



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in SUPPORT of H.B. 914, HD1
RELATING TO HEALTH.**

REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Hearing Date: Wednesday, February 15, 2023

Room Number: 329

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department STRONGLY SUPPORTS this bill and appreciates
3 the Legislature's support in our mutual aim to safeguard the public, protect aged and vulnerable
4 consumers, and ensure quality of care by requiring and enforcing that all residential care homes
5 and other health care facilities, agencies and organizations are licensed pursuant to state law.

6 The purpose of this bill is to protect the public and, specifically, vulnerable consumers of
7 health care services in residential care facilities throughout the state by expanding the
8 Department's ability to more thoroughly investigate complaints of unlicensed care home
9 activities and to take appropriate enforcement action on bad actors.

10 The Department's strategy toward unlicensed or uncertified care homes is two-fold:
11 1. investigate complaints and, if substantiated, close these homes; and 2. reduce or eliminate
12 referrals to them by taking action against those who refer.

13 Ten (10) unlicensed homes or facilities have been closed and over \$175,000 were
14 collected or is in the process of being collected. Several other investigations are ongoing and
15 over twenty-five (25) Notices of Violation and Order (NOVO) are in draft or awaiting draft.

1 There are a number of so-called aging-in-place care homes appearing to masquerade as
2 rental homes with several unrelated tenants all requiring care services. These homes appear to
3 meet the definition of residential care homes, but persons cite the exclusion clause at HRS §321-
4 488 and refuse entry by investigators and avoid the state's enforcement of licensing
5 requirements. One such unlicensed aging-in-place care home refused entry of the Department's
6 investigators who were attempting to conduct a complaint investigation. With the help of the
7 Office of the Attorney General, the Department took the unprecedented step of obtaining and
8 serving a search warrant on the home and gathered sufficient evidence to substantiate the
9 allegation of the home being an unlicensed care home. A NOVO was issued, and the case is
10 currently on appeal.

11 At a minimum, repealing HRS §321-488 would allow the Department to more thoroughly
12 and timely investigate complaints of unlicensed care home activity. It would also send a
13 powerful message that bad actors cannot hide behind an exclusion clause. Without this repeal,
14 the state is concerned that more of these homes will open or that current licensed care homes will
15 surrender their license and claim the exclusion, thereby increasing the risk of substandard quality
16 of care or living conditions on consumers and our vulnerable population. The home is the
17 environment of care and should be inspected along with the caregiver services to ensure optimal
18 health outcomes for consumers. This would prevent consumers who require care from being in
19 accommodations which could be hazardous to their health, safety, or welfare, such as homes or
20 bedrooms without smoke or fire detectors, or inadequate ingress or egress points for persons in
21 wheelchairs or with walkers or other assistive devices to escape in case of fire or other

1 emergency, or cramped and overcrowded bedrooms, or dilapidated living conditions, or home or
2 bedrooms that don't meet county codes for occupancy, or have inadequate utilities.

3 In addition, taking enforcement action on any person who refers patients to unlicensed
4 homes will eliminate or reduce the sources of referrals and cut off business to these unlicensed
5 homes. These persons could be other unlicensed or uncertified operators themselves or persons
6 formerly licensed or certified by the state or unlicensed care finders.

7 Enforcement activities are a critical component of the state's regulatory efforts to ensure
8 the health, safety, and welfare of consumers and our *kupuna*, and such actions deserve our
9 support.

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

11 **Offered Amendments:** None.



HB914 HD1 Refer to Unlicensed Facility, Fine for Counselors

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Mark M. Nakashima, Chair

Rep. Jackson D. Sayama, Vice Chair

Wednesday, Feb 15, 2023: 2:00: Room 329 Videoconference

Hawaii Substance Abuse Coalition Opposes HB914:

ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization for substance use disorder and co-occurring mental health disorder treatment, prevention, and recovery services.

We agree that unlicensed facilities should be closed.

- **We oppose fining our staff for referrals with an ambiguous, subjective term about “knowingly.” The bill language is too vague.**

With respect to Special Treatment Facilities, we recommend changing the bill to be Long Term Care Facilities only.

- 1. The term “knowingly” about our staff referring is not clearly defined as who determines that.**
 - Best to explain it well so as not to be subject to different state worker’s interpretation.
- 2. It is the state’s job to license, monitor or close inappropriate facilities, not our agency or staff.**
- 3. Agencies and staff are not in a position to make a difference here.**
 - As licensed facilities lose or gain licensure, agencies and especially staff would not know.
 - In regard to licensing, the state issues temporary licensures and even then it takes months before the paperwork is done.
 - Sometimes licensures are about to expired because the state hasn’t monitored yet so the state issues extensions, but the formal paperwork can take months, which puts a facility at risk.

4. The state doesn't inform providers who is licensed or not.

- The state could start by informing all providers about which ones are required to be licensed, what are the licensed care facilities, and keep the website updated.
- A communication plan would help to inform everyone to go to a website to look at an updated list of licensed providers. This is a better compassionate start than a punitive plan.

If a staff or agency is accepting kickbacks, then they are violating the law and subject to legal actions and fines.

- If this is what this bill is about then needs clarification.

SUMMARY

Closing down unlicensed facilities that are required to be licensed is a good idea, but it is a challenge for struggling agencies and hard-working staff to do the State's job.

We understand that the state is overwhelmed with work and understaffed, but let's find a solution where we work together as licensed care givers and state agencies so as to not pit one another against another by imposing fines on our staff.

Please provide much more clarity.

We appreciate the opportunity to provide testimony and can answer any questions.