

HRS § 346-151

§ 346-151. Definitions

For the purposes of this part:

“Care” refers to those situations where a person or organization has agreed to assume and has been entrusted with the responsibility for the child’s supervision, development, safety, and protection apart from the parent or guardian.

“Child abuse record check” means an examination of an individual’s child abuse confirmation history through:

- (1) An initial name inquiry into the state child welfare record files;
- (2) Subsequent child abuse confirmation history checks for new hires and rehires; and
- (3) An annual name inquiry into state child welfare record files.

“Child care facility” means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

“Child care subsidy” means a payment made to low-income parents, guardians, or other responsible parties to pay for the care of a child under the age of thirteen years, or age thirteen years or older if the child has qualifying special needs as defined under federal law.

“Family child care home” means a private residence, including a home, apartment, unit, or townhouse, as those terms are defined in section 502C-1, at which care may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption, at any given time.

“Group child care center” means a facility, other than a private home, at which care is provided.

“Group child care home” means a facility, which may be an extended or modified private home, at which care is provided for seven to twelve children.

“Provider” means the person who is issued the license or certificate of registration, as the case may be, by the department to provide care in a child care facility.

HRS § 346-152

§ 346-152. Exclusions; exemptions

(a) Nothing in this part shall be construed to include:

- (1) A person caring for children related to the caregiver by blood, marriage, or adoption;

(2) A person, group of persons, or facility caring for a child less than six hours a week;

(3) A kindergarten, school, or child care program licensed or certified by the department of education or the United States Department of Defense and located on federal property;

(4) A program that provides exclusively for a specialized training or skill development for children, including but not limited to programs providing activities such as athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;

(5) A multiservice organization or community association, duly incorporated under the laws of the State, that operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through seventeen years of age;

(6) Programs for children four years of age and older that operate for no more than two consecutive calendar weeks in a three-month period;

(7) A provider agency operating or managing a homeless facility or any other program for homeless persons authorized under part XVII;

(8) After-school, weekend, and summer recess programs conducted by the department of education pursuant to section 302A-408;

(9) Child care programs conducted by counties pursuant to section 302A-408; provided that each county adopts rules for its programs;

(10) Any person who enters a home in a child caring capacity and only cares for children who are of that household;

(11) A person caring for two or fewer children unrelated to the caregiver by blood, marriage, or adoption; and

(12) A child care program licensed by the Hawaii council of private schools. A child care program claiming an exemption under this paragraph shall submit an application for the exemption on a form provided by the department and shall provide to the department evidence that the licensing standards of the Hawaii council of private schools meet or exceed the department's standards for a comparable program, including a monitoring component. Upon application of a child care program for the exemption under this paragraph, the department shall have the discretion to determine whether the licensing standards of the Hawaii council of private schools meet or exceed the department's standards.

(b) Staff members of programs taught solely in Hawaiian that promote fluency in the Hawaiian language shall be exempt from any rules requiring academic training or certification.

(c) Minimum health and safety requirements or standards as required by federal law may be imposed on any of the groups listed in this section that provide child care services and are reimbursed with federal funds.

(d) Any person asserting an exemption under this section shall cooperate with the department in investigations. Hawaii Constitution and statutes are current with provisions in effect April 23, 2014, through Act 51 of the 2014 Regular Session of the Hawaii Legislature.

relating to unlicensed child care.

HRS § 346-152.3

[§ 346-152.3. Investigations]

Upon receiving a report that a person may be caring for more than two children unrelated to the caregiver by blood, marriage, or adoption, or providing care for a child for more than six hours per week, without a child care license issued by the department, the department may conduct an investigation for the limited purpose of determining the number of children in care who are unrelated to the caregiver by blood, marriage, or adoption, and the number of hours of care provided per week, in accordance with the following provisions:

(1) The department may request access to the location indicated in the report; or

(2) The department may file a complaint with the district court in the circuit where the location indicated in the report is; and the district court, upon probable cause, may issue a search warrant, directed to the department and the appropriate county police department, if necessary, to conduct an investigation pursuant to this section between the hours of sunrise and sunset.

HRS § 346-152.5

§ 346-152.5. Criminal history record checks, child abuse record checks, and adult abuse perpetrator checks for persons exempt pursuant to section 346-152

To be eligible to provide child care and to receive a child care subsidy from the department, persons exempt pursuant to section 346-152 shall be required to agree to a criminal history record check, a child abuse record check, and an adult abuse perpetrator check in the same manner as a prospective applicant or licensed provider in accordance with section 346-154; provided that the following relatives of the child who requires care: grandparents, great-grandparents, aunts, uncles, and siblings aged eighteen or older living in a separate residence shall be required to agree to a criminal history record check conducted through files maintained by the Hawaii criminal justice data center, a child abuse record check, and an adult abuse perpetrator check.

For the purposes of this section, “adult abuse perpetrator check” means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual’s name and birth date in the department’s adult protective services file.

HRS § 346-152.7

[§ 346-152.7]. Safe sleep policy

(a) All child care facilities, which include family child care homes, group child care centers, and group child care homes, as those terms are defined in section 346-151, and infant and toddler child care centers, that are registered or licensed by the department to provide care for children less than one year of age shall implement and maintain a written safe sleep policy in accordance with any rules that may be adopted by the department to implement the provisions of this section. The purpose of the safe sleep policy shall be to maintain a safe sleep environment that prevents the occurrence of sudden infant death syndrome and sudden unexpected infant deaths in children less than

Hawaii Constitution and statutes are current with provisions in effect April 23, 2014, through Act 51 of the 2014 Regular Session of the Hawaii Legislature.

Hawai'i Revised Statutes Annotated _Division 1. Government _Title 20. Social Services (Refs & Annos)_Chapter 346. Department of Human Services (Refs & Annos)_Part VIII. Child Care _A. General
one year of age.

(b) As used in this section:

“Sudden infant death syndrome” means the sudden death of an infant less than one year of age that cannot be explained after a thorough investigation has been conducted, including a complete autopsy, an examination of the death scene, and a review of the clinical history.

“Sudden unexpected infant death” means the sudden and unexpected death of an infant less than one year of age in which the manner and cause of death are not immediately obvious prior to investigation. Causes of sudden unexpected infant death include but are not limited to metabolic disorders, hypothermia or hyperthermia, neglect or homicide, poisoning, and accidental suffocation.

HRS § 346-153

[§ 346-153]. Records of deficiencies and complaints; release to public

For every child care facility, the department shall maintain records for the current and previous two years of: results of its inspections; notifications to providers of deficiencies; corrective action taken; complaints of violations of rules adopted under this part; results of its investigations; resolution of complaints; and suspensions, revocations, reinstatements, restorations, and reissuances of licenses, temporary permits, and registrations issued under this part. Notwithstanding any other law to the contrary, such records shall be available for inspection in the manner set forth in section 92-51; provided that with respect to records of family child care homes and group child care homes, sensitive personal information or information provided to the department with the understanding that it would not be publicly divulged shall be deleted or obliterated prior to making the records available to the public. Nothing in this section shall authorize the department to release the names of or any other identifying information on complainants. The department may withhold information on a complaint for which an investigation is being conducted for not more than ten working days following the date of filing of the complaint; provided that if an investigation relates to an alleged criminal offense, no information shall be released until the investigation has been completed and the director has determined that no legal proceeding will be jeopardized by its release.

HRS § 346-154

§ 346-154. Criminal history checks, child abuse record checks, and adult abuse perpetrator checks

(a) The department shall develop standards to ensure the reputable and responsible character of an applicant to operate a child care facility, prospective employees of the applicant, and new employees of the provider after registration or licensure, which shall include criminal history record checks in accordance with section 846-2.7, child abuse record checks, and adult abuse perpetrator checks.

For the purposes of this section, “adult abuse perpetrator check” means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual’s name and birth date in the department’s adult protective services file.

(b) An applicant to operate a child care facility shall:

(1) Be subject to criminal history record checks in accordance with section 846-2.7;

Hawaii Constitution and statutes are current with provisions in effect April 23, 2014, through Act 51 of the 2014 Regular Session of the Hawaii Legislature.

Hawai'i Revised Statutes Annotated _Division 1. Government _Title 20. Social Services (Refs & Annos)_Chapter 346. Department of Human Services (Refs & Annos)_Part VIII. Child Care _A. General

(2) Submit to the department under penalty of law, statements signed by the applicant and prospective employees of the applicant indicating whether the applicant or any of the prospective employees has ever been confirmed to have abused or neglected a child or vulnerable adult, including threatened harm; and

(3) Provide consent to the department to conduct a criminal history record check in accordance with section 846-2.7, a child abuse record check, and an adult abuse perpetrator check, and to obtain criminal history information, child abuse record information, and adult abuse perpetrator information for verification.

(c) A provider shall:

(1) Be subject to criminal history record checks in accordance with section 846-2.7;

(2) Submit to the department a statement signed by any employee hired after the initial licensure or registration that requires the employee to indicate under penalty of law, whether the employee has ever been confirmed to have abused or neglected a child or vulnerable adult, including threatened harm; and

(3) Provide consent to the department or its designee to conduct a criminal history record check in accordance with section 846-2.7, a child abuse record check, and an adult abuse perpetrator check, and to obtain criminal history information, child abuse record information and adult abuse perpetrator check information for verification.

(d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7, and child abuse record information and adult abuse perpetrator check information from the department in accordance with departmental procedures on the applicant and any prospective employee of the applicant, including any new employee retained after the applicant is issued a registration or license under this part, which shall include an annual name inquiry into the state criminal history record files.

(e) The department may deny an application for a license or registration to operate a child care facility if:

(1) The applicant or any prospective employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child or vulnerable adult, including threatened harm; and

(2) The department finds that the criminal history or child abuse record or adult abuse perpetrator check record of that applicant or prospective employee indicates that the applicant or prospective employee may pose a risk to the health, safety, or well-being of children.

(f) The department may request the provider to terminate the employment of a new employee or may suspend or revoke the license or registration of the provider who employs a new employee if:

(1) The employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child or vulnerable adult, including threatened harm; and

(2) The department finds that the criminal history or child abuse record or adult abuse perpetrator check record of the new employee indicates that the new employee may pose a risk to the health, safety, or well-being of children.

HRS § 346-155

[§ 346-155]. Rules

Rules adopted pursuant to this part shall be adopted in accordance with chapter 91.

HRS § 346-156

§ 346-156. Penalty

Any person violating any provision of this chapter or any rule made pursuant thereto shall be fined as follows:

- (1) Up to \$1,000 for the first violation; and
- (2) Up to \$3,000 for the second violation and each succeeding violation.

HRS § 346-157

[§ 346-157]. Liability insurance coverage; no requirement

(a) For the purpose of this section, "liability insurance coverage" means a general casualty insurance policy issued to a provider insuring against legal liability for injury resulting from negligence to a child during the time the child is under the care of the child care provider.

(b) The department shall not require a provider to obtain or maintain liability insurance coverage as a condition of licensure, temporary permission, or registration to operate a child care facility.

(c) The department, as a condition of continued licensure, temporary permission, or registration, shall require a provider who does not have liability insurance coverage to disclose in writing that the provider does not have coverage to each parent or guardian:

- (1) Applying to have a child cared for at the provider's facility, if the provider has no liability insurance coverage at the time of application; or
- (2) Within seven working days of cancellation or termination of liability insurance coverage if the coverage is canceled or terminated while the parent's or guardian's child is cared for at the provider's facility.

(d) The department may suspend or revoke a license, temporary permit, or certificate of registration of a provider in accordance with section 346-164 or 346-175, if the provider or any employee of the provider knowingly makes a false statement to any person concerning the provider's liability insurance coverage.

HRS § 346-158

[§ 346-158]. No smoking in child care facilities

Smoking shall be prohibited in all group child care homes, group child care centers, and family child care homes during their hours of operation.

HRS § 346-159

[§ 346-159]. Child care licensing and registration special fund

(a) There is established within the state treasury, to be administered by the department, the child care licensing and registration special fund into which shall be deposited:

(1) All fees received from applicants for a license to operate group child care homes or group child care centers as provided in section 346-163 and from applicants for a certificate of registration for family child care homes as provided in section 346-173;

(2) Appropriations made by the legislature to the fund; and

(3) Any other revenues designated for the fund.

(b) Moneys in the child care licensing and registration special fund shall be used for the following purposes:

(1) The costs of administering child care licensing and registration;

(2) Furthering the provision of quality child care services; and

(3) Any other purpose deemed necessary by the department to ensure the health and safety of children.

(c) All interest on special fund balances shall accrue to the credit of the special fund. Upon dissolution of the child care licensing and registration special fund, any unencumbered moneys in the fund shall lapse to the credit of the general fund.

HRS § 346-161

§ 346-161. License for group child care home, group child care center required

No person shall operate, maintain, or conduct a group child care home or group child care center unless licensed to do so by the department of human services under this subpart.

HRS § 346-162

§ 346-162. Rules; minimum standards

The department of human services, after consultation with the department of health, the department of education, and the fire chiefs of the respective counties, shall make, prescribe, and publish such rules as are deemed necessary to protect the best interests of minor children who are provided care in a group child care home or group child care center and to carry out the purposes of this subpart.

HRS § 346-163

§ 346-163. Licenses and temporary permits

(a) If satisfied that the applicant meets the minimum standards established pursuant to section 346-162 and subject to the criminal history record checks and child abuse record checks of section 346-154, the department shall grant the applicant a license for the operation of a group child care home or group child care center, as the case may be. The license shall be valid for:

(1) One year for new applicants and for those who have been licensed for less than four years; and

(2) Two years for those who have been licensed for four years or more,

unless sooner revoked. Where the activities of the applicant fall within the licensing requirements of the department of education and this subpart, a license shall be required from both the department of education and the department of human services.

A temporary permit may be issued for a period of six months at the department's discretion to any applicant who is temporarily unable to conform to all of the minimum standards. Renewal of the temporary permit shall be left to the department's discretion; provided that the combined period of the initial and subsequently renewed permits shall not exceed twenty-four months. Licenses and permits shall be conspicuously posted on the licensed premises.

(b) The department may establish reasonable fees for the issuance or renewal of licenses and permits according to rules adopted pursuant to chapter 91.

HRS § 346-164

§ 346-164. Suspension and revocation of licenses and permits; reissuance

Any license or temporary permit issued under this subpart may be suspended or revoked by the department of human services after due notice and hearing, the provisions for which shall be made in the rules. However, upon a determination by the department that conditions exist which constitute an imminent danger to the health, welfare, or safety of the children cared for, a license or temporary permit may be immediately suspended pending a hearing by the department as herein provided. The department, in its discretion, may reissue a license or temporary permit which has been suspended or revoked upon satisfying itself that minimum standards have been or will be met.

Hawaii Constitution and statutes are current with provisions in effect April 23, 2014, through Act 51 of the 2014 Regular Session of the Hawaii Legislature.

HRS § 346-165

§ 346-165. Visitation and inspection of group child care home, group child care center

The department of human services shall visit and inspect each group child care home and group child care center as frequently as it deems necessary for the proper operation, sanitation, and safety of the home or center, as the case may be. The visits and inspections shall be made at least once annually. Every group child care home and group child care center licensed under this subpart shall be open to visitation and inspection by representatives of the department of human services, the department of education, and the department of health, and by designated representatives of the respective county fire departments at all times.

HRS § 346-166

§ 346-166. Records

Every group child care home and group child care center shall keep such records and shall file with the department of human services such reports as required by rules adopted by the department. All records and all information obtained concerning children or their parents or relatives shall be kept confidential by the provider and by members of any department herein named.

HRS § 346-171

§ 346-171. Registration for family child care home required

No person shall operate or maintain a family child care home unless registered to do so by the department of human services under this subpart. The registration shall be valid for:

(1) One year for new applicants and for those who have been registered for less than four years; and

(2) Two years for those who have been registered for four years or more,

unless sooner revoked.

HRS § 346-172

[§ 346-172]. Rules for registration

(a) The department shall adopt rules establishing minimum requirements to ensure the health and safety of children provided care in a family child care home. The rules may specify, but shall not be limited to, minimum requirements concerning:

(1) The number of children which may be cared for at one time and the ratio of adult to children;

Hawaii Constitution and statutes are current with provisions in effect April 23, 2014, through Act 51 of the 2014 Regular Session of the Hawaii Legislature.

(2) The health of the provider and children;

(3) Fire and sanitation standards;

(4) The supervision and allowable types of discipline of children; and

(5) Protection of children who are provided care from abuse.

(b) It is the intent of the legislature that the:

(1) Minimum requirements established under this section be less strict than the minimum standards established under section 346-162 for group child care homes and group child care centers;

(2) Minimum requirements be as simple and clear as possible;

(3) Minimum requirements be germane to the provision of care to children in a private home as opposed to a nonresidential facility or institution, require as little recordkeeping by the provider as possible, and require information and reports if deemed necessary, from the provider which the department intends to scrutinize carefully and not cursorily; and

(4) Department establish minimum requirements, the compliance with which can be assessed easily and objectively by officers and employees of the department, providers, and parents and legal guardians of children.

HRS § 346-173

§ 346-173. Procedure for registration

(a) A person desiring to have the person's home registered as a family child care home shall make application to the department. Upon receipt of the application, the department shall conduct a study of the applicant's qualifications, home, and proposed operation. The department shall issue a certificate of registration to the applicant which authorizes the applicant to operate a family child care home if the department is satisfied that the premises and proposed operation will be in compliance with the minimum requirements established under section 346-172 and subject to the criminal history record checks under section 346-154.

The provider shall operate and maintain the premises of the family child care home in accordance with the minimum requirements established under section 346-172 so long as registered.

(b) The department may establish reasonable fees for the issuance or renewal of certificates of registration according to rules adopted pursuant to chapter 91.

HRS § 346-174

[§ 346-174]. Informing parent and legal guardian of children and general public

Hawaii Constitution and statutes are current with provisions in effect April 23, 2014, through Act 51 of the 2014 Regular Session of the Hawaii Legislature.

(a) The department shall maintain a registry of registered family child care homes and make the information in the registry available to the general public upon request. The department may also provide for the publication and dissemination of the registry through the news media or other means.

(b) The provider of child care in a family child care home shall give to each parent or legal guardian of a child a copy of the provider's certificate of registration upon request.

HRS § 346-175

[§ 346-175]. Visitation and inspection of family child care home; revocation of registration

(a) The department shall visit and inspect the premises and operation of a family child care home to determine compliance with the minimum requirements established under section 346-172:

(1) At least once in each calendar year; and

(2) Upon receipt of a complaint that the premises or operation of the home is in violation of the minimum requirements established under section 346-172.

(b) If the visitation and inspection reveal that the premises or operation of the home is in violation of a minimum requirement, the department shall immediately suspend or revoke the registration. Upon suspension or revocation, the home shall no longer be a registered family child care home and the department shall notify the parents or legal guardian of each child who is provided care in the home of the revocation.

A person whose registration has been suspended or revoked may appeal the suspension or revocation in accordance with chapter 91, but the appeal shall not stay the suspension or revocation. If an appeal is made under chapter 91, the appeal of the suspension or revocation, and not the suspension or revocation itself, shall be deemed the contested case.

The department shall suspend the registration if the violation of the minimum requirement is the first violation of the provider and the violation does not warrant a revocation of the registration. The department shall revoke the registration if the provider has violated any minimum requirement or requirements to such an extent or of a nature that the provider is unfit to be trusted with the care of children or operation of a family child care home or if the provider has had the provider's registration suspended at least once previously.

(c) The department may reinstate a suspended registration or restore a revoked registration if it deems that the person is willing and able to comply with the rules adopted under section 346-172. A suspended registration may be reinstated upon the department's satisfaction that the violation has been or will be corrected. A revoked registration shall be restored only after new application is made and reviewed under this subpart.

HRS § 346-176

[§ 346-176]. Family child care system

The department shall authorize the establishment and operation of a family child care system under which a sponsoring agency contracts family child care homes to provide care and assumes administrative tasks for the homes and providers; provided that the department shall register each of the family child care homes individually in accordance with this subpart and establish no rule or requirement which jeopardizes the status of the providers of care in family child care homes as independent contractors of the sponsoring agency. The department may establish rules defining the administrative tasks which may be performed and minimum requirements, including provision of training to providers which must be complied with by the sponsoring agency, but shall not require the sponsoring agency to register or obtain a license or registration as a child care facility unless the sponsoring agency provides care to children on the sponsoring agency's premises.

HRS § 346-177

[§ 346-177]. Program of incentive for registration

Subject to the limits of legislative appropriations, the department may establish a program to encourage the registration of persons who provide care in private homes in violation of section 346-171. The program may include:

- (1) Training of providers of care;
- (2) Assistance to applicants in obtaining registration and complying with the minimum requirements;
- (3) Counseling in providing quality care;
- (4) Referrals of parents to providers;
- (5) Assistance in obtaining benefits under or participation in federal and state child care programs; and
- (6) Assistance in complying with business and tax regulations and requirements.

HRS D. 1, T. 20, Ch. 346, Pt. VIII, Refs & Annos

HRS § 346-181

[§ 346-181]. Preschool open doors program

(a) There is established within the department a school readiness program to be known as the preschool open doors program within the department's child care assistance program. The program shall:

- (1) Provide access to school readiness services that address children's physical, cognitive, linguistic, social, and emotional development;
- (2) Require each provider to conduct school readiness assessments;

Hawaii Constitution and statutes are current with provisions in effect April 23, 2014, through Act 51 of the 2014 Regular Session of the Hawaii Legislature.

(3) Give priority to children from low- and moderate-income families; and

(4) Prepare children for school through either of the State's two official languages.

(b) Subject to the availability of funds, the program shall serve four-year-old children, with priority extended to:

(1) Children who are not eligible to attend public school kindergarten in the calendar year in which they turn five years of age because their birth date occurs after the kindergarten eligibility date pursuant to section 302A-411; and

(2) Underserved or at-risk children.

(c) Enrollment in the program shall be voluntary. A parent or guardian of a child enrolled in the program shall share in the costs of the program through a copayment according to a sliding fee scale that is based on need pursuant to rules adopted by the department.

(d) The department may adopt interim rules to carry out the purposes of this section without regard to chapter 91 or 201M; provided that:

(1) The department shall hold at least one public hearing prior to the adoption of interim rules;

(2) The interim rules shall comply with all applicable state and federal laws; and

(3) The interim rules shall be effective for no more than one year after their adoption.