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# A BILL FOR AN ACT

RELATING TO CARE FACILITIES.

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

1           SECTION 1. The legislature finds that healthcare  
2 facilities serve a vital role in providing care to all people of  
3 Hawaii, especially vulnerable, frail, and elderly individuals  
4 who depend on the services of state-certified or state-licensed  
5 healthcare professionals, facilities, and homes. The  
6 legislature further finds that uncertified or unlicensed  
7 healthcare professionals, facilities, and homes pose a  
8 significant risk to the health, safety, and welfare of patients.  
9 Over the past few years, the number of uncertified or unlicensed  
10 care homes in the State has increased, and while the number of  
11 homes reported to be uncertified or unlicensed is small, many  
12 other uncertified or unlicensed homes go unreported and  
13 uninvestigated.

14           The legislature also finds that certain individuals have  
15 publicly stated that they are not required to have a state  
16 certificate or license to operate a care home and have expressed  
17 defiance in obtaining a certificate or license. The legislature



1 recognizes that it is the responsibility of the department of  
2 health to conduct inspections on certified or licensed care  
3 homes, investigate reports of uncertified or unlicensed care  
4 homes, and enforce state laws that require that care homes be  
5 certified or licensed. The department of health has been  
6 hampered in conducting such investigations on landlords or  
7 uncertified or unlicensed care home operators who refuse to  
8 speak with the department's investigators or to allow them entry  
9 into homes for the purpose of determining if the homes are  
10 operating without a state certification or license.

11 Therefore, the purpose of this Act is to:

- 12 (1) Authorize the department of health to investigate care  
13 facilities reported to be operating without an  
14 appropriate certificate or license issued by the  
15 department;
- 16 (2) Prohibit patient referrals and transfers to  
17 uncertified and unlicensed care facilities; and
- 18 (3) Establish penalties for violations.

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



1                   "PART       .    CARE FACILITY INVESTIGATIONS

2           §321-A   Definitions.   As used in this part:

3           "Care facility" means an adult residential care home,  
4 assisted living facility, expanded adult residential care home,  
5 or hospice home, as defined in section 321-15.1.

6           "Department" means the department of health.

7           "Health care provider" means an individual licensed,  
8 certified, or otherwise authorized by law to provide health care  
9 in the ordinary course of business or practice of a profession.

10          "Person" means any individual, corporation, partnership, or  
11 other business association or entity, for-profit or non-profit,  
12 and whether or not registered with the State or any other state.

13          "Vulnerable adult" has the same meaning as in section  
14 346-222.

15          §321-B   Investigations.   Upon receiving a report that a  
16 person may be operating a care facility without a certificate or  
17 license as required by law or that a home or any type of living  
18 arrangement may be operating as a care facility without a  
19 certificate or license as required by law, the department may  
20 conduct an investigation for the limited purposes of determining



1 whether the person is operating without a required certificate  
2 or license, in accordance with the following provisions:

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

5 (2) The department may file a complaint with the district  
6 court in the circuit of the location indicated in the  
7 report and the district court, upon a finding of  
8 probable cause, may issue a search warrant directed to  
9 the department and the appropriate county police  
10 department, if necessary, to investigate the location  
11 pursuant to this section between the hours of sunrise  
12 and sunset.

13 **§321-C Action upon investigation.** Upon investigation, the  
14 department shall take action on confirmed findings that the  
15 subject of a report is operating a care facility without the  
16 required certificate or license and may do any or all of the  
17 following:

18 (1) Resolve the matter in an informal fashion as is  
19 appropriate under the circumstances;

20 (2) Exercise the department's right of entry pursuant to a  
21 warrant under section 321-D;



- 1           (3) File a petition with the district court for
- 2                   enforcement, protective, or remedial action; or
- 3           (4) Pursue any protective or remedial actions authorized
- 4                   by law.

5           **§321-D Right of entry; obstruction or interference. (a)**

6 The department, when engaged in an investigation pursuant to  
7 section 321-B, may visit and communicate with any person  
8 operating the facility, home, or other type of living  
9 arrangement that is the subject of a report.

10           (b) Any person who intentionally or knowingly obstructs or  
11 interferes with the department's right of entry pursuant to a  
12 warrant, the department's investigation of a report of operating  
13 without a certificate or license, or the department's  
14 communication with a vulnerable adult reported to be receiving  
15 care from an uncertified or unlicensed operator shall be guilty  
16 of a misdemeanor.

17           **§321-E Operation of a care facility without a certificate**  
18 **or license; penalties.** Any person who intentionally operates a  
19 care facility without a required certificate or license shall be  
20 guilty of a misdemeanor and shall be fined no more than:



1 (1) \$ for each day of uncertified or unlicensed  
2 operation for the first violation;

3 (2) \$ for each day of uncertified or unlicensed  
4 operation for the second violation; and

5 (3) \$ for each day of uncertified or unlicensed  
6 operation for the third and each succeeding violation.

7 §321-F Referrals or transfers to uncertified or unlicensed  
8 care facility; penalties. (a) Any health care provider or care  
9 facility that knowingly refers or transfers an individual to an  
10 uncertified or unlicensed care facility shall be fined no more  
11 than:

12 (1) \$ for the first violation;

13 (2) \$ for the second violation; and

14 (3) \$ for the third and each succeeding  
15 violation.

16 (b) In addition to the civil fines imposed under this  
17 section, and without limitation to any other sanction provided  
18 by law, upon a third or any succeeding violation of subsection  
19 (a), the department may initiate administrative proceedings to  
20 suspend or revoke the certificate or license of the health care



1 provider or the care facility that made the referral or  
2 transfer."

3 SECTION 3. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 4. In codifying the new sections added by section  
7 2 of this Act, the revisor of statutes shall substitute  
8 appropriate section numbers for the letters used in designating  
9 the new sections in this Act.

10 SECTION 5. This Act shall take effect on January 1, 2050.



**Report Title:**

Care Facilities; Uncertified; Unlicensed; Enforcement;  
Department of Health Investigations

**Description:**

Authorizes the Department of Health to investigate care facilities reported to be operating without an appropriate certificate or license. Prohibits patient referrals and transfers to uncertified and unlicensed care facilities. Establishes penalties for violations. Effective 1/1/2050.  
(SD2)

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