporary variance from a regulation or provision of this Act.
- (B) The application for a temporary variance shall state the following:
  - (1) the regulation or provisions of Act from which the temporary variance is sought and description of the way in which the home is not in compliance with that regulation or provision;

- (2) the reasons why the variance is needed;
- (3) the period of time for which the variance is requested;
- (4) the licensee's plan for bringing the home into compliance prior to the expiration of the temporary variance;
- (5) the licensee's methods for sufficiently safeguarding the residents against the dangers covered by the regulation or provision of the Act during the period of the temporary variance; and
- (6) the licensee's assurance that the conditions in the home do not present an imminent danger.

#### **Section 19.2. Temporary Variance. Notice to Residents.**

- (A) Upon filing of the application for a temporary variance, the agency shall notify each resident of the home of the licensee's application.
- (B) A copy of the application shall be attached to the notice to each resident, and the notice shall state the following:
  - (1) the right of each resident to comment in writing on the licensee's application for a temporary variance and on whether the licensee's application for a temporary variance should be granted or denied; and
  - (2) the date by which written comments on the application must be received.
- (C) The agency shall serve the notice on each resident personally or by certified mail within five (5) days of the receipt by the agency of the licensee's application for a temporary variance.
- (D) The agency shall consider the written comments received as provided in this section in determining whether the licensee's application for a temporary variance shall be granted or denied.

#### **Section 19.3. Temporary Variance. Authority of Agency to Investigate, Inspect, or Schedule Conference**

In determining whether the licensee's application for a temporary variance shall be granted or denied, the agency shall take one or more of the following actions:

- (A) investigate the statements in the application;
- (B) inspect the premises of the board and care home; or
- (C) schedule a conference with the licensee regarding the application.

#### **Section 19.4. Temporary Variance. Grant or Denial.**

- (A) The agency shall grant a temporary variance upon a determination that:
  - (1) strict compliance with the regulation or provision of the Act cannot with reasonable diligence be accomplished within:
    - (a) the time limit stated in the notice of violation served upon the licensee; or
    - (b) if a notice of violation has not been served upon the licensee, within a reasonable time.
  - (c) In determining whether strict compliance with the regulation or provision of this Act cannot with reasonable diligence be accomplished within the time limits as provided in paragraph (a) or a reasonable time as provided in paragraph (b), the agency shall consider whether the licensee is unable to comply with the regulation or provision of the Act because of any of the following factors:
    - (i) the unavailability of professional or technical personnel;
    - (ii) the unavailability of materials and equipment needed to come into compliance with the regulation or provision; or
    - (iii) the inability to complete necessary construction or alteration of facilities before the time limit as provided in paragraphs

(1)(a) and (1)(b).

- (2) the licensee has an effective plan for bringing the home into compliance with the regulation or provision of the Act as quickly as is practicable; and
  - (3) the licensee's plan for bringing the home into compliance during the period of the temporary variance sufficiently safeguards the residents against the danger covered by the regulation or provision, and the conditions in the home do not present an imminent danger.
- (B) The duration of the temporary variance shall not exceed the reasonable time necessary to accomplish the licensee's plan for coming into compliance with the Act. The agency may grant one extension of time for the temporary variance upon a showing by the licensee that unforeseen circumstances have arisen since the granting of the variance and have delayed completion of the licensee's plan for coming into compliance with the Act.
- (C) The order granting or denying the temporary variance shall be in writing and shall state the agency's decision, and the findings in support for that decision. If the temporary variance is granted, the order shall state the expiration date of the temporary variance, and the steps the licensee must take to bring the home into compliance and protect the residents during the pendency of the order.
- (D) The licensee shall be served personally or by certified mail with a copy of the order and opinion, and with written notice of the licensee's right to contest the order as provided in section 19.5. Notice of the agency's order granting or denying the temporary variance shall be given to each resident of the home.
- (E) A licensee who fails to comply with an order granting a temporary variance shall be subject to the procedures and sanctions for failure to comply with the Act.

#### **Section 19.5. Right to Contest Denial of a Temporary Variance.**

- (A) A licensee shall have the right to contest denial of his or her application for a temporary variance in accordance with the adjudication procedures as provided in section 6.
- (B) If a licensee intends to contest denial of his or her application for a temporary variance, the licensee shall request a hearing in writing within ten (10) days after receipt of notice of the denial.
- (C) Upon written request of the licensee, the agency may stay the date by which the violation must be corrected as specified in the notice of violation until a final decision is reached regarding denial of an application for a temporary variance.

#### **Section 19.6. Application for Variance After Receipt of Notice of Violation.**

- (A) If a licensee has received a notice of violation, as provided in section 22.1, the licensee may apply for a variance from any regulation or provision of this Act that is specified in the notice of violation.
- (B) If a licensee applies for a variance as provided in subsection (A), the licensee may request, in writing, an order to stay the date by which the violations must be corrected as specified in the notice of violation. The agency may stay the date by which violations must be corrected until review of the licensee's application for a variance is completed only upon a showing by the licensee that any conditions in the home that present an imminent danger have been abated.

#### **Section 19.7. Permanent Variance. Application.**

- (A) A licensee of a board and care home may apply to the agency for permanent variance from a regulation or

provision of this Act.

- (B) The applicant for a permanent variance shall state:
  - (1) the specific regulation or provision of the Act from which the variance is sought;
  - (2) a description of the way in which the home is not in compliance with the Act;
  - (3) the reasons why strict compliance with the regulation or provision of the Act would impose a substantial hardship on the licensee because of economic, technological, legal, or medical considerations; and
  - (4) the alternative method the licensee will use to meet the requirements of the Act, and the way in which the licensee's alternative method:
    - (a) meets the same goal as the specific regulation or provision from which the variance is sought is designed to meet; and
    - (b) protects the health, safety, and welfare of the residents as well as they would be protected if strict compliance with the regulation or provision of the Act was required.

#### **Section 19.8. Permanent Variance. Notice to Residents.**

- (A) Upon filing of the application for a permanent variance, the agency shall notify each resident of the home of the licensee's application.
- (B) A copy of the application shall be attached to the notice to each resident and the notice shall state the following:
  - (1) the time and place for a hearing as provided in section 19.9; and
  - (2) the right of each resident to testify or present evidence at the hearing.
- (C) The agency shall serve the notice on each resident personally or by certified mail within five (5) days of the receipt by the agency of the licensee's application for a variance or within fourteen (14) days of the hearing, whichever is earlier.

#### **Section 19.9. Permanent Variance. Mandatory Hearing.**

- (A) The agency shall hold a hearing on the application for a permanent variance within forty-five (45) days of the filing of the application.
- (B) The hearing, including notice requirements, shall be conducted as provided in section 6; except that each resident of the home shall have the right to testify and present evidence at the hearing.
- (C) The licensee shall have the burden of proving at the hearing that it meets the requirements for granting a permanent variance as provided in section 19.10(A).
- (D) Prior to the hearing, the agency may inspect the premises of the home seeking the permanent variance and the findings of the inspection may be presented at the hearing.

#### **Section 19.10. Permanent Variance, Grant or Denial. Notice. Effect of Order.**

- (A) The agency shall grant a permanent variance upon a determination that:
  - (1) strict compliance with the regulation or statutory provision of the Act would impose a substantial hardship on the licensee because of economic, technological, legal, or medical considerations;
  - (2) the licensee's alternative method of compliance with the Act will meet the same goal that the regulation or provision of the Act from which the licensee seeks the variance was designed to meet; and
  - (3) the licensee's alternative method of compliance with the Act protects the health, safety, and welfare of the residents as well as they would be protected if strict compliance with the Act was required.



- (B) the order to grant or deny a variance shall be in writing and shall be accompanied by a written opinion that states the findings of facts and conclusion of law upon which the decision was based. In granting the variance, the agency may impose any conditions upon the variance it determines are necessary to meet the policies of the Act, and any conditions imposed shall be stated in the decision granting the variance.
- (C) The licensee shall be served personally or by certified mail with a copy of the order and opinion, and with written notice of the licensee's right to contest the order as provided in section 19.11. Notice of the decision and opinion shall be given to all interested parties.
- (D) A licensee who fails to comply with an order granting a permanent variance shall be subject to the procedures and sanctions for failure to comply with the Act.

**Section 19.11. Right to Judicial Review Following Denial of Application for a Permanent Variance.**

A licensee shall have the right to file a petition for judicial review of an agency determination denying an application for a permanent variance in accordance with the judicial review procedures as provided in section 6.

**Section 19.12. Exceptions.**

- (A) No variance shall be granted from a regulation or provision of the Act pertaining to licensing, as provided in sections 17.1–17.10, inspections, as provided in sections 20.1–20.6, resident rights, as provided in sections 10.1–10.18, or the posting and public inspection of licensing documents, as provided in section 17.5.
- (B) No medium or large home shall be granted a permanent variance from regulations or provisions of the Act pertaining to fire safety, as provided in section 12.4.

**SECTION 20. INSPECTIONS AND INVESTIGATIONS.**

**Section 20.1. Mandatory and Discretionary Inspections.**

- (A) The agency shall conduct an inspection of a board and care home:
  - (1) prior to issuance of a license as provided in section 17.3;
  - (2) no later than sixty (60) days prior to annual renewal of a license as provided in section 17.6;
  - (3) within thirty (30) days after the date the agency receives a report of compliance or, if the agency does not receive a report of compliance, the date by which violations must be corrected as specified in the notice of violation as provided in section 22;
  - (4) within twenty-four (24) hours after the date by which violations that present an imminent danger must be corrected as specified in the notice of violation as provided in section 22.5;
  - (5) upon complaint, as provided in section 21; and
  - (6) anytime the agency has probable cause to believe a home has violated a regulation or provision of this Act.
- (B) The agency may conduct inspection any time such inspections are authorized by this Act and any other time the agency considers it necessary to determine if a home is in compliance with this Act.

**Section 20.2. Purpose, Scope, and Time of Inspections.**

- (A) The purpose of inspecting a board and care home shall be to determine whether the home is in compliance with regulations or provisions of this Act.
- (B) An inspector shall have full access and authority to examine, among other things, a home's records, accounts, and physical premises, including the buildings, grounds, equipment, or any vehicles.
- (C) An inspector shall have authority to interview the li-

censee, administrator, staff, and residents. Interviews with residents shall be confidential and conducted privately.

- (D) Inspections may be conducted any time.

**Section 20.3 Subpoenas to Compel Attendance and Testimony of Witnesses and Production of Evidence and Oaths.**

For the purpose of making investigations and inspections under this Act, the agency may:

- (A) issue subpoenas for the attendance and testimony of witnesses and the production of evidence, including relevant papers, books, and documents; and
- (B) administer oaths.

**Section 20.4. Inspection Reports.**

- (A) Whenever an inspection is conducted, the agency shall prepare a written report that states the reasons for the inspection and summarizes all information obtained during the inspection.
- (B) If the home is in violation of the Act, a copy of the inspection report shall be served upon the licensee at the same time as the notice of violation as provided in section 22.1. If the home is not in violation of the Act, a copy of the inspection report shall be mailed to the licensee within ten (10) days of the inspection of the home.
- (C) All inspection reports shall be made available to the public at the agency during business hours.

**Section 20.5. Advance Notice, Consent, and Search Warrants to Inspect.**

- (A) The agency has authority to conduct inspections as provided in subsection 20.1(A) with or without advance notice to the licensee, administrator, staff or a resident of the home; except that the agency shall not give advance notice of any inspection if the agency believes that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of the Act.
- (B) An inspection may be conducted pursuant to a search warrant or consent of the licensee; except that a warrant shall be obtained without first seeking the licensee's consent if advance notice has not been given because the agency believes that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of the Act as provided in subsection (A) of this section.
- (C) The inspector shall provide residents with a reasonable opportunity to remove personal effects from their bedrooms prior to conducting an inspection.
- (D) Application, issuance, and execution of a search warrant to inspect a board and care home shall be in accordance with procedures provided by [state law].

**Section 20.6. Consultation with Other Agencies.**

If after an inspection the agency believes that it does not possess sufficient knowledge or expertise to determine whether a home is in compliance with any requirement of the Act, the agency shall obtain information from other agencies that have such knowledge or expertise.

**SECTION 21. COMPLAINTS.**

- (A) A person who believes that this Act has been violated may file a complaint with the agency.
- (B) The agency shall investigate any complaint filed under subsection (A), unless the agency reasonably believes the complaint is without merit. If the agency reasonably believes a requirement of the Act has been violated, it shall conduct an inspection of the home as provided in section 20.1.
- (C) A complaint filed with the agency under subsection (A) which is subsequently released to the home that is the

subject of the complaint or to any member of the public shall not disclose the name or identifying characteristics of the complainant or the name of the resident who is the subject of the complaint, unless:

- (1) the complainant or resident consents in writing to the disclosure; or
- (2) the investigation results in a judicial proceeding and disclosure is ordered by the court.

If the disclosure is essential to the investigation, the complainant shall be given an opportunity to withdraw the complaint before disclosure.

- (D) Upon request of the complainant, the agency shall inform the complainant or, if requested by the complainant, the complainant's designated representative, of the results of the investigation and any action taken by the agency.

## **SECTION 22. IDENTIFICATION AND PROCEDURES FOR CORRECTION OF VIOLATIONS.**

### **Section 22.1. Notice of Violation.**

- (A) If, as a result of an inspection, the agency determines that a condition in the home violates a regulation or provision of this Act, the agency shall prepare a notice of violation in writing.
- (B) The notice of violation shall state the following:
  - (1) a description of each condition in the home that constitutes a violation;
  - (2) each regulation or statutory provision alleged to have been violated;
  - (3) except as provided in section 22.5, the date by which violations must be corrected as specified in the notice of violation, but no later than ninety (90) days after receipt of the notice;
  - (4) the requirements for filing a report of compliance as provided in section 22.3;
  - (5) sanctions that may be imposed against the home for failure to correct the violations or failure to file the report of compliance by the date specified in the notice of violation;
  - (6) except as provided in section 24.4, the right to contest the violations if an administrative sanction is imposed as provided in section 24.3; and
  - (7) the right to apply for a variance as provided in section 19.
- (C) Except as provided in section 22.5, the notice of violation shall be served upon the licensee personally or by certified mail within five (5) working days of the inspection.

### **Section 22.2. Conference.**

- (A) At any time after receipt of a notice of violations as provided in section 22.1, or an inspection report as provided in section 20.5, the licensee or the agency may request a conference. Except as provided in section 22.5, the conference shall be scheduled within seven (7) days of a request by either party.
- (B) The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of the Act.
- (C) The request by a licensee or the agency for a conference shall not toll the running of any time periods as provided in this Act.

### **Section 22.3. Report of Compliance.**

- (A) Except as provided in section 22.5, upon correction of the violations specified in the notice of violation, the licensee shall file a report of compliance with the agency no later than five (5) days after the date by which violations must be corrected as specified in the notice of

violation.

- (B) The report of compliance shall be in writing and shall state:
  - (1) each violation listed in the notice of violation; and
  - (2) a description of how each violation has been corrected.
- (C) The licensee shall sign the report of compliance, affirming its contents, and the signature of the licensee shall be notarized.

### **Section 22.4. Reinspection.**

The agency shall conduct an inspection of the home as provided in section 20.1 within thirty (30) days after the date the agency receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.

### **Section 22.5. Expedited Procedures for Violations that Present an Imminent Danger.**

The agency shall use the procedures specified in sections 22.1–22.4 for violations that present an imminent danger, except as follows:

- (A) The notice of violation as provided in section 22.1 shall be served personally upon the licensee within twenty-four (24) hours of the inspection or shall be posted conspicuously on the premises if the licensee cannot be located with reasonable diligence. The notice shall order the licensee to correct the violation and abate the conditions within a specific period of time, but no later than twenty-four (24) hours after receipt of the notice of violation.
- (B) The conference as provided in section 22.2 may be scheduled after the time required to abate the conditions or correct the violations.
- (C) The agency shall inspect the home as provided in section 20.1 within twenty-four (24) hours after the date by which violations must be corrected as specified in the notice of violation.

## **SECTION 23. MANDATORY ENFORCEMENT ACTIONS.**

If, after inspection of a home, the home has not corrected violations by the date specified in the notice of violation as provided in section 22, or if the agency has not received a report of compliance as provided in section 22.3, the agency shall institute one or more of the following actions:

- (A) imposition of an administrative sanction as provided in sections 24–27;
- (B) civil court action for a receivership as provided in section 31, or an injunction as provided in section 32; or
- (C) filing of a criminal complaint as provided in section 38.

## **SECTION 24. ADMINISTRATIVE SANCTION PROCEDURES.**

### **Section 24.1. Notice of Administrative Sanction Imposed for Violations that Do Not Result in Conditions Presenting an Imminent Danger.**

- (A) If the agency imposes an administrative sanction for violations that do not result in conditions presenting an imminent danger, it shall serve a notice of administrative sanction upon the licensee personally or by certified mail.
- (B) The notice shall state:
  - (1) each sanction imposed;
  - (2) a description of each condition in the home that constitutes a violation;
  - (3) each regulation or provision of the Act allegedly violated; and
  - (4) the licensee's right to contest the administrative

sanction as provided in section 24.2.

- (C) If a civil penalty is imposed, the notice shall state, in addition to the above, the amount of the penalty and the licensee's right to request reduction of the penalty as provided in section 25.2.
- (D) A copy of the notice of violation previously served upon the licensee shall be attached to the notice of administrative sanction.

**Section 24.2. Right to Contest Administrative Sanctions Imposed for Violations that Do Not Result in Conditions Presenting an Imminent Danger.**

- (A) A licensee may contest imposition of the following administrative sanctions for violations that do not result in conditions presenting an imminent danger in accordance with adjudication procedures as provided in section 6:
  - (1) revocation of a license;
  - (2) nonrenewal of a license;
  - (3) suspension of admissions;
  - (4) transfer of residents; and
  - (5) civil penalties.
- (B) If a licensee intends to contest an administrative sanction, the licensee shall request a hearing in writing within ten (10) days after receipt of the notice of administrative sanction.
- (C) If a licensee fails to request a hearing within the time provided in subsection (B), the notice of administrative sanction shall be deemed a final order of the agency. The agency may seek court enforcement of the final order as provided in section 29.
- (D) Upon receipt of the licensee's request for a hearing as provided in subsection (B), the agency shall hold a hearing as provided in section 6. The hearing shall be held prior to execution of the sanctions listed in subsection (A) and shall be held within thirty (30) days after receipt of the licensee's request for a hearing.

**Section 24.3. Notice of Order to Suspend Admissions Immediately and Transfer Residents Immediately for Violations that Result in Conditions Presenting an Imminent Danger.**

- (A) If the agency issues an order to suspend admissions immediately and transfer residents immediately as provided in sections 26 and 27, it shall serve the order upon the licensee personally or, if the licensee cannot be located with reasonable diligence, it shall post the order conspicuously in the home. The order shall be executed upon issuance.
- (B) The order shall state:
  - (1) that all admissions to the home are suspended and that all residents will be transferred immediately;
  - (2) the reasons for finding that conditions in the home present an imminent danger; and
  - (3) the licensee's right to contest the order as provided in section 24.4.

**Section 24.4. Right to Contest an Order to Suspend Admissions Immediately and Transfer Residents Immediately for Violations that Result in Conditions Presenting an Imminent Danger.**

- (A) A licensee may contest imposition of an order to suspend admissions immediately and transfer residents immediately.
- (B) If a licensee intends to contest an order to suspend admissions immediately and transfer residents immediately, the licensee shall request a hearing within twenty-four (24) hours after receipt of the order.
- (C) If a licensee fails to request a hearing within the time

provided in subsection (B), the order shall be deemed final. The agency may seek court enforcement of a final order as provided in section 29.

- (D) Upon receipt of the licensee's request for a hearing as provided in subsection (B), the agency shall hold a hearing as provided in section 6 no later than forty-eight (48) hours after receipt of the order by the licensee.

**SECTION 25. CIVIL PENALTIES.**

**Section 25.1. Grounds.**

The agency may impose a civil penalty against a board and care home in the amount of:

- (A) [ten dollars (\$10)] per resident or [one hundred dollars (\$100)], whichever is greater, for each day that a violation of a regulation or provision of the Act remains uncorrected after the date by which the violation must be corrected as specified in the notice of violation for:
  - (1) a violation in a home that results in conditions presenting an imminent danger or a substantial probability of death or serious physical harm to residents of the home;
  - (2) a violation of a resident's rights as provided in section 10;
  - (3) a violation of the Act or regulations governing fire safety as provided in section 12.4;
  - (4) operation of a board and care home without a license; or
- (B) [five dollars (\$5)] per resident or [fifty dollars (\$50)], whichever is greater, for each day that a violation remains uncorrected after the date by which the violation must be corrected as specified in the notice of violation for any other violation of a regulation or provision of the Act.

**Section 25.2. Reduction of Civil Penalty.**

- (A) A board and care home may request reduction of a civil penalty imposed by the agency. The request shall be in writing, shall state the reasons for the request, and shall be made within ten (10) days of the home's receipt of the notice of administrative sanction as provided in section 24.1. A request for reduction of a civil penalty shall not toll the running of any time periods as provided in this Act.
- (B) The agency shall hold an informal conference with the licensee on the issue of whether to reduce the civil penalty within fourteen (14) days of receipt of the request for reduction as provided in subsection (A).
- (C) If assessment of the full civil penalty against a board and care home would be unjust and contrary to the purpose of the Act, the agency may reduce the civil penalty.
- (D) The agency shall consider the following factors to determine whether the penalty would be unjust and contrary to the purposes of the Act, and to determine the extent of the penalty reduction:
  - (1) whether payment of the full civil penalty will substantially diminish the home's ability to make needed corrections;
  - (2) whether payment of the full civil penalty, after payment for needed corrections, will substantially diminish the home's capacity to continue to operate;
  - (3) the home's current and past diligence in correcting the violation; and
  - (4) the home's history of violations.
- (E) In granting a licensee's request for reduction of a civil penalty, the agency shall impose as a condition upon reduction of the penalty the correction of all violations.
- (F) The agency shall issue a written determination granting or denying the request for reduction of a civil penalty

stating the findings in support of the determination. The determination shall be served upon the licensee personally or by certified mail.

### **Section 25.3. Treble Penalty for Repeated Violations.**

A board and care home that violates a regulation or provision of the Act and that has had a sanction imposed against it for the same violation within two (2) years prior to issuance of the current inspection report shall be subject to a penalty three (3) times the amount provided in section 25.1.

### **Section 25.4. Payment of Penalties.**

- (A) A board and care home shall pay all penalties to the agency within ten (10) days after the home receives a final order imposing a civil penalty. The order imposing a civil penalty is final when the home has exhausted all opportunities to contest the penalty in accordance with the adjudication procedures as provided in section 6.
- (B) If a board and care home does not correct all violations following issuance of a final order imposing a civil penalty:
  - (1) on the first day of each month the violations remain uncorrected, the agency shall serve a written demand for payment upon the home personally or by certified mail; and
  - (2) the home shall pay the penalty demanded within ten (10) days after it receives each written demand for payment.
- (C) If a board and care home does not comply with subsection (A) or subsection (B), the agency shall file a court action to recover the penalty as provided in section 29.

## **SECTION 26. SUSPENSION OF ADMISSIONS.**

The agency may suspend admissions to a board and care home on the following grounds:

- (A) as a result of a violation of a regulation or provision of this Act, the home is unable to provide an adequate level of meals, lodging, and personal assistance to persons residing in the home at the time of the violation;
- (B) a violation of a resident's rights as provided in section 10;
- (C) the number of residents currently in the home exceeds the number of residents the home is licensed to serve;
- (D) the home is operating without a license; or
- (E) a violation of a regulation or provision of this Act results in conditions that present an imminent danger.

## **SECTION 27. TRANSFER OF RESIDENTS.**

### **Section 27.1 Grounds.**

The agency may transfer residents from a board and care home to an alternative placement on the following grounds:

- (A) as a result of a violation of a regulation or provision of this Act, the home is unable to provide an adequate level of meals, lodgings, and personal assistance to the persons residing in the home at the time of the violation;
- (B) a violation of a resident's rights as provided in section 10;
- (C) the number of residents currently in the home exceeds the maximum number of residents the home is licensed to serve;
- (D) the home is operating without a license; or
- (E) a violation of a regulation or provision of this Act results in conditions that present an imminent danger.

### **Section 27.2. Assistance in Relocating.**

(A) The agency and the resident's service coordinator shall make available assistance in relocating as provided in subsection (B) to any resident who:

- (1) is being transferred under section 27.1;
- (2) is being transferred as a result of an injunction issued under section 32;

- (3) is being transferred as a result of a receivership ordered under section 31; or
- (4) has requested assistance in moving to an alternative placement as provided in section 9.8.

(B) Assistance in relocating shall include the following:

- (1) a resident shall be involved in planning his or her move and shall have the right to choose among available alternative placements; except that if a situation presenting an imminent danger makes prior involvement of the resident impossible, the agency and the resident's service coordinator may make a temporary placement until a final placement can be arranged;
- (2) residents shall be provided with an opportunity to visit alternative placements before the move or following a temporary placement under paragraph (1);
- (3) residents may choose their final alternative placement and shall be given assistance in moving to such placement;
- (4) if the agency and the resident's service coordinator make or participate in making the decision to move to an alternative placement, consideration shall be given to the wishes of the resident and the proximity of the placement of the residents' relatives and friends;
- (5) the resident, the agency, and the resident's service coordinator shall prepare a plan to assure a safe move and to protect the resident's health, safety, welfare, and rights before and during the move.

(C) A resident transfer under this section shall be consistent with the resident's board and care plan as provided in section 8.

(D) In any resident transfer conducted under subsections 27.1(A), (B), (C), or (D), the agency shall provide prior written notice to the resident being transferred. The notice shall state the basis for the transfer and shall inform the resident of his or her right to contest the transfer in accordance with the adjudication procedures as provided in section 6. If the resident wishes to contest the transfer, he or she shall request a hearing within ten (10) days following receipt of the notice.

(E) In any resident transfer conducted under subsection 27.1(E), the agency shall provide written notice to the resident being transferred. The notice shall state that the agency has issued an order to transfer residents from the home and to suspend admissions, and it shall be served personally upon the residents immediately following issuance of the order. The notice also shall inform the resident of his or her right to contest the transfer in accordance with the adjudication procedures as provided in section 6 following the transfer. If the resident wishes to contest the transfer, he or she shall request a hearing within five (5) working days following receipt of the notice.

## **SECTION 28. REVOCATION OR NONRENEWAL OF LICENSE.**

The agency may revoke or refuse to renew the license of a board and care home on the following grounds:

- (A) a violation of a regulation or provision of the Act results in conditions that present an imminent danger or a substantial probability of death or serious physical harm to residents of the home;
- (B) a violation of a resident's rights as provided in section 10;
- (C) a criminal conviction of the licensee or administrator for an offense specified in section 38 during the term of the home's license;

- (D) obtaining or attempting to obtain or retain a license by fraudulent means, misrepresentation, or by submitting false information;
- (E) insolvency of the home;
- (F) failure to comply with a final order of the agency to correct a violation of a regulation or provision of the Act for which an administrative sanction has been imposed; or
- (G) failure to comply with a final order of the agency imposing an administrative sanction.

## **SECTION 29. CIVIL ENFORCEMENT OF FINAL AGENCY ORDERS.**

### **Section 29.1. Agency Authority to File for Civil Enforcement.**

In addition to other remedies provided by law, the agency may seek enforcement of its final orders by filing an action for civil enforcement in a court of competent jurisdiction.

### **Section 29.2. Defenses.**

In any enforcement proceeding brought under section 29.1, the respondent may assert only the following defenses:

- (A) the invalidity of the relevant provision of the Act;
- (B) the inapplicability of the order to respondent;
- (C) that the order is not final; or
- (D) that respondent has corrected all violations, except that a respondent who establishes this defense is not necessarily relieved from any sanction imposed under this Act.

### **Section 29.3. Relief.**

In any enforcement proceeding brought under section 29.1, the court may grant any civil remedy provided by law.

## **SECTION 30. NOTICE TO PLACEMENT AGENCIES OF ORDERS TO IMPOSE AN ADMINISTRATIVE SANCTION.**

- (A) Except as provided in subsection (B), the agency shall provide written notice of a final agency order imposing an administrative sanction to:
  - (1) all public or private agencies involved in placement or referral of persons to board and care homes; and
  - (2) any other appropriate federal, state, or local agency.
- (B) If any agency order to immediately suspend admissions or immediately transfer residents is imposed, the notice shall be provided to the agencies listed in subsection (A) pending a hearing to contest the order.
- (C) The notice provided in subsection[s] (A) and (B) shall be in writing and shall state:
  - (1) the name and address of the board and care home;
  - (2) the uncorrected violation that prompted imposition of the sanction;
  - (3) the sanction imposed; and
  - (4) if the notice is of an order to immediately suspend admissions or immediately transfer residents, that a hearing to contest the order is pending.
- (D) The agency shall provide written notice to the agencies listed in subsection (A) when a previously imposed sanction has been lifted.
- (E) The notice provided in subsection (D) shall be in writing and shall state:
  - (1) the name and address of the board and care home;
  - (2) the date of the notice issued under subsection (A) or (B);
  - (3) the sanction that has been lifted; and
  - (4) the date the sanction was lifted.

## **SECTION 31. RECEIVERSHIP.**

### **Section 31.1. Who May Petition.**

The agency, the attorney general, an advocate, a resident, or the licensee may petition a court of competent jurisdiction to appoint a receiver to operate a board and care home.

### **Section 31.2. Grounds.**

The court may appoint a receiver upon the filing of a petition or *sua sponte* in any pending action for one or more of the following grounds:

- (A) a violation which results in conditions that present a substantial probability of death or serious physical harm to residents or staff;
- (B) the home is operating without a license;
- (C) the license of the home has been suspended or revoked or the home is closing or intends to close and adequate arrangements for relocating residents have not been made;
- (D) the procedures for nonrenewal or revocation of the home's license have been initiated and violations in the home result in conditions that present an imminent danger;
- (E) insolvency;
- (F) a previous court order has been issued requiring respondent to act or refrain from acting and respondent has failed to comply with the court order;
- (G) upon request of the owner-operator or licensee of the home; or
- (H) misdealing or fraud in the handling of resident funds.

### **Section 31.3. Procedures for Appointment.**

The procedure for petitioning a court for an appointment of a receiver, including service of process, shall be in accordance with the [state] rules of civil procedure. In addition:

- (A) If personal service of a copy of the petition cannot be made with due diligence upon the respondent, service may be made upon the respondent by posting a copy of the summons and petition in a conspicuous place within the board and care home, and sending a copy of the summons and petition to the respondent by registered mail at his last known address. Service shall be complete upon filing a return of service with the clerk of the courts.
- (B) If it appears from the petition, affidavits, or testimony of witnesses under oath that there is probable cause to believe that violations in the home are resulting in conditions that present an imminent danger, the court shall order *ex parte* the appointment of a receiver. Notice of the petition and order shall be served on the respondent and any other parties to the case within twenty-four (24) hours after issuance of the order. A hearing on the petition shall be held within three (3) days after notice is served or posted unless the respondent agrees to a later date. After the hearing, the court may terminate, continue, or modify the temporary order.

### **Section 31.4. Receiver Qualifications.**

The court shall appoint as a receiver one or more responsible and qualified persons, except that the following individuals shall not be appointed:

- (A) any of the parties to the action, any employees, agents, or any persons related by blood or marriage to the parties to the action;
- (B) the agency or representative of the agency, except that if no qualified individual is willing to be appointed as a receiver and the agency does not object to its appointment, the court may appoint the agency as the receiver.

### **Section 31.5. Purchase of Home by Receiver Prohibited.**

Ownership of the respondent home shall not be transferred to the receiver or its employees, agents, or relatives

during the pendency of the receivership, or within six (6) months of the termination of the receivership; except that the ownership of the respondent home may be transferred to the state or agent of the state notwithstanding that the agency has been appointed as the receiver for the home.

#### **Section 31.6. Powers and Duties of Receiver.**

A receiver appointed under this section:

- (A) may exercise those powers and shall perform those duties set out by the court;
- (B) shall operate the home in compliance with this Act and assure the safety of the residents and the delivery of services to them;
- (C) shall have the same rights to possession of the building in which the home is located and of all goods and fixtures the time the petition for receivership is filed as the licensee would have had if the receiver had not been appointed. The receiver shall take such action as is necessary to protect or conserve the assets or property of which the receiver takes possession, or the proceeds of any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court;
- (D) may use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the home at the time the petition for receivership was filed. The receiver shall collect payment for all goods and services provided to residents or others during the period of the receivership at the same rate and method of payment as was charged by the licensee at the time the petition for receivership was filed, unless a different rate is set by the court;
- (E) may correct or eliminate any deficiency in the structure or furnishings of the home that endangers the safety or health of residents while they remain in the home, provided the total cost of correction does not exceed \$1,000;
- (F) shall submit to the court a plan as provided in section 31.7 of this Act for correction or elimination of any deficiency in the structure or furnishings of the home that endangers the safety or health of residents while they remain in the home, if such corrections are estimated to exceed \$1,000, and shall carry out the plan with any modification as approved by the court;
- (G) may let contracts and hire agents and employees to carry out the powers and duties created under this section;
- (H) except as specified in section 31.8, shall honor all leases, mortgages, and secured transactions governing the building in which the home is located and all goods and fixtures in the building of which the receiver has taken possession, but, in the case of a rental agreement, only to the extent of payments that are for the use of the property during the period of the receivership, or, in the case of a purchase agreement, come due during the period of the receivership;
- (I) shall have full power to direct, manage, and discharge employees of the home, subject to any contract rights they may have;
- (J) if transfer of the residents is necessary, shall cooperate with the agency in carrying out the transfer of residents to an alternative placement as provided in section 26; and
- (K) shall be entitled to and shall take possession of all property or assets of residents in the possession of the licensee or administrator. The receiver shall preserve all property, assets, and records of residents of which the receiver takes possession and shall provide for the

prompt transfer of the property, assets, and records to the alternative placement of any transferred resident.

#### **Section 31.7. Plan for Correction of Deficiencies in Excess of \$1,000.**

- (A) If the receiver determines that it is necessary to correct a deficiency estimated by the receiver to cost in excess of \$1,000, the receiver shall submit to the court a written plan that contains the following:
  - (1) a description of the deficiency that requires correction;
  - (2) a description of the method proposed by the receiver for correction of the deficiency; and
  - (3) an estimate of the cost of the correction.
- (B) A copy of the plan shall be served upon the petitioner and the respondent within three (3) days after the submission of the plan to the court.
- (C) Upon the written request of a party within seven (7) days after submission of the plan to the court, a hearing on the proposed plan of correction shall be held. If a hearing is requested by a party, the hearing shall be held within fourteen (14) days of the written request. The petitioner, respondent, and receiver shall have the opportunity to present evidence at the hearing regarding the proposed plan. Upon hearing the evidence, the court may approve the plan, modify the plan, or, if the court determines as a result of the evidence that the alleged deficiency does not require correction, it may reject the plan.
- (D) If no party requests a hearing on the plan, the court may order the receiver to proceed to implement the plan.
- (E) Upon written petition, affidavits, and any other evidence submitted to the court showing that violations in the home have resulted in conditions that present an imminent danger, the court may approve *ex parte* a written plan of the receiver to correct a deficiency of the home. Notice of the plan and the *ex parte* order shall be served upon the parties within twenty-four (24) hours after issuance of the *ex parte* order approving the plan. A hearing on the plan shall be held within three (3) days after service of the notice. Upon hearing the evidence presented at the hearing, the court may continue, modify, or reject further implementation of the written plan.

#### **Section 31.8. Payment to Receiver.**

- (A) A person who is served with notice of an order of the court appointing a receiver and of the receiver's name and address shall be liable to pay the receiver for any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services as supplied by the licensee or agent of the licensee. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit amounts received in a special account and shall use this account for all disbursements.
- (B) The receiver may bring an action to enforce the liability created by subsection (A). Proof of payment to the receiver is as effective in favor of the person making the payment as payment of the amount to the person who, but for this subsection, would have been entitled to receive the sum so paid.
- (C) A resident may not be discharged, nor may any contract or rights be forfeited or impaired, nor may forfeiture or liability be increased, by reason of an omission to pay a licensee or other person a sum paid to the receiver.

#### **Section 31.9. Avoidance of Preexisting Leases, Mortgages, and Contracts.**

- (A) A receiver may not be required to honor any lease,

mortgage, secured transaction, or other wholly or partially executory contract entered into by the licensee or administrator of the home if:

- (1) the person seeking payment under the agreement was a licensee or administrator of the home or was an affiliate of a licensee or administrator at the time the agreement was made; or
  - (2) the rental price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rental price or rate of interest at the time the contract was entered into.
- (B) If the receiver is in possession of real estate or goods subject to a lease, mortgage, security interest, or other contract which the receiver is permitted to avoid under subsection (A), and if the real estate or goods are necessary for the continued operation of the home under this section, the receiver may apply to the court to set a reasonable rental price or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within fifteen (15) days after receipt of the application. The receiver shall send notice of the application to any known owners of the property involved at least ten (10) days prior to the hearing.
- (C) Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for possession of the goods or real estate subject to the lease, mortgage, security interest, or other contract involved by any person who received such notice, but the payment does not relieve the licensee of liability for the difference between the amount paid by the receiver and the amount due under the original lease, mortgage, or security interest involved.

#### **Section 31.10. Contingency Fund.**

- (A) The legislature shall appropriate a sufficient sum of money to establish a receivership contingency fund.
- (B) Upon a showing that expenses of the receivership exceed the operating funds of the home, the court, in its discretion, may order that the agency pay to the receiver proceeds from the fund for the following:
- (1) payment of the expenses of the receiver incurred with respect to implementation of a court-approved plan for correction of deficiencies in excess of \$1,000; and
  - (2) compensation of the receiver.

#### **Section 31.11. Termination of Receivership.**

The court shall order the termination of the receivership upon a showing that the goals of the receivership have been met.

#### **Section 31.12. Compensation of Receiver.**

The court shall set the compensation of the receiver.

#### **Section 31.13. Accounting Lien for Expenses.**

- (A) Within thirty (30) days after termination of the receivership, the receiver shall give the court a complete accounting of:
- (1) all property of which the receiver has taken possession;
  - (2) all funds collected under this section; and
  - (3) expenses of the receivership.
- (B) If the operating funds collected by the receivership exceed the reasonable expenses of the receivership, the court shall order payment of the surplus to the licensee, after reimbursement of funds drawn from the contingency fund. If the operating funds are insufficient to cover the reasonable expenses of the receivership, the

licensee shall be liable for the deficiency. The licensee may apply to the court to determine the reasonableness of any expenses of the receivership. The licensee shall not be responsible for expenses in excess of what the court finds to be reasonable. Payment recovered from the licensee shall be used to reimburse the contingency fund for amounts drawn by the receiver.

- (C) The court may order that the agency shall have a lien for any reasonable costs of the receivership which are not covered by the operating funds collected by the receiver and for any funds paid out of the contingency fund during the receivership upon any beneficial interest, direct or indirect, of any licensee or administrator in the following property:
- (1) the building in which the home is located;
  - (2) the land on which the home is located;
  - (3) any fixtures, equipment, or goods used in the operation of the home; or
  - (4) the proceeds from any conveyance of property described in paragraph (1), (2), and (3) of this section made by the licensee or administrator within one year prior to the filing of the petition for receivership.
- (D) The lien provided for in this section is superior to any lien or other interest which originates subsequent to the filing of a petition for receivership under this section, except for a construction or mechanic's lien arising out of work performed with the express consent of the receiver.
- (E) The clerk of the court for the county in which the home is located shall record the filing of the petition for receivership in the lien docket opposite the names of the licensees and administrator named in the petition.
- (F) Within sixty (60) days after termination of the receivership, the receiver shall file a notice of any lien created under this section. If the lien is on real property, the notice shall be filed with the clerk of the court of the county in which the home is located and entered on the lien docket. If the lien is on personal property, the lien shall be filed with the person against whom the lien is claimed, and shall state the name of the receiver, the dates of the petition for receivership, the termination of receivership, a description of the property involved, and the amount claimed. No lien shall exist under this section against any person, on any property, or for any amount not specified in the notice filed under this section.

#### **Section 31.14. Obligations of Licensee.**

Nothing in this section shall be deemed to relieve any licensee or administrator of a home placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the licensee or administrator prior to the appointment of a receiver under this section. Nothing contained in this section shall be construed to suspend during the receivership any obligation of the licensee or administrator for payment of taxes or other operating and maintenance expenses of the facility nor the licensee or administrator or any other person for the payment of mortgages or liens. No licensee or administrator may be held professionally liable for acts or omissions of the receiver or the receiver's employees during the term of the receivership.

### **SECTION 32. INJUNCTION.**

#### **Section 32.1. Grounds.**

A resident, the agency, the attorney general, or an advocate may bring an action for a temporary restraining order, preliminary injunction, or permanent injunction against a

board and care home to enjoin:

- (A) any act or omission which constitutes a violation of this Act; or
- (B) operation of:
  - (1) an unlicensed home;
  - (2) a licensed home against which procedures for renewal or revocation of this home's license have been initiated and that has violations that have resulted in conditions that present an imminent danger or violate resident's rights as provided in section 10.

#### **Section 32.2. Procedures.**

An action for a temporary restraining order, preliminary injunction, or permanent injunction shall be brought in a court of competent jurisdiction in accordance with the rules of civil procedure.

### **SECTION 33. CIVIL ACTION FOR DAMAGES BY RESIDENT.**

#### **Section 33.1. Grounds.**

- (A) Residents of board and care homes individually or as a class may bring an action in a court of competent jurisdiction to recover actual and punitive damages for an injury that results from a violation of this Act. If the violation is of the rights of residents as specified in section 10, the resident shall be awarded three times the actual damages or \$1,000, whichever is greater.
- (B) The right of a resident to bring an action pursuant to this section is in addition to any other rights or remedies the resident may have by statute or at common law.

#### **Section 33.2. Defenses.**

It shall be an affirmative defense to an action as provided in section 33.1 that the licensee, an agent, or employee of the licensee exercised reasonable care to prevent the deprivation and injury for which liability is asserted. The adoption of policies and procedures to implement the model act shall not be sufficient evidence alone to show that the home exercised reasonable care.

### **SECTION 34. ACTION FOR MANDAMUS.**

A resident, advocate, or licensee of a board and care home may bring a civil action for mandamus to order the agency to carry out any act which is required to be performed by the agency under the Act.

### **SECTION 35. RIGHT OF RESIDENT TO INTERVENE IN AGENCY ADJUDICATION PROCEEDINGS.**

A resident may intervene in any adjudication proceeding as provided in section 6 in which the agency and the licensee of the home in which the resident resides are parties.

### **SECTION 36. RIGHT OF RESIDENT TO SEEK JUDICIAL REVIEW OF FINAL AGENCY ACTION AND TO INTERVENE IN JUDICIAL REVIEW PROCEEDINGS.**

- (A) A resident may seek judicial review of final agency action and may intervene in any judicial review proceeding if the licensee of the home in which resident resides is a party.
- (B) Judicial review proceedings shall be conducted in accordance with procedures provided in section 6 of the Act.

### **SECTION 37. ATTORNEY'S FEES.**

The court may award reasonable attorney's fees and costs to the prevailing party in any action brought under this Act.

### **SECTION 38. CRIMINAL PENALTIES.**

#### **Section 38.1. Misdemeanor.**

- (A) No person shall:

- (1) operate a board and care home without a license as provided in section 17.1; or
- (2) *commingle, borrow from, or pledge any funds of a resident required to be held in a separate account as provided in section 10.5.*
- (B) No person shall purposely or knowingly:
  - (1) interfere with or attempt to interfere with or obstruct or attempt to obstruct by unlawful means any investigation under or enforcement of this Act;
  - (2) retaliate or discriminate against a resident or employee of a board and care home for:
    - (a) providing any information to a state official;
    - (b) filing a complaint under section 21; or
    - (c) initiating, participating in, or testifying in any action against a board and care home;
  - (3) file false, incomplete, or misleading information required to be filed under this Act;
  - (4) fail or refuse to file or to report information required under this Act;
  - (5) provide advance notice of an inspection when prohibited by section 20.5;
  - (6) place any person in or refer any person to a board and care home that is operating without a license; or
  - (7) commit any act that violates a provision of this Act and that creates a risk of death or serious harm to a resident.
- (C) A violation of subsections (A) and (B) of this section constitutes a serious misdemeanor as defined by state law.

#### **Section 38.2. Felony.**

- (A) No person shall purposely, knowingly, recklessly, or negligently commit any act that violates a provision of this Act and that results in death or serious harm to a resident.
- (B) A violation of subsection (A) of this section constitutes a felony as defined by state law.
- (C) A violation of subsections (A) and (B) of section 38.1 for which there has been a previous conviction constitutes a felony as defined by state law.

### **SECTION 39. REMEDIES CUMULATIVE.**

The remedies provided in this Act are cumulative and shall not restrict any agency or person from seeking any remedy provided by law or from obtaining additional relief based upon the same facts.

### **SECTION 40. ZONING FOR BOARD AND CARE HOMES.**

#### **Section 40.1. Small Board and Care Homes: Status as a Permitted Use.**

A small board and care home is a residential use of property for zoning purposes. Political subdivisions shall treat small board and care homes as a permitted use in all residential zoning districts including all single-family residential zoning districts. No political subdivision may require that a small board and care home, or its licensee or administrator, obtain a conditional use permit.

#### **Section 40.2. Medium Board and Care Homes: Status as a Permitted Use and Conditionally Permitted Use.**

A medium board and care home is a residential use of property for zoning purposes. Political subdivisions shall treat medium board and care homes as a permitted use in all residential zoning districts except single-family residential zoning districts. No political subdivision may require that a medium board and care home, or its licensee or administrator, obtain a conditional use permit except when such a board and care home is to be located in a single-family residential zoning district.



**Section 40.3. Large Board and Care Homes: Status as a Permitted Use and Conditionally Permitted Use.**

A large board and care home is a residential use of property for zoning purposes. Political subdivisions shall treat large board and care homes as a permitted use in all high-density, multi-family residential zoning districts. No political subdivision may require a large board and care home, or its licensee or administrator, to obtain a conditional use permit, except when such a board and care home is to be located in a single-family residential zoning district or a low-density, multi-family residential zoning district.

**Section 40.4. Density Controls Administered by the Agency.**

(A) For purposes of avoiding over-concentration of board and care homes, the agency shall promulgate regulations in the following areas:

- (1) limits on the number of board and care homes permitted on blocks, block faces, and other geographic areas within the various types of political subdivisions of the state. These limits shall take into account the existing population density and the number, occupancy, and location of existing community residential facilities serving persons in juvenile, mental health, drug, alcohol, criminal justice, and other treatment, supervision, or rehabilitation programs;
- (2) procedures by which any resident of a residential zoning district or the governing body of a political subdivision in which a board and care home is, or is to be, located may petition the agency to deny an application for a license to operate a board and care home on the grounds that the operation of such a home would violate the limits established under paragraph (A) (1) of this section; and
- (3) any other regulations necessary to carry out the

requirements of this section, provided that compliance with these regulations shall not relieve the board and care home of the obligation to comply with the general requirements or standards of a political subdivision pertaining to building, housing, health, fire, safety, and motor vehicle parking that are applied to residential structures of a similar size in the zoning district; and provided further that no requirements for business licenses, gross receipt taxes, environmental impact studies, or clearances may be imposed on such homes if these fees, taxes, or clearances are not imposed on all residential structures of similar size in the zoning district.

- (B) An applicant for a license to operate a board and care home shall file a copy of the application as provided in section 17.2 with the governing body of the political subdivision having zoning jurisdiction over the land on which the board and care home is to be located.

**Section 40.5. Exclusion by Private Agreement Void.**

Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument pertaining to the transfer, sale, lease, or use of property that would conflict with sections 40.1, 40.2, or 40.3 shall be void, to the extent of such prohibition, as against the public policy of this state and shall be given no legal or equitable force or effect.

**SECTION 41. SEPARABILITY OF SECTIONS.**

If any section, subsection, paragraph, sentence, or any other part of this Act is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined to the section, subsection, paragraph, sentence, or any other part of this Act directly involved in the controversy in which the judgment has been rendered.

## Appendix F

### MOLOKAI ARCH QUESTIONNAIRE

- A. House Resolution No. 11 lists the following 8 specific concerns of Molokai ARCH operators. Please circle the three that you believe would be most helpful to you.
- (1) Increasing the medical staff at Molokai General Hospital to provide more regular and efficient medical and support services for ARCHs;
  - (2) Providing additional Department of Health (DOH) and Department of Human Services (DHS) administrative support staff--which may be permanent or contractual staff--on Molokai;
  - (3) Creating incentives so that ARCH operators can pursue new business ventures and expand existing businesses related to community care-giving;
  - (4) Establishing grants, low interest business loans, and other tax break incentives to reduce start-up business costs related to ARCHs;
  - (5) Establishing a government liaison office to handle permits, zoning, and regulations related to ARCH licensing and operations;
  - (6) Opening access to group rates for personal medical coverage, liability and business insurance, and lawyer and accountant services on a sliding fee basis;
  - (7) Increasing the monthly personal allowance fee for residents; and
  - (8) Making across-the-board level of care pay increases for State ARCH payments;
- B. Is there an item not listed that you believe should be included? If so, please describe it.
- 
- 
- 
- 
- C. The following information about your ARCH will help us evaluate the responses to this questionnaire.
1. Is your ARCH part of your home? \_\_\_\_Yes \_\_\_\_No
  2. Is your ARCH a family business? \_\_\_\_Yes \_\_\_\_No

3. Do you have paid staff for 20 or more hours per week? \_\_\_\_Yes \_\_\_\_No
4. Are you a member of ARCA (Alliance of Residential Care Administrators) or UGHO ( United Group of Home Operators)? \_\_\_\_Yes \_\_\_\_No

If Yes,

- a. Are you generally satisfied with the services provided by the organization? \_\_\_\_Yes \_\_\_\_No
- b. Would you be willing to pay higher dues if more services were provided? \_\_\_\_Yes \_\_\_\_No
5. Have you found the Department of Health (DOH) and Department of Human Services (DHS) staff you deal with to be:

	DOH	DHS
Polite?	____Yes ____No	____Yes ____No
Knowledgeable?	____Yes ____No	____Yes ____No
Helpful?	____Yes ____No	____Yes ____No
Supportive?	____Yes ____No	____Yes ____No

6. How often do you see a DOH or DHS staff member?
- One or twice a year \_\_\_\_
- More often \_\_\_\_
- Less often \_\_\_\_

7. How often do you need to call a DOH or DHS staff member?
- Once a week \_\_\_\_
- Once a month \_\_\_\_
- Other \_\_\_\_\_

8. Do you currently have any vacant beds? \_\_\_\_Yes \_\_\_\_No
- If yes, how many \_\_\_\_

9. Have you ever taken out a loan for improvements to your ARCH or for operating expenses? \_\_\_\_Yes \_\_\_\_No
10. Have you ever asked the federal Small Business Administration (SBA) or the State of Hawaii for financial or technical assistance such as low interest loans or help with business management or financial planning? \_\_\_\_Yes \_\_\_\_No
11. Would you like to know more about business assistance available through the SBA and the State? \_\_\_\_Yes \_\_\_\_No
12. Are you currently employed or involved in a business besides operating your ARCH? \_\_\_\_Yes \_\_\_\_No
- If No, would you like to be? \_\_\_\_Yes \_\_\_\_No

**ADDITIONAL COMMENTS:**