
A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE ORDERS.

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

1 SECTION 1. Section 321-20, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " [†] §321-20 [†] **Remedies.** Notwithstanding other penalties,
4 the director may enforce this chapter in either administrative
5 or judicial proceedings:

6 (1) Administrative. If the director determines that any
7 person is violating any provision of this chapter, any
8 rule adopted thereunder, or any variance or exemption
9 or waiver issued pursuant thereto, the director may
10 have that person served with a notice of violation and
11 an order. The notice shall specify the alleged
12 violation. The order may require that the alleged
13 violator do any or all of the following: cease and
14 desist from the violation, pay an administrative
15 penalty not to exceed \$1,000 for each day of
16 violation, correct the violation at the alleged
17 violator's own expense, or appear before the director
18 at a time and place specified in the order and answer

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1 the charges complained of. The order shall become
2 final twenty days after service unless within those
3 twenty days the alleged violator requests in writing a
4 hearing before the director. Upon such request the
5 director shall specify a time and place for the
6 alleged violator to appear. When the director issues
7 an order for immediate action to protect the public
8 health from an imminent and substantial danger, the
9 department shall provide an opportunity for a hearing
10 within twenty-four hours after service of the order.
11 Any hearing before the director shall not stay any
12 order to cease and desist issued pursuant to this
13 paragraph. After a hearing pursuant to this
14 [~~subsection,~~] paragraph, the director may affirm,
15 modify, or rescind the order as appropriate. The
16 director may institute a civil action in any court of
17 appropriate jurisdiction for the enforcement of any
18 order issued pursuant to this [~~subsection.~~] paragraph.

19 Factors to be considered in imposing the
20 administrative penalty include the nature and history
21 of the violation and any prior violation and the
22 opportunity, difficulty, and history of corrective

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1 action. It is presumed that the violator's economic
2 and financial conditions allow payment of the penalty
3 and the burden of proof to the contrary is on the
4 violator. In any judicial proceeding to enforce the
5 administrative penalty imposed pursuant to this
6 chapter, the director need only show that notice was
7 given, a hearing was held or the time granted for
8 requesting a hearing had expired without such a
9 request, the administrative penalty imposed, and that
10 the penalty imposed remains unsatisfied.

11 This section does not supersede specific
12 administrative penalties provided elsewhere.

13 (2) Judicial. The director may institute a civil action
14 in any court of appropriate jurisdiction for
15 injunctive relief to prevent violation of any order
16 issued or rule adopted pursuant to this chapter, in
17 addition to any other remedy or penalty provided for
18 under this chapter."

19 SECTION 2. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that
21 began before its effective date.

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1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: *Nashua K. Moulton*

6

BY REQUEST

JAN 21 2025

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Report Title:

Department of Health; Remedies; Administrative Orders;
Administrative Hearings

Description:

Requires any order to cease and desist issued by the Director of Health that is administratively appealed to remain in effect during the appeals process.

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

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO ADMINISTRATIVE ORDERS.

PURPOSE: To ensure that orders to cease and desist issued by the Director of Health that are administratively appealed remain in effect during the appeals process.

MEANS: Amend section 321-20, Hawaii Revised Statutes.

JUSTIFICATION: The Director of Health is authorized to issue orders to cease and desist to certain state-licensed facilities, due to concerns over threats to the health and safety of patients. Clarification is necessary to prevent a facility that has received an order to cease and desist from continuing operations during the administrative appeal process, which may take weeks or months. This process is similarly in place for community care foster family homes and should be applied to all orders to cease and desist issued by the Director including those issued to facilities licensed by the Office of Health Care Assurance.

Impact on the public: Increased personal safety of patients who reside or receive care in a facility that has been ordered to cease and desist operations. However, patients will have to be transferred to another licensed facility, which may be disruptive for the patient and families.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

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PPBS PROGRAM
DESIGNATION:

HTH 720.

OTHER AFFECTED
AGENCIES:

None.

EFFECTIVE DATE:

Upon Approval.