
A BILL FOR AN ACT

RELATING TO HEALTH.

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

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

7 The legislature also finds that the prevalence of
8 unlicensed care homes and facilities in the State continues to
9 pose significant health and consumer protection issues for
10 Hawaii's elderly and vulnerable populations. Over the past
11 three years, the department of health has received hundreds of
12 complaints regarding unlicensed care homes and facilities, which
13 has resulted in the closure of several homes and facilities and
14 the significant collection of fines by the department. Since
15 December 2019, the department has closed at least seven
16 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) Requiring the department of health to prioritize
- 2 complaint allegations based on severity for
- 3 investigations of state-licensed or state-certified
- 4 care facilities;
- 5 (2) Clarifying who is prohibited from knowingly referring
- 6 or transferring patients to an uncertified or
- 7 unlicensed care facility; and
- 8 (3) Repealing the provision that a landlord, under
- 9 specified conditions, shall not be deemed to be
- 10 providing home care services or operating a care
- 11 facility that requires a license.

12 SECTION 2. Section 321-1.9, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 "~~§~~321-1.9~~§~~ . **Inspections; visits; state-licensed or**
 15 **state-certified care facilities.** (a) The department of health
 16 shall conduct unannounced visits and inspections, including
 17 inspections for relicensing or recertification, for the
 18 following state-licensed or state-certified care facilities on
 19 an annual basis and at such intervals as determined by the
 20 department to ensure the health, safety, and welfare of each
 21 resident:



- 1 (1) Adult day health centers;
- 2 (2) Adult day care centers;
- 3 (3) Community care foster family homes;
- 4 (4) Developmental disabilities domiciliary homes;
- 5 (5) Adult foster homes;
- 6 (6) Long-term care facilities, including but not limited
- 7 to:
- 8 (A) Adult residential care homes;
- 9 (B) Expanded adult residential care homes;
- 10 (C) Assisted living facilities;
- 11 (D) Intermediate care facilities;
- 12 (E) Nursing facilities; and
- 13 (F) Skilled nursing facilities; and
- 14 (7) Special treatment facilities.
- 15 (b) Unannounced visits may be conducted during or outside
- 16 regular business hours. All inspections relating to follow-up
- 17 visits, visits to confirm correction of deficiencies, or visits
- 18 to investigate complaints or suspicion of abuse or neglect shall
- 19 be conducted unannounced during or outside regular business
- 20 hours. Annual inspections for relicensing or recertification
- 21 may be conducted during regular business hours or at intervals



1 determined by the department. Annual inspections for
2 relicensing or recertification shall be conducted without
3 notice.

4 (c) The department shall prioritize complaint
5 investigations based on the degree of severity of the
6 allegations and shall give highest priority to allegations of
7 actual harm or potential harm.

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

10 SECTION 3. Section 321-487, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) It shall be unlawful for ~~[a certified or licensed~~
13 ~~healthcare provider or certified or licensed care facility]~~ any
14 person, corporation, or any other entity in the health care or
15 human services community to knowingly refer or transfer patients
16 to an uncertified or unlicensed care facility. The department
17 may impose a fine on any ~~[certified or licensed healthcare~~
18 ~~provider or certified or licensed care facility]~~ person,
19 corporation, or any other entity in the health care or human
20 services community that knowingly refers or transfers patients
21 to a care home, agency, or facility operating without a



1 certificate or license as required by law; provided that the
2 fine shall be no more than:

- 3 (1) \$500 for the first violation;
- 4 (2) \$1,000 for the second violation; and
- 5 (3) \$2,000 for the third and each succeeding violation."

6 SECTION 4. Section 321-488, Hawaii Revised Statutes, is
7 repealed.

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



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on June 30, 3000.

7



Report Title:

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

Description:

Requires the department of health to prioritize complaint allegations based on severity for inspections of state-licensed or state-certified care facilities. Clarifies who is prohibited from knowingly referring or transferring patients to an uncertified or unlicensed care facility. Repeals the landlord exclusion. Effective 6/30/3000. (HD1)

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

