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## A BILL FOR AN ACT

RELATING TO HEALTH.

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

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PART I

SECTION 1. The legislature finds that the State has nearly two thousand licensed legal long-term care facilities serving approximately thirteen thousand residents. However, there are many care facilities that have closed and others that continue to operate without a license or certification by the department of health.

The legislature also finds that the prevalence of unlicensed care homes and facilities in the State continues to pose significant health and consumer protection issues for Hawaii's elderly and vulnerable populations. Over the past three years, the department of health has received hundreds of complaints regarding unlicensed care homes and facilities, which has resulted in the closure of several homes and facilities and the significant collection of fines by the department. Since December 2019, the department has closed at least seven unlicensed adult residential care homes and two unlicensed



1 special treatment facilities or therapeutic living programs and  
2 imposed over \$800,000 in fines.

3       The legislature further finds that unbeknownst to long-term  
4 care patients, certain licensed care home operators and other  
5 persons are referring or transferring patients to unlicensed  
6 care homes and facilities. This illegal practice has cost some  
7 patients thousands of dollars due to denied insurance  
8 reimbursements and endangers patients' health and safety since  
9 unlicensed care homes and facilities do not have to follow  
10 required health and consumer protection regulations, which  
11 include liability insurance requirements, criminal background  
12 checks of employees, building and fire code requirements,  
13 standards for qualified staff, and billing and financial record  
14 requirements. The tragedy of unlicensed and uncertified care  
15 homes is played out daily across the State, victimizing kupuna,  
16 people with disabilities, and families trying to do the best  
17 they can.

18       The purpose of this Act is to bolster the department of  
19 health's enforcement activities to protect the health, safety,  
20 and welfare of the State's elderly and vulnerable populations  
21 by:



- 1 (1) Clarifying who is prohibited from knowingly referring
- 2 or transferring patients to an uncertified or
- 3 unlicensed care facility;
- 4 (2) Repealing the provision that a landlord, under
- 5 specified conditions, shall not be deemed to be
- 6 providing home care services or operating a care
- 7 facility that requires a license; and
- 8 (3) Requiring the department of health to prioritize
- 9 complaint allegations based on severity for
- 10 investigations of state-licensed or state-certified
- 11 care facilities.

PART II

13 SECTION 2. Section 321-487, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) It shall be unlawful for [~~a certified or licensed~~  
16 ~~healthcare provider or certified or licensed care facility]~~ any  
17 person, corporation, or any other entity in the health care or  
18 human services community to knowingly refer or transfer patients  
19 to an uncertified or unlicensed care facility. The department  
20 may impose a fine on any [~~certified or licensed healthcare~~  
21 ~~provider or certified or licensed care facility]~~ person,



1 corporation, or any other entity in the health care or human  
 2 services community that knowingly refers or transfers patients  
 3 to a care home, agency, or facility operating without a  
 4 certificate or license as required by law; provided that the  
 5 fine shall be no more than:

- 6 (1) \$500 for the first violation;
- 7 (2) \$1,000 for the second violation; and
- 8 (3) \$2,000 for the third and each succeeding violation."

9 SECTION 3. Section 321-488, Hawaii Revised Statutes, is  
 10 repealed.

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



1 ~~facility or similar facility that provides care services in that~~  
2 ~~facility." ]~~

3 PART III

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

6 "[+]§321-1.9[+] **Inspections; visits; state-licensed or**  
7 **state-certified care facilities.** (a) The department of health  
8 shall conduct unannounced visits and inspections, including  
9 inspections for relicensing or recertification, for the  
10 following state-licensed or state-certified care facilities on  
11 an annual basis and at such intervals as determined by the  
12 department to ensure the health, safety, and welfare of each  
13 resident:

- 14 (1) Adult day health centers;
- 15 (2) Adult day care centers;
- 16 (3) Community care foster family homes;
- 17 (4) Developmental disabilities domiciliary homes;
- 18 (5) Adult foster homes;
- 19 (6) Long-term care facilities, including but not limited  
20 to:
  - 21 (A) Adult residential care homes;



1 (B) Expanded adult residential care homes;

2 (C) Assisted living facilities;

3 (D) Intermediate care facilities;

4 (E) Nursing facilities; and

5 (F) Skilled nursing facilities; and

6 (7) Special treatment facilities.

7 (b) Unannounced visits may be conducted during or outside  
8 regular business hours. All inspections relating to follow-up  
9 visits, visits to confirm correction of deficiencies, or visits  
10 to investigate complaints or suspicion of abuse or neglect shall  
11 be conducted unannounced during or outside regular business  
12 hours. Annual inspections for relicensing or recertification  
13 may be conducted during regular business hours or at intervals  
14 determined by the department. Annual inspections for  
15 relicensing or recertification shall be conducted without  
16 notice.

17 (c) Consistent with subsection (b), the department shall  
18 prioritize complaint investigations based on the degree of  
19 severity of the allegations and shall give highest priority to  
20 allegations of actual harm or potential harm.





# H.B. NO. 914

**Report Title:**

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

**Description:**

Clarifies who is 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.*

