

JAN 21 2022

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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 PART I

2 SECTION 1. The legislature finds that the prevalence of  
3 unlicensed care homes and facilities in the State continues to  
4 pose significant health and consumer protection issues for  
5 Hawaii's elderly and vulnerable populations. Over the past  
6 three years, the department of health has received hundreds of  
7 complaints regarding unlicensed care homes and facilities, which  
8 has resulted in the closure of several homes and facilities and  
9 the significant collection of fines by the department. Since  
10 December 2019, the department has closed at least seven  
11 unlicensed adult residential care homes and two unlicensed  
12 special treatment facilities or therapeutic living programs and  
13 imposed over \$800,000 in fines.

14 The legislature further finds that licensed care home  
15 operators and other persons are still referring or transferring  
16 patients to unlicensed care homes and facilities unbeknownst to  
17 the patient. This illegal practice has cost some patients



1 thousands of dollars due to denied insurance reimbursements and  
2 endangers patients' health and safety since unlicensed care  
3 homes and facilities do not have to follow required health and  
4 consumer protection regulations.

5 The purpose of this Act is to bolster the department of  
6 health's enforcement activities to protect the health, safety,  
7 and welfare of the State's elderly and vulnerable populations  
8 by:

- 9 (1) More clearly defining the group of professionals who  
10 are prohibited from knowingly referring or  
11 transferring patients to an uncertified or unlicensed  
12 care facility;
- 13 (2) Repealing the provision that a landlord, under  
14 specified conditions, shall not be deemed to be  
15 providing home care services or operating a care  
16 facility that requires a license; and
- 17 (3) Requiring the department of health to prioritize  
18 complaint allegations based on severity for  
19 investigations of state-licensed or state-certified  
20 care facilities.

21 PART II



1 SECTION 2. Section 321-487, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending its title to read:

4 "[~~§~~§321-487[~~]~~] Referral or transfers to uncertified or  
5 unlicensed care facility; penalty."

6 2. By amending subsection (a) to read:

7 "(a) It shall be unlawful for [~~a certified or licensed~~  
8 ~~healthcare provider or certified or licensed care facility]~~ any  
9 person, corporation, or any other entity in the health care or  
10 human services community to knowingly refer or transfer patients  
11 to an uncertified or unlicensed care facility. The department  
12 may impose a fine on [~~any certified or licensed healthcare~~  
13 ~~provider or certified or licensed care facility]~~ any person,  
14 corporation, or any other entity in the health care or human  
15 services community that knowingly refers or transfers patients  
16 to a care home, agency, or facility operating without a  
17 certificate or license as required by law; provided that the  
18 fine shall be no more than:

19 (1) \$500 for the first violation;

20 (2) \$1,000 for the second violation; and

21 (3) \$2,000 for the third and each succeeding violation."



1 SECTION 3. Section 321-488, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§321-488] Exclusion. For purposes of this chapter, a~~  
4 ~~landlord, as defined in section 521-8, shall not be deemed to be~~  
5 ~~providing home care services or to be operating a care facility~~  
6 ~~requiring a license under this chapter solely due to a landlord~~  
7 ~~permitting a tenant to receive care services from persons~~  
8 ~~licensed to provide care services, if licensing is otherwise~~  
9 ~~required by law, and the landlord does not require a tenant to~~  
10 ~~use or pay for care services as a condition of the rental~~  
11 ~~agreement. For the purposes of this section, an operator means~~  
12 ~~an individual or entity that operates or manages a healthcare~~  
13 ~~facility or similar facility that provides care services in that~~  
14 ~~facility." ]~~

15 PART III

16 SECTION 4. Section 321-1.9, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[+]§321-1.9[+] **Inspections; visits; state-licensed or**  
19 **state-certified care facilities.** (a) The department of health  
20 shall conduct unannounced visits and inspections, including  
21 inspections for relicensing or recertification, for the



1 following state-licensed or state-certified care facilities on  
2 an annual basis and at [~~such~~] intervals as determined by the  
3 department to ensure the health, safety, and welfare of each  
4 resident:

- 5 (1) Adult day health centers;
- 6 (2) Adult day care centers;
- 7 (3) Community care foster family homes;
- 8 (4) Developmental disabilities domiciliary homes;
- 9 (5) Adult foster homes;
- 10 (6) Long-term care facilities, including but not limited  
11 to:
  - 12 (A) Adult residential care homes;
  - 13 (B) Expanded adult residential care homes;
  - 14 (C) Assisted living facilities;
  - 15 (D) Intermediate care facilities;
  - 16 (E) Nursing facilities; and
  - 17 (F) Skilled nursing facilities; and
- 18 (7) Special treatment facilities.

19 (b) Unannounced visits may be conducted during or outside  
20 regular business hours. All inspections relating to follow-up  
21 visits, visits to confirm correction of deficiencies, or visits



1 to investigate complaints or suspicion of abuse or neglect shall  
2 be conducted unannounced during or outside regular business  
3 hours. Annual inspections for relicensing or recertification  
4 may be conducted during regular business hours or at intervals  
5 determined by the department. Annual inspections for  
6 relicensing or recertification shall be conducted without  
7 notice.

8 (c) Consistent with subsection (b), the department shall  
9 prioritize investigations of complaints based on the degree of  
10 severity of the allegations and shall give highest priority to  
11 allegations of actual harm or potential harm.

12 [~~e~~] (d) The department shall adopt rules pursuant to  
13 chapter 91 to effectuate the purposes of this section."

14 PART IV

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

18 SECTION 6. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20



# S.B. NO. 2432

1 SECTION 7. This Act shall take effect upon its approval.

2

INTRODUCED BY: Bennett Jr. Minshak



# S.B. NO. 2432

**Report Title:**

Care Facilities; Uncertified Care Facilities; Unlicensed Care Facilities; Landlord Exclusion; Complaint Allegations

**Description:**

Clearly defines the group of professionals who are prohibited from knowingly referring or transferring patients to an uncertified or unlicensed care facility. Repeals the landlord exclusion. Requires the Department of Health to prioritize complaint allegations based on severity for inspections of state-licensed or state-certified care facilities.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

