

ACT 184

S.B. NO. 2384

A Bill for an Act Relating to Licensing Inspections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the department of health is responsible for licensing, certifying, and monitoring several types of facilities, including care facilities and medical marijuana production centers and dispensaries, to ensure a standard of quality. To ensure that these facilities are providing a high standard of quality on a day-to-day basis, inspections and visits of these facilities should be unannounced to prevent a prepared appearance that does not truly portray the regular quality of operations that the facility provides on an ongoing basis.

The purpose of this Act is to require the department of health to:

- (1) Conduct visits and relicensing or recertification inspections without notice for state-licensed or state-certified care facilities and unannounced inspections for license renewals for medical marijuana production centers and dispensaries; and
- (2) Submit reports to the legislature prior to the regular sessions of 2017, 2018, and 2019 on the number of unannounced visits and inspections on state-licensed or state-certified care homes specified in this Act.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- Inspections; visits; state-licensed or state-certified care facilities. (a) The department of health shall conduct unannounced visits and inspections, including inspections for relicensing or recertification, for the following state-licensed or state-certified care facilities on an annual basis and at such in-

tervals as determined by the department to ensure the health, safety, and welfare of each resident:

- (1) Adult day health centers;
- (2) Adult day care centers;
- (3) Community care foster family homes;
- (4) Developmental disabilities domiciliary homes;
- (5) Adult foster homes;
- (6) Long-term care facilities, including but not limited to:
 - (A) Adult residential care homes;
 - (B) Expanded adult residential care homes;
 - (C) Assisted living facilities;
 - (D) Intermediate care facilities;
 - (E) Nursing facilities; and
 - (F) Skilled nursing facilities; and
- (7) Special treatment facilities.

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

(c) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section.”

SECTION 3. Section 321-15.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein. The department shall conduct ~~[unannounced visits, other than the inspection for relicensing, to every licensed adult residential care home and expanded adult residential care home on an annual basis and at such intervals as determined by the department to ensure the health, safety, and welfare of each resident. Unannounced visits may be conducted during or outside regular business hours. All inspections relating to follow-up visits, visits to confirm correction of deficiencies, or visits to investigate complaints or suspicion of abuse or neglect shall be conducted unannounced during or outside regular business hours. Annual inspections for relicensing may be conducted during regular business hours or at intervals determined by the department. Annual inspections for relicensing shall be conducted with notice, unless otherwise determined by the department.]~~ visits and inspections pursuant to section 321- . . .”

SECTION 4. Section 321-15.62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All expanded adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein. The department shall conduct visits and inspections pursuant to section 321- . . .”

SECTION 5. Section 329D-4, Hawaii Revised Statutes, is amended by amending subsection (n) to read as follows:

“(n) A dispensary license may be renewed annually by payment of an annual renewal fee of \$50,000 and subject to verification by the department through an unannounced inspection that the individual licensee and entity li-

censee continue to meet all licensing requirements from the date the initial licenses were issued.”

SECTION 6. Section 329D-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§329D-7]]~~ **Medical marijuana dispensary rules.** The department shall establish standards with respect to:

- (1) The number of medical marijuana dispensaries that shall be permitted to operate in the State;
- (2) A fee structure for the submission of applications and renewals of licenses to dispensaries; provided that the department shall consider the market conditions in each county in determining the license renewal fee amounts;
- (3) Criteria and procedures for the consideration and selection, based on merit, of applications for licensure of dispensaries; provided that the criteria shall include but not be limited to an applicant’s:
 - (A) Ability to operate a business;
 - (B) Financial stability and access to financial resources; provided that applicants for medical marijuana dispensary licenses shall provide documentation that demonstrates control of not less than \$1,000,000 in the form of escrow accounts, letters of credit, surety bonds, bank statements, lines of credit or the equivalent to begin operating the dispensary;
 - (C) Ability to comply with the security requirements developed pursuant to paragraph (6);
 - (D) Capacity to meet the needs of qualifying patients;
 - (E) Ability to comply with criminal background check requirements developed pursuant to paragraph (8); and
 - (F) Ability to comply with inventory controls developed pursuant to paragraph (13);
- (4) Specific requirements regarding annual audits and reports required from each production center and dispensary licensed pursuant to this chapter;
- (5) Procedures for announced and unannounced inspections by the department or its agents of production centers and dispensaries licensed pursuant to this chapter; provided that inspections for license renewals shall be unannounced;
- (6) Security requirements for the operation of production centers and retail dispensing locations; provided that, at a minimum, the following shall be required:
 - (A) For production centers:
 - (i) Video monitoring and recording of the premises;
 - (ii) Fencing that surrounds the premises and that is sufficient to reasonably deter intruders and prevent anyone outside the premises from viewing any marijuana in any form;
 - (iii) An alarm system; and
 - (iv) Other reasonable security measures to deter or prevent intruders, as deemed necessary by the department;
 - (B) For retail dispensing locations:
 - (i) Presentation of a valid government-issued photo identification and a valid identification as issued by the department pursuant to section 329-123, by a qualifying patient or caregiver, upon entering the premises;

- (ii) Video monitoring and recording of the premises;
 - (iii) An alarm system;
 - (iv) Exterior lighting; and
 - (v) Other reasonable security measures as deemed necessary by the department;
- (7) Security requirements for the transportation of marijuana and manufactured marijuana products between production centers and retail dispensing locations;
 - (8) Standards and criminal background checks to ensure the reputable and responsible character and fitness of all license applicants, licensees, employees, subcontractors and their employees, and prospective employees of medical marijuana dispensaries to operate a dispensary; provided that the standards, at a minimum, shall exclude from licensure or employment any person convicted of any felony;
 - (9) The training and certification of operators and employees of production centers and dispensaries;
 - (10) The types of manufactured marijuana products that dispensaries shall be authorized to manufacture and sell pursuant to sections 329D-9 and 329D-10;
 - (11) Laboratory standards related to testing marijuana and manufactured marijuana products for content, contamination, and consistency;
 - (12) The quantities of marijuana and manufactured marijuana products that a dispensary may sell or provide to a qualifying patient or primary caregiver; provided that no dispensary shall sell or provide to a qualifying patient or primary caregiver any combination of marijuana and manufactured products that:
 - (A) During a period of fifteen consecutive days, exceeds the equivalent of four ounces of marijuana; or
 - (B) During a period of thirty consecutive days, exceeds the equivalent of eight ounces of marijuana;
 - (13) Dispensary and production center inventory controls to prevent the unauthorized diversion of marijuana or manufactured marijuana products or the distribution of marijuana or manufactured marijuana products to qualifying patients or primary caregivers in quantities that exceed limits established by this chapter; provided that the controls, at a minimum, shall include:
 - (A) A computer software tracking system as specified in section 329D-6(j) and (k); and
 - (B) Product packaging standards sufficient to allow law enforcement personnel to reasonably determine the contents of an unopened package;
 - (14) Limitation to the size or format of signs placed outside a retail dispensing location or production center; provided that the signage limitations, at a minimum, shall comply with section 329D-6(o)(2) and shall not include the image of a cartoon character or other design intended to appeal to children;
 - (15) The disposal or destruction of unwanted or unused marijuana and manufactured marijuana products;
 - (16) The enforcement of the following prohibitions against:
 - (A) The sale or provision of marijuana or manufactured marijuana products to unauthorized persons;

- (B) The sale or provision of marijuana or manufactured marijuana products to qualifying patients or primary caregivers in quantities that exceed limits established by this chapter;
 - (C) Any use or consumption of marijuana or manufactured marijuana products on the premises of a retail dispensing location or production center; and
 - (D) The distribution of marijuana or manufactured marijuana products, for free, on the premises of a retail dispensing location or production center;
- (17) The establishment of a range of penalties for violations of this chapter or rule adopted thereto; and
- (18) A process to recognize and register patients who are authorized to purchase, possess, and use medical marijuana in another state, United States territory, or the District of Columbia as qualifying patients in this State; provided that this registration process may commence no sooner than January 1, 2018.”

SECTION 7. Section 329D-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each medical marijuana production center and dispensary licensed pursuant to this part shall:

- (1) Be subject to an annual announced inspection and unlimited unannounced inspections of its operations by the department; provided that inspections for license renewals shall be unannounced;
- (2) Submit reports on at least a quarterly basis, or as otherwise required, and in the format specified by the department; and
- (3) Annually cause an independent financial audit, at the dispensary licensee’s own expense, to be conducted of the dispensary, its production center, and retail dispensing locations and shall submit the audit’s findings to the department.”

SECTION 8. The department of health shall submit reports to the legislature no later than twenty days prior to the convening of the regular sessions of 2017, 2018, and 2019 on:

- (1) The annual aggregate numbers of announced and unannounced visits conducted by the department of health on the state-licensed or state-certified care facilities;
- (2) The annual aggregate numbers of unannounced inspections conducted by the department of health on the state-licensed or state-certified facilities as follow-up visits, visits to confirm corrections or deficiencies, or visits to investigate complaints or suspicions of abuse or neglect; and
- (3) The general outcomes and corrective actions taken because of the visits and investigations conducted by the department of health on the state-licensed or state-certified care facilities,

as specified in sections 2, 3, and 4 of this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2016; provided that sections 2, 3, and 4 shall take effect on July 1, 2019.

(Approved July 1, 2016.)

Note

1. Edited pursuant to HRS §23G-16.5.