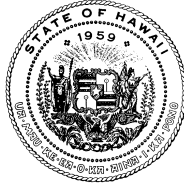


DAVID Y. IGE
GOVERNOR OF HAWAII



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**Testimony in OPPOSITION to H.B. 0582 HD1
RELATING TO HEALTH.**

REPRESENTATIVE ROY M. TAKUMI, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Hearing Date: Wednesday, February 13, 2019 Room Number: 329

1 **Fiscal Implications:** None.

2 **Department Testimony:** House Draft 1 (HD1) includes a variety of issues mostly related to
3 non-institutional residential care homes. It appears to require unannounced inspections on
4 certain care homes and facilities, clarifies current statutory language, addresses an online forum,
5 attempts to establish licensing fees in statute, and creates a task force at the Department of
6 Health to determine minimum compensation for caregivers and address issues on interest on late
7 payments. Allow us to address each item.

8 HD1 adds another type of provider (adult day care centers) into Section 321-15.6 HRS
9 and Section 321-15.62 HRS. However, Section 321-15.6 HRS contains language that requires
10 announced inspections for relicensing and does not reflect other language in Section 321-1.9
11 HRS that will require all inspections to be unannounced beginning July 1, 2019. The
12 Department is fine with adding another type of provider to Section 321-15.6 HRS and Section
13 321-15.6 HRS, but OPPOSES the language on announced inspections, or unless the Legislature
14 clarifies that adding adult day care centers is not intended to change the requirement for
15 unannounced inspections beginning July 1, 2019.

1 The Department SUPPORTS the clarifying language of online posting of inspection
2 reports.

3 HD1 inserts language that permits but does not require the University of Hawaii or a
4 neutral 3rd party to maintain an online forum for private state-licensed care homes to post
5 vacancy information to facilitate referrals between private state-licensed professionals, health
6 care facilities, and other organizations or persons. The Department has no comment on this
7 change in language except to express appreciation that DOH was removed.

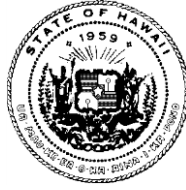
8 HD1 establishes facility licensing fees in statute. However, licensing fees are contained
9 in administrative rules Chapter 103 and were effective on March 17, 2018. The Department is
10 now in the process of implementing a computer-based invoicing system as part of a broader
11 management information system (MIS) in order to invoice and collect fees. This system will "go
12 live" by February 2019. As a result, establishing licensing fees in statute is unnecessary and the
13 Department OPPOSES this proposal.

14 HD1 requires the Department to convene a task force to determine minimum
15 compensation rates for caregivers based on number of beds available at the home, and to address
16 issues of payment of late fees for insurance reimbursement. The Department will convene this
17 task force and work with stakeholders to submit a report to the 2020 legislature. However, the
18 Department respectfully requests that the Office of Health Care Assurance not be required to be
19 a member on this task force as the amount of caregiver compensation is not a licensure or
20 certification function.

21 Thank you for the opportunity to provide testimony on this measure.

22 **Offered Amendments:** None.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 11, 2019

TO: The Honorable Representative Roy M. Takumi, Chair
House Committee on Consumer Protection & Commerce

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 582 HD 1– RELATING TO HEALTH**

Hearing: Wednesday, February 13, 2019 2:00 p.m.
Conference Room 329, Capitol

DEPARTMENT’S POSITION: The Department of Human Services (DHS) offers comments on Section 9 of the bill and suggests an amendment.

PURPOSE: The purpose of this bill is to create and establish various policies to adequately address the various issues concerning the elderly and disabled and the community healthcare industry while ensuring consumer protection for Hawaii’s elderly and disabled.

DHS defers to the Department of Health (DOH) regarding the licensing, reporting and fee collection sections of the bill.

DHS will comment on the caregiver and case manager compensation task force in Part V, Section 9.

The bill establishes a task force under DOH that shall develop recommendations to the legislature to:

- 1) Develop a minimum compensation rate for caregivers;
- 2) Address issues of compensation based on number of beds available at each facility; and

- 3) Address issues of payment of late fees and the applicability of section 431:13-108, Hawaii Revised Statutes, regarding time frames for insurance reimbursement.

DHS welcomes the opportunity to work collaboratively with stakeholders in a task force. This task force would be charged with making recommendations on a minimum compensation rate for caregivers, among other duties. This is an expansive agenda because caregivers are used in many different settings in the provision of home and community based services (HCBS).

DHS Med-QUEST Division (MQD) currently contracts with health plans that contract and pay for HCBS in the QUEST Integration (QI) program, which encompasses the caregivers and case managers described in this bill. Also, as the State's Medicaid agency, MQD oversees the Medicaid services provided by Developmental Disability Division (DDD) of DOH. In this role, the rates paid by DDD are under the purview of DHS as the State's Medicaid agency.

Currently, DHS and DOH do not set caregiver compensation rates as caregivers are hired and paid by home care agencies, or paid in accordance with the plan designed by the Medicaid beneficiary if the beneficiary is directing their own care. Under our current financing model, direct compensation of caregivers is downstream of DHS and DOH, and involves different entities like health plans and home care agencies. Thus, the first described objective of the taskforce is not within the purview of the state agencies represented on the taskforce.

Given the scope of the task force's responsibilities, DHS suggests amending Section 9(a) to include at least one representative from one of the QI health plans to serve on the task force. A QI health plan representative would bring expertise and insight into the issues covered by the task force.

Thank you for the opportunity to testify on this bill.

HB-582-HD-1

Submitted on: 2/11/2019 1:12:58 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------------|-----------------------------------|-------------------------------|-------------------------------|
| Rosemarie S. Sebastian | United Group of Home Operators | Support | No |

Comments:

On behalf of UGHO, I strongly support the passing of HB582, HD1. Thank you!

HB-582-HD-1

Submitted on: 2/12/2019 12:34:48 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------|---|--------------------|--------------------|
| Melodie Aduja | O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i | Support | No |

Comments:

HB-582-HD-1

Submitted on: 2/13/2019 6:16:50 AM

Testimony for CPC on 2/13/2019 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|-------------------------------|-------------------------------|
| Ruth Raza | Big Island Adult Residential Carehome | Support | No |

Comments:

Date: February 12, 2019

To: Hawaii State Legislature – House Health Committee

Rep. John Mizuno – Chairman

Members of the Health Committee

From: Darryl Tanaka, Individual

Re: Testimony regarding HB 582, HD 1

HB 582 is intended to improve elder care in Hawaii. Although it addresses some issues that require attention, it fails to address the key areas and is disguised as a bill to improve elder care. I cannot support the bill, as written, without stronger protections for elders and the disabled. The amendments and sections to reduce its effectiveness and implementation indicates the lack of interest in the legislature to place public safety above special interests. It is not consistent toward addressing the details in a recent report regarding the growing population of elders, or the “Silver Tsunami”, that is present and getting worse. The interest of the people must be first and foremost, and not be countered by legislators who are also elected to look after the welfare of the public. Special Interest groups can raise opposition but it does not bode well for Hawaii when the leaders of the committees like Health Care, support such opposition, when it is clearly not in the public’s interest. That leaves no one to represent the people and degrades the trust in the elder care in Hawaii.

I was born and lived in Hawaii for over thirty years, and hope to move back. My parents have passed away and my experience with their care in their last days made me realize the need for improvements, and the need to get involved. Unannounced inspections and posting of reports are a good start that must be supported.

There is no good reason that I can see for delays to the implementation of unannounced inspections. The article in Civil Beat on 1/31/19 by Nathan Eagle (Title: “Key Lawmakers Are Trying To Water Down Inspection Rules For Elder Care Homes”) states that only 4% of 1556 inspections were unannounced in 2017. The question is why any inspection is even announced, except to allow facilities to prepare. Even the objection that visits have a burden on operating expenses does not make sense. Inspections should all be unannounced and totally unobtrusive to staff and operations. The objection that visits impact operations, is further reason to implement unannounced inspections. In other words, if the intent is to be fully effective, these issues and concerns should not have to be raised. It only adds to the scrutiny of the system that looks after the care homes and not the people it needs to protect.

The open efforts by the city long term care ombudsman, John McDermott, provides a voice on behalf of the public. His objections to the continuous delays for unannounced inspections and requests for funds to hire more inspectors, show his commitment to the people. His efforts are minimized by the lack of support and constant denials in the legislature. His fights for logical explanations are reasonable and valid. Unannounced inspections, posting of reports, listing of violations and corrective actions or plans are critical items that he is requesting. All are very reasonable, justified and clearly in the interest of the public.

I am a volunteer ombudsman in California and see issues that may be issues in Hawaii. In the last month I have dealt with:

1. A resident was moved to a home after being discharged from a major hospital. Although his wife paid for a full month fee, he only survived three days at the home. She has since been working to contact the home (30 times over seven months) with no response, in efforts to get a pro-rated refund. She is not wealthy and is currently working to meet expenses. This case has been elevated to the state licensing.
2. An employee arrived for work at a care home, only to find that there were no staff members present, caring for the residents. The residents were left alone with no assistance or avenue to request help, in the event of any need. This has also been elevated to the state licensing board.
3. Residents were locked into the home to prevent access to outside and roaming. This is in violation of State regulations. Doors were locked and even blocked to prevent access.

Mandated, unannounced inspections and the posting of current and historical reports are critical. Each show attempts to protect the public from unsafe operations. "Watering down" of these laws do the opposite and set a higher priority of retaining the quantity of beds, at the expense of the quality of care. It also supports the delays for inspections and limits to the posting of inspector reports – all of which add to the scrutiny of the system. No one believes every violation will be caught, but open efforts must be made to show that public safety is a top concern. It is much better to enact laws to protect elders, and may require refinements, than to work toward a perfect, amenable solution that may take years to implement. By that time you will be dealing with a larger and more critical issue, as supported by recent reports. To err on the side of safety, immediately, is always better than continued discussion and negotiation.

Our goal should and must be to increase the public's trust and confidence in the Elder Care system. This cannot be compromised and the public must feel that their welfare is foremost in the actions of the legislature. We cannot and must not work toward protecting the profits of facilities, in the interest of quantity of beds, at the expense of quality care. We must work toward improving the elder care system first, then address how to make it equitable for operators, and not the other way around.

Hawaii should remain a special place and we should do all we can to make it such a place. My experience with my parent's care prompts me to work toward the improvement of elder care in Hawaii and to ensure families have access to current, valid and adequate information to make proper choices for their loved ones. Degrading the culture of caring removes another aspect that makes us special and certainly reduces the pride of calling Hawaii "home".

Below are my comments to specific sections in the bill HB 582, HD 1:

Section 2:

321-15.6 Pg2 line 17-19

The sentence "The department of health shall conduct unannounced visits, other than the inspection for relicensing, to every licensed adult:".

-The underlined text is removed in the latest version. There is no reason why unannounced visits only apply to relicensing. It must be replaced and apply to all inspections.

Item 3 Lines 10-14:

-Last two sentences, beginning with "Annual inspections" are weakened in the interest of the care homes. The first of these has a "may", which lessens the requirement for the inspections. It should be "Annual Inspections for relicensing SHALL be conducted unannounced during or outside regular business hours...". The second of the sentences for relicensing inspections to be conducted with notice, allows for care homes to prepare for the inspections. It devalues the

intent and effectiveness of the inspections. It does not demonstrate to the public that their welfare is not compromised.

Section 3:

321-15.62 Pg. 3 Lines 20-21, Pg 4 Lines 1-2:

-The sentence should include “elderly or disabled persons who are unrelated to...” should be changed to “elderly or disabled persons who are charged a fee for care...”. The reason is in Hawaii, there are many who care for distant relatives, friends, and parents via being hanai. “Unrelated” needs a clearer definition.

Section 4:

321-15.7 Pg 4, Lines 7-9: Penalty.

-Not sure what the penalty is, but homes that are charging for care and without a valid license should be guilty with a misdemeanor, but there must be a resultant action to look after the welfare of the elder or disabled to ensure their welfare. It could result in moving the resident or corrective actions or even work toward closing the home. The end result must be that the resident is safe. Operating without a license and charging to provide care allows for further scrutiny of the health care for elders and the disabled.

Section 5:

Act 184, Pg 4, Lines 10-11:

-This section repeals Sections 3 and 4. If Sections 3-4 are repealed, further amendments to the bill are necessary to strengthen the intent and effectiveness. Both Sections contain text to mandate unannounced inspections. To not do it and to allow for the reducing of requirements, does not demonstrate to the public that the welfare of the elders or disabled is first and foremost.

Section 6:

321-1.8; Pg 6, Lines 1-2, 13-16:

-The web site must post all inspections, violations, valid complaints, citations, decisions against or legal violations that are not covered or discovered as part of an inspection. Inclusion of all applicable events is critical and essential information for people in search of a home to care for their loved one. It allows for measuring the quality of a home or facility.

Item 3, Pg 6, Lines 20-21:

-There is no clear time requirements for corrections, nor requirements for re-inspection to verify corrective actions.

Item b, Pg 6, Lines 13-16:

-The item limits the requirements to inspection reports. It must be broader to include all inspections, violations, valid complaints, citations, decisions against or legal violations that are not covered or discovered as part of an inspection. Any incident, event or document that has an impact on the quality of care, be it negative or positive.

Item c, Pg 7, Lines 8-12:

-I do not agree that reports shall be removed after three years from the date posted. It is clearly to protect violators and does nothing to highlight those facilities that operate without violations over extended periods. Historical records are critical information for people searching for suitable homes for their loved ones. In reviewing sites, one that has no violations over extended period is much better than one that has repeated violations every several years. Historical information provides the ability to characterize the quality of operations. Any negative issues can be mitigated by correction notes or comments from inspectors, but violations are and must be part of records. It is no different from individuals who commit a crime and have a negative history, because historical patterns are important. Hiding the incidents after three years lowers the confidence in health care to the lowest performing site, without rewarding those that work to benefit the public.

Section 10:

Item 4, Pg 13, Lines 1-4:

-I support the requirement for grievance procedures for clients, but there must be a defined process to elevate critical findings to a violation and be added to the website for inspections, in the event such grievances are valid and require corrective action.

Item 5, Pg 13, Line 6:

-Not sure of the reasoning for "three" clients to be defined as such. It should be "any client who pays for care" because each client is charged and pays not based on the number of residents. Hence the fee is based on the level of care provided, not the number of residents.

Section 12: Pg 14

This section calls for further delays in unannounced inspections. It is definitely not in the interest of the public to delay inspections that can protect elders and the disabled. Section 5 repeals Sections 3 and 4, that require unannounced inspections. Amendments to other sections need to be strengthened, as a result of the repealing of Sections 3-4, to further protect the public and to demonstrate a sincere effort to care for the welfare of the people. Delaying does not help to gain trust in the health care system and leaves for an even larger and more complicated issue in years to come. It is clearly better to implement something, with the ability to refine it as issues arise, than to implement a bill that is only disguised as an effort to help elders and the disabled. Nothing is truly accomplished, at the expense of dealing with the growing problem, working for the public, gaining more confidence in elder care and protecting the culture of Hawaii. We all lose, including those who oppose the need for stronger bills.

HB-582-HD-1

Submitted on: 2/12/2019 4:12:35 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|-------------------------------|-------------------------------|
| Lilia P. Fajotina | Individual | Support | Yes |

Comments:

STRONGLY SUPPORT

TO: Chair of Committee on Consumer Protection Representative Roy Takumi
Vice Chair Linda Ichiyama and Members of the Committee

DATE: February 13, 2019, Wednesday

TIME: 2:00 PM

PLACE: Conference Room 329

TESTIFIER: Wannette Gaylord

BILL: HB 582 HD1

POSITION: IN STRONG SUPPORT

Aloha Chair Takumi, Vice Chair Ichiyama and Committee Members,

My name is Wannette Gaylord and I strongly support HB 582 HD 1.

I would like to request a friendly amendment to **REMOVE** on page five, Part VI, Section 10 (5)- the portion—“and any other facility licensed or certified under the department ,”. Also in (C) and (D)—“or other facility”.

Adult Residential Care Homes and Expanded ARCH's are regulated by the Department of Health under HAR Chapter 11-100.1. These Administrative rules consist of four pages of requirements for caregivers that we must abide by, and we do.

This multifaceted bill will be beneficial for all of our frail kupuna. Anyone caring for an elderly person (UNLESS RELATED DIRECTLY BY BLOOD OR ADOPTED LEGALLY OR HANAI) should have training AND “must” have State oversight to prevent both abuse and OR neglect.

With our elderly population growing at a rapid pace it is necessary to maintain the quality of care for our Kupuna by retaining the Department of Health's oversight of care facilities for our frail kupuna. Placement of our loved ones into licensed care facilities (if unable to return home with family) will ensure this. “THIS IS BASIC CONSUMER PROTECTION FOR OUR ELDERLY.”

“Unlicensed” care facilities only care for people that have the financial means to pay, when their resident runs out of money they are dumped out onto the street therefore becoming homeless. This then adds to our already gigantic problem of homelessness. These facilities are not licensed or certified so they cannot receive Long Term Care Insurance or Medicaid funds, so the person is unable to “age in place”, therefore being displaced.

Mahalo Nui for understanding my major support for HB 582 HD1 with the Friendly Amendment to **REMOVE** Part VI, Section 10(5)---“and any other facility licensed or certified under the department,”. Also in (C) and (D)—“or other facility”.

