



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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**Testimony in OPPOSITION to S.B. 901  
RELATING TO CARE FACILITY INSPECTIONS.**

SENATOR JOY A. SAN BUENAVENTURA, CHAIR  
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Hearing Date: Wednesday, February 8, 2023

Room Number: 225

1 **Fiscal Implications:** This measure impacts the Department of Health's (DOH) Office of Health  
2 Care Assurance (OHCA) and Developmental Disabilities Division (DDD) and may impact the  
3 priorities identified in the Governor's Executive Budget Request for DOH appropriations and  
4 personnel. Resource needs would include permanent, full-time, civil service positions and funds  
5 if this bill passes.

6 **Department Testimony:** Thank you for the opportunity to testify in OPPOSITION to this bill.  
7 The intent of this bill is laudable and DOH works hard to post inspection reports timely, but  
8 portions of the bill are unclear, duplicative, or would add work, and the Department's overall  
9 current performance may make this bill unnecessary since the bill's main intent may already be  
10 met.

11 Bill Requirements: This bill would require the following timelines to be met:

- 12 1. A report on the "initial inspection visit:" within 5 working days on the inspection;
- 13 2. A report on the violations (citations): within 15 working days of the inspection;
- 14 3. A report on the plans of correction: within 30 working days of the inspection; and

1           4.     A list of corrective actions taken by the facility: within 60 working days of the  
2                     plan of correction’s submission.

3           DOH’s Current Performance: On average during calendar year 2022, OHCA’s survey  
4 reports were posted within 20 calendar days from inspection date to posting date. Of the 20  
5 days, 16 calendar days were taken by surveyors to write the reports and submit them for posting  
6 and 4 calendar days were taken by the posting clerk to post them. If weekends were excluded  
7 from the calendar day measurement, OHCA would be meeting the timelines of this bill.

8           Ninety-five percent (95%) of DDD’s reports are posted within the bills timeframes.

9           Admittedly, averages mean that some reports are posted within the timeline while other  
10 reports are posted beyond the timeline. The Department is concerned that the strict requirement  
11 of this bill in statute would expose the Department to lawsuits similar to the one filed in 2017,  
12 which was concluded in the Department’s favor. This would distract the Department from its  
13 other duties and responsibilities. Nevertheless, the Department continues to work to improve on  
14 its performance.

15           Unclear, Duplicated, and Added Requirements: If this bill passes, OHCA and DDD  
16 would be required to post online some kind of report within 5 days of the conclusion of an  
17 “initial inspection visit,” but the bill does not define what an initial inspection visit is or what  
18 shall be reported from that visit. Is the initial visit the inspection when the facility is initially  
19 licensed or is it the annual inspection visit for license renewal? The current HRS is also unclear  
20 on the differences of paragraphs (b)(3) and (b)(4) on pages 2 and 3, respectively. Both  
21 paragraphs discuss the facilities’ plans of correction and their statuses. Since this bill would

1 establish different timeframes for these actions, it would help to better know the legislature's  
2 intent.

3         This bill also requires duplicative information for DOH to post, i.e., a log of each  
4 inspection report in a publically accessible database even though the reports themselves are  
5 posted. This will require additional time and effort to create and maintain. Further, DOH will  
6 defer to non-DOH entities but the bill appears to create additional administrative burdens for  
7 licensed or certified care facilities to maintain records of inspections and to report initial  
8 inspections to the Executive Office on Aging (EOA) Long Term Care Ombudsman (LTCO) and  
9 county agencies on aging who shall also create additional public databases. Licensed facilities  
10 are already required to post or make available inspection reports at the facility location. This bill  
11 would also require all licensees, including the approximately 1,700-plus mom-and-pop  
12 residential care homes to create and maintain websites with online information for public access.  
13 We know from experience that residential care home licensees are often computer challenged.

14         Potential Financial Considerations: If this bill passes, the Department would require  
15 additional resources to meet its requirements given the Department's workload. For example,  
16 surveyors could not be scheduled on back-to-back surveys so they could write reports. For the  
17 larger institutional facilities, let me use skilled nursing facilities (SNF) as an example of how this  
18 bill would impact OHCA. SNFs are surveyed by as many as 4 – 5 surveyors for as many as 4  
19 days, sometimes longer, and they look at the multi-disciplinary processes of a facility's operation  
20 to ensure compliance with federal and state regulations to protect the health, safety, and welfare  
21 of patients. They look at everything from governance to management oversight to nursing  
22 services to multi-disciplinary care planning upon admission, discharge planning, patients' rights,

1 kitchen and dietary, social services and activities, maintenance and housekeeping, medication  
2 management, fire and life safety, and the always important infection control practices including  
3 COVID-19 prevention and mitigation.

4 Surveyors then have ten (10) working days to write reports but typically the report  
5 writing can take longer due to the extensive and detailed nature of the report or because  
6 surveyors are assigned back-to-back surveys to keep up with the workload. This delays the  
7 report writing on the first survey. OHCA would require additional surveyors to break this cycle  
8 of back-to-back surveys.

9 Thank you for the opportunity to testify in OPPOSITION on this measure. Respectfully,  
10 the Department asks that this bill be deferred as was done by the House on its companion bill.

11 **Offered Amendments:** None.

# THE KŪPUNA CAUCUS



Feb. 6<sup>th</sup> 2023 for HHS\_02-03-23 1:00 pm Hearing

TO: THE COMMITTEE ON HEALTH AND HUMAN SERVICES

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

CONCERNING: SB606 (Relating to Hearing Aids), SB608 (Relating to Prescription Drugs), SB609 (Relating to Hearing Aids), SB900 (Relating to Health Insurance Assistance Program), SB 901 (Care Facility Inspections), SB902 (Relating to Caregivers), SB1592 (Relating to Senior Medicare Patrol Program). SB853 (Relating to Healthy Aging Partnership), SB 442 (Relating to Health)

POSITION: Full support

Aloha Chair Buenaventura, Vice Chair Aquino and members of the committee

The Kupuna Caucus of the Democratic Party of Hawaii supports the bills listed above and hopes they will be passed.

It has taken long enough for Federal and State health programs to recognize the vital importance of hearing aids to seniors who suffer disproportionately from gradual hearing loss. Hearing assistance is vital to self-sufficiency, to personal safety, and for the people a senior may interact with on a daily basis. Any bill that supports financial assistance in buying hearing aids is worthy of support.

The recent COVID pandemic demonstrated the need for more stringent and frequent inspections of care facilities and the need to provide the results to the public before they trust a place with their loved ones.

There is a serious shortage of care givers especially those who work for agencies that accept Federal or state assisted insurance programs. One reason is because the businesses keep almost all of the money paid by the insurance for the hourly services and pay the workers poorly. Better training and a higher wage will provide more and better in home care.

Please continue to support agencies and department services that assist Kupuna to live out their lives with dignity, healthy, safe and well cared for.

Martha Randolph for  
The Kupuna Caucus

THE SENATE

KA 'AHA KENEKOA

THE THIRTY-SECOND LEGISLATURE REGULAR SESSION OF 2023

COMMITTEE ON HEALTH AND HUMAN SERVICES

Senator Joy A. San Buenaventura, Chair      Senator Henry J.C. Aquino, Vice Chair

NOTICE OF HEARING DATE:

Wednesday, February 8, 2023

TIME: 1:00 PM

PLACE: Conference Room 225 & Videoconference

State Capitol

415 South Beretania Street

**In Opposition to SB901**

Good afternoon, Chair San Buenaventura, and Vice Chair Aquino,

My name is John G. McDermott, and I am the State Long-Term Care Ombudsman.

I am here today to testify in opposition to SB901. This proposed bill was already heard in 2021 as HB488. We opposed it then and we continue to oppose it because it's not possible to accomplish.

I think there is some misunderstanding of what goes into an inspection. SB901 would apply equally to both small community care foster family homes with no more than 3 residents as well as larger facilities like Hale Nani with 288 residents. I worked at Hale Nani as Director of Social Services for 7 years before becoming the State Long-Term Care Ombudsman in 1998. A typical inspection at Hale Nani takes a full week. The Exit Interview is usually on a Friday. At that meeting the State Surveyors report all they found wrong, and the facility has an opportunity to rebut this - present evidence that there was a misunderstanding, something was misfiled, it was an honest mistake, whatever. It's a very open conversation with both sides listening to one another. Sometimes the facility wins and sometimes their evidence isn't convincing enough.

After the Exit Interview the surveyors return to their Kapolei office to compare notes, discuss what each one observed, weigh the evidence presented at the Exit Interview, follow up with phone calls to family members who made complaints, review the pertinent federal regulations, possibly ask questions of their supervisor or CMS, decide the best way to phrase what they saw and why it's a deficiency, and have 30 days to compose this deficiency report and send it to the facility for their Plan of Correction. The report is not written by one surveyor but by a team of surveyors who each have their own section to focus on. It's a complicated process with legal consequences. Trying to do this in only 5 days is simply impossible.

You can't determine how many days it should take for the surveyors to complete their written report based on the smallest facilities, you must use the largest facility, which currently is Hale Nani. My Office gets copies of ALL the long-term care facility inspections and some of them are over 100 pages long. That can't be written in 5 days.

OHCA has no vested interest in slowing down the release of these reports, but they need time to get them right. Within 30 days they send their written findings to the facility with what the regulations say - what was the Deficiency - and the right side of the page is left blank for the facility to respond and write their *Plan of Correction* for each deficiency.

The Plan of Correction is inter-disciplinary. It's also not written by one person. Nursing has a section, Social Services has a section, Activities has a section, Pharmacy has a section, the Medical Director has a section, etc. depending on what were the deficiencies. It takes time to get everyone to do their part. Medical Directors often visit only once a week and Pharmacists only as needed.

The facility now has 30 days to submit their Plan and get it back to OHCA. We're not done yet. Now OHCA has 30 days to review it. They can accept the Plan as is (which would now be 60 days after the initial inspection) or send it back and ask the facility to tweak it some more. OHCA (and CMS) want Systemic Change.

*"Don't tell me what you will do about a particular deficiency. Tell me what systems you will put in place, so this never happens again to anyone."*

If that happens, the facility has another 30 days to get their plan right and accepted so there is a possibility it could take as much as 90 days for this process to be completed.

SB901 should really say the ***Annual Inspection should be posted 5 days AFTER this whole process is completed*** (which current law Act 213 already requires!)

It would be of no use to the public to see only the left column listing Deficiencies without seeing the right column with the Plan of Correction. One last point: After the facility receives their Deficiency Report, they may want to appeal and request an Independent Informal Dispute Resolution (IIDR). Serious deficiencies have serious consequences. The three areas the surveyors look at are Scope, Severity, and Pattern. Is the deficiency in one unit or throughout the facility? Is the deficiency serious enough to cause the death of a resident? Is the deficiency continuing to happen year after year? If the surveyors believe the deficiency rises to the level of "Immediate Jeopardy," CMS can remove the administrator, stop all Medicare payment, prevent any new admissions, fine a facility up to \$10,000/day until the deficiency is corrected, etc.

Facilities will often hire very sharp attorneys to contest the report - and if they win, the deficiency(s) may be removed from the final report so that is another reason why we have to honor the process and it will be posted for the public as soon as that process is completed.

When the facility administrator and OHCA sign off on FORM CMS-2567 that both agree with the Deficiencies found and Plan of Correction, then it's pau. Anything before that is misleading, half the story, not of any real help to the public.

Mahalo for this opportunity to testify.