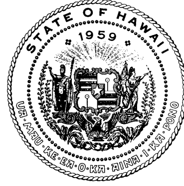
DAVID Y. IGE
GOVERNOR OF HAWAII



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WRITTEN TESTIMONY ONLY

LATE

Testimony in SUPPORT of S.B. 2586, SD1
RELATING TO CARE FACILITIES.

SENATOR DONOVAN M. DELA CRUZ, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS
Hearing Date: Wednesday, February 21, 2018 Room Number: 211

1 **Fiscal Implications:** None known.

2 **Department Testimony:** Thank you for the opportunity to provide testimony in SUPPORT of
3 this measure.

4 This measure authorizes the Department of Health (Department) to investigate care
5 facilities reported to be operating without an appropriate certificate or license issued by the
6 Department. It provides the Department a right of entry to conduct investigations and establishes
7 penalties for violations and for patient referral or transfer to uncertified or unlicensed care
8 facilities.

9 The language in this bill was modeled after HRS Sections 346-152.3, 346-156, 346-227,
10 346-228, 346-229, which is language from the Department of Human Services (DHS) statutes on
11 child care and adult protective services (APS). Specifically, Section 346-229 HRS is the APS
12 statute on Right of Entry. There is precedent in statute for similar authority for the Department
13 of Health.

14 The Department of Health, Office of Health Care Assurance (OHCA), has the regulatory
15 authority to issue health care facility licenses and to conduct surveys (inspections) to ensure
16 compliance with licensing requirements.

1 OHCA had seen a small but growing number of "caregivers" opening care homes and
2 providing care as possibly unlicensed care homes. OHCA has investigated these homes with
3 mixed success. Some homes voluntarily close once they are notified of licensing requirements,
4 or perhaps they simply moved locations. Other home owners have refused entry by DOH OHCA
5 investigators citing private property concerns.
6 OHCA respectfully requests legislation for improved investigative authority to enter
7 private property when conducting a lawful investigation on potentially unlicensed care homes to
8 ensure the health, safety and welfare of persons receiving care at these homes, and respectfully
9 requests legislation for improved enforcement authority to assess fines on unlicensed care homes
10 and to assess fines or suspend the license of licensed facilities or professionals when they
11 knowingly refer patients to unlicensed care homes. However, OHCA would conduct thorough
12 investigations before taking any enforcement action. Investigations could determine if
13 circumstances existed that could exonerate the licensed facility or professional in their role in
14 making a specific referral. Circumstances could possibly be based on patient rights and patient
15 choice after providing appropriate counselling to patients or families. This circumstance,
16 however, would not be allowed as justification for the unlicensed care home.
17 OHCA's Licensing Section is stretched to conduct inspections and complaint
18 investigations and requests statutory authority to more quickly and effectively address unlicensed
19 care homes before a vulnerable person gets harmed and before the number of unlicensed care
20 homes becomes out-of-hand or unmanageable.
21 However, the Department recommends the following amendments:

1 1. Amend the definition of "care facility" to read "means an adult residential care home,
2 assisted living facility, expanded adult residential care home, or hospice home, as
3 defined in section 321-15.1 or community care foster family home as defined in
4 section 321-481."; and
5 2. To provide for and safeguard patient or consumer choice and granting immunity to
6 referring facilities:
7 §321-E Referral or transfers to uncertified or unlicensed care facility; immunity. (a) It
8 shall be unlawful for a certified or licensed healthcare provider or certified or licensed care
9 facility to knowingly refer or transfer patients to an uncertified or unlicensed care facility. The
10 department shall be authorized to enforce on any certified or licensed healthcare provider or
11 certified or licensed care facility that knowingly refers or transfers patients to a care home,
12 agency, or facility operating without a certificate or license as required by law, a fine of not more
13 than:
14 (1) $ for the first violation;
15 (2) $ for the second violation; and
16 (3) $ for the third and each succeeding violation.
17 (b) In addition to fines imposed under this subsection, the department may initiate
18 administrative proceedings to suspend or revoke the referring or transferring care provider or
19 facility's certificate or license upon a third or any succeeding violation."
20 (c) Notwithstanding (a) and (b) of this section, if the patient or caregiver, family member,
21 or authorized representative of the patient chooses to be transferred to an uncertified or

1 unlicensed care facility following counselling by the healthcare provider, the referring healthcare

2 provider or healthcare facility shall be immune from civil or criminal liability.

3 Thank you for the opportunity to testify in SUPPORT of this bill.

Senate Committee on Ways and Means
Sen. Donovan M. Dela Cruz, Chair
Sen. Gilbert S.C. Keith-Agaran, Vice Chair

LATE

S.B. 2586 SD1 Relating to Care Facilities
Conference Room 211, 10:10 a.m.
February 21, 2018

Testimony of John G. McDermott, LSW, ACSW, M.Div.
State Long Term Care Ombudsman

Position: The Office of the Long Term Care Ombudsman **strongly supports** this measure.

Good morning, Chair Dela Cruz, Vice Chair Keith-Agaran and members of the Committee.

My name is John G. McDermott and I have been the State Long Term Care Ombudsman (LTCO) since August of 1998. The LTCO Program is both federally and state mandated, receives federal and state funding, and is housed in the Executive Office on Aging.

We advocate for [mostly] seniors living in licensed nursing homes, licensed assisted living facilities (ALFs), licensed adult residential care homes (ARCHs), licensed expanded ARCHs (E-ARCH) and certified community care foster family homes (CCFFHs). With the CCFFHs it's the case manager who is required to be licensed.

As of January 12, 2018, the breakdown was 48 nursing homes with 4,456 beds, 17 ALFs with 2,683 beds, 481 ARCHs with 2,599 beds and 1,153 CCFFHs with 2,919 beds. That grand total for the State of Hawaii was 1,699 facilities with 12,657 beds.

Because these residents often suffer from dementia and can have many other physical and mental limitations which make them so vulnerable, the State has always required that facilities caring for these people be licensed or certified. It's the right thing to do.

These facilities are monitored by the Department of Health's Office of Healthcare Assurance (OHCA). They have annual inspections. In 2019 those inspections will also be *unannounced,* as is required by federal law for our nursing homes. Inspection reports are required to be posted on the DOH website. There are staffing requirements, criminal background check requirements, building and fire code requirements, substitute caregiver requirements, Resident Rights requirements, knowledge of CPR requirements, TB clearance requirements, reading and speaking English requirements, housing design and self-preservation requirements, confidentiality requirements, medical records requirements, billing and financial record requirements, medication pass requirements (especially regarding the use of anti-psychotic medications), infection control requirements, waste removal requirements, and I'm sure many more that I'm not remembering at the moment. And, not to be forgotten, there is the right of the resident to access the services of the Long-Term Care Ombudsman when the resident or responsible person needs an advocate and doesn't know where to turn.

I think we would all agree these are good and essential regulations, NOT frivolous, because they protect our most vulnerable kupuna. Unfortunately, the public …and maybe some members of the Press … don't understand NONE of these consumer protections exist if someone chooses to move into an *Aging in Place Home.* You are totally on your own, exchanging all those consumer protections for an *unenforceable promise* to do a good job. "Trust us."

The proponents of the *Aging in Place Home* movement have been very clever in misappropriating a term we are all familiar with. “Aging in Place” is something we all want to do but that term is intended to mean aging in my OWN home, not someone else’s home. Installing grab bars in the bathroom, replacing a bathtub with a shower, installing a ramp in place of stairs to get into the home, having bedrooms on the ground floor, even installing a call bell system - in your OWN home - is what most mean by “aging in place.” When you move into someone else’s home – not related to you - and you pay a fee for the care provided - that by definition is a “care home” and in Hawaii, like almost every other state, care homes must be licensed.

Some have tried to argue this model helps resolve the shortage of affordable housing for our seniors. I disagree. Any senior who can afford to “rent” just a room for $4,000 to $5,000/month would have no problem finding a place to live. This model exacerbates the housing shortage situation. If 4 or 5 seniors are all “renting” bedrooms in the same house for $4,000/month, that one house is now pulling in $20,000/month! What landlord would rent a house to a family for $3,000/month if s/he can now get $20,000/month?

I would also agree with the ARCHs and CCFFHs who claim the *Aging in Place Homes* are unfair competition. Why would a caregiver subject herself and her family to annual inspections, the Ombudsman dropping in unannounced, having to pay for all the requirements and costs of running a licensed business - if they can drop out of the regulatory system and call herself or himself an *Aging in Place Home* and get away with it? *What message are we sending to all those good caregivers following the rules?* If the Legislature is unable to stop this trend, more licensed facilities will drop out and this will place more seniors at risk.

On January 22nd I walked into Don Quixote on Kaheka Street and taped to the door of the nail salon is a sign proudly declaring “all our staff are licensed.” That’s how it should be. For our *Aging in Place Homes*, their sign would have to read “none of our homes are licensed.” Shouldn’t protecting our seniors be at least as important as protecting our fingernails?! The residents I am responsible for need to be protected and that’s why I am asking that the Legislature insist that all Aging in Place Homes come into compliance with the law and become licensed like everyone else. Mahalo.

Thank you for this opportunity to testify.

John G. McDermott, LSW, ACSW, M.Div
State Long Term Care Ombudsman

LATE

Senate Committee on Ways and Means

Wednesday, February 21, 2018
10:10 a.m.
Conference Room 211

To: Chair Dela Cruz, Vice-Chair Keith Agaran and Members of the WAM Committee

Re: S.B. 2586, S.D. 1 Relating to Care Facilities

My name is Gary Hironaka and I am the owner of a recently formed non-profit organization called Comprehensive Innovations for Senior Services. We are a group that advocates for measures that will bring new innovations for senior options in a safe, sustainable, and efficiently affordable manner. I grew up in an Adult Residential Care Home (ARCH) operated by my parent's in the early 90s and ventured my own in 2010.

I am testifying on S.B. 2586, S.D.1 which authorizes the Department of Health to investigate care facilities reported to be operating without an appropriate certificate or license issued by the department. The measure also establishes penalties for violations and for patient referral or transfer to uncertified or unlicensed care facilities.

In the 25 years that I've been involved in the senior services field, there has been considerable change – from senior demographics to consumer preferences, wants, and needs. I want to clarify that I am NOT opposed to the ARCH system. It works very well for the operators who run it properly and for the consumers who like the traditional approach to long term care - for this group of people they are happy with current systems and no change is needed. However, there are other individuals who want more options to choose from including use of the latest technologies, ala carte or full services and frequency of services (e.g., part time and full time). That is why I am opposing this measure. I believe its passage will further limit our largely growing senior population from having new innovations and greater options for their services. Specifically, the model of the "Aging In Place" concept is a vehicle that can address their changing wants and needs.

There are misunderstandings and disconnects of what "Aging In Place" and an "AIP" actually is that need to be understood before progress can be made. The disconnect is thinking that the concept of "Aging In Place" is the same as what is being termed by news articles, the

Department of Health, and even proponents of the model, as "AIP". For example, an "*AIP*" is not a designation like an ARCH or ICF or SNF, it is not a "facility", it is simply an abbreviation of the term "Aging In Place".

Aging in place is a new model in which older individuals have the ability to remain at their place of residence throughout their aging process. In Hawaii, it enables our kupuna to have greater influence in the direction of their own care and empower them to take greater control of their environment and well-being and is more accurately described as "Services In Place" (SIP) or "In-Home Aging" (IHA) where services and accommodations are completely independent of each other.

Importantly, the key to comprehending this model is to understand that "Aging in Place" is the separation of **type of care** with **place of care**" (Aging in Place: A New Model for Long-Term Care, Karen Dorman Marek, PhD, MBA, RN and Marilyn J. Rantz, PhD, RN, FAAN). Properly structured "AIPs" are regarded as SIP or IHA where services and accommodations are completely independent of each other.

In an environment where "type of care" and "place of care" are separate and completely independent of the other, consumers have a naturally built in shield of protection as ALL of the options provided through this model concept are self-directed and controlled by the consumers. Consumers are able to hire and fire care providers that do not provide satisfactory services. Long term care costs can be managed effectively and efficiently because services are only paid for as needed. In certain situations cost sharing between friends, family, or others utilizing the same service in the same place can reduce long term care costs by 50% month over month. Regulatory measures are stringent as properly structured "AIP" models will require the home care companies to have mandatory record audits and client care quality assurance checks conducted by a third party registered nurse licensed in the State of Hawaii at a minimum of once per month and will also require all clients with any health and/or medical related needs to contract with a nurse case manager who is also licensed in the State of Hawaii to provide them with increased oversight, plan of care, further quality of care assurance checks, monthly inspections, trainings, delegations, and on-call 24/7 availability.

The main purposes of the Aging In Place model is to provide our seniors with greater control of their well-being, higher levels of satisfaction and above all, provide the means where they can maintain their quality of life all while ensuring their safety and protection.

Thank you for the opportunity to present this testimony.

LATE

SB-2586-SD-1
Submitted on: 2/20/2018 10:12:28 PM
Testimony for WAM on 2/21/2018 10:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Testifying for Ho`omana Pono, LLC	Support	Yes

Comments:

LATE

SB-2586-SD-1
Submitted on: 2/21/2018 9:37:43 AM
Testimony for WAM on 2/21/2018 10:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Myriam R. Tabaniag	Testifying for ARCA	Support	No

Comments:

This Bill was written for the major goal of benefiting the very old and frail elderly, those with dementia, mental illness and developmentally disabled. These vulnerable populations are highly dependent on others and unable to protect themselves from abuses and neglect by caregivers. Moreover, many have no immediate family members, friends, or advocates who are able to oversee their care and protection. They need a safe environment, protection and oversight.

I have high hopes that every legislator will look into this SB2586, SD1 and PASS it. The Department of Health should have the Right of Entry into this homes to investigate, inspect and impose penalties as need be especially if the violations are recurrent. Anybody in the healthcare arena who are discharging and transferring clients to any uncertified or unlicensed care home should also be penalized.

I firmly believe that regulatory protection is essential given the significant vulnerability of many of the people using long term care. The State has an obligation under their police power functions to provide oversight over the public health and safety of all individuals involved.

Thank you for allowing me to testify.

LATE

SB-2586-SD-1
Submitted on: 2/20/2018 7:15:54 PM
Testimony for WAM on 2/21/2018 10:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
yolanda collo	Testifying for ARCA	Support	No

Comments:

I STRONGLY SUPPORT THE BILL

LATE

SB-2586-SD-1
Submitted on: 2/20/2018 4:09:08 PM
Testimony for WAM on 2/21/2018 10:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Maile Harada	Testifying for Maile Case Management	Oppose	No

Comments:

LATE

SB-2586-SD-1
Submitted on: 2/20/2018 10:57:09 AM
Testimony for WAM on 2/21/2018 10:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dann	Individual	Oppose	No

Comments:

LATE

SB-2586-SD-1
Submitted on: 2/20/2018 6:54:13 PM
Testimony for WAM on 2/21/2018 10:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
WANNETTE GAYLORD	Individual	Support	Yes

Comments: