

STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in SUPPORT of H.B. 1911 HD1
RELATING TO HEALTH.**

REPRESANTATIVE ROY M. TAKUMI, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Hearing Date: Wednesday, February 14, 2018 Room Number: 329

1 **Fiscal Implications:** None known.

2 **Department Testimony:** Thank you for the opportunity to testify in SUPPORT of this measure.

3 This measure seeks to protect the public and consumers by authorizing the Department of
4 Health (DOH) to investigate care facilities reported to be operating without an appropriate
5 certificate or license issued by the Department. It provides the Department a right of entry to
6 conduct investigations and establishes penalties for violations and for patient referral or transfer
7 to uncertified or unlicensed care facilities.

8 The language in this bill was modeled after HRS Sections 346-152.3, 346-156, 346-227,
9 346-228, 346-229, which is language from the Department of Human Services (DHS) statutes on
10 child care and adult protective services (APS). Specifically, Section 346-229 HRS is the APS
11 statute on Right of Entry.

12 The DOH Office of Health Care Assurance (OHCA) has the regulatory authority to issue
13 health care facility licenses and to conduct surveys (inspections) to ensure compliance with
14 licensing requirements.

15 OHCA had seen a very small but growing number of “caregivers” opening care homes
16 and providing care as possibly unlicensed care homes. OHCA has investigated these homes with

1 mixed success. Some homes voluntarily close once they are notified of licensing requirements,
2 or perhaps they simply moved locations. Other home owners have refused entry by DOH OHCA
3 investigators citing private property concerns.

4 OHCA respectfully requests legislation for improved investigative authority to enter
5 private property when conducting a lawful investigation on potentially unlicensed care homes to
6 ensure the health, safety and welfare of persons receiving care at these homes and respectfully
7 requests legislation for improved enforcement authority to assess fines on unlicensed care homes
8 and to assess fines or suspend the license of licensed facilities or professionals when they
9 knowingly refer patients to unlicensed care homes. However, OHCA would conduct thorough
10 investigations before taking any enforcement action. Investigations could determine if
11 circumstances existed that could exonerate the licensed facility or professional in their role in
12 making a specific referral. Circumstances could possibly be based on patient rights and patient
13 choice after receiving appropriate counselling. This circumstance, however, would not be
14 allowed as justification for the unlicensed care home.

15 OHCA's Licensing Section is stretched to conduct inspections and complaint
16 investigations and needs statutory authority to more quickly and effectively address unlicensed
17 care homes before a vulnerable person gets harmed and before the number of unlicensed care
18 homes becomes out-of-hand or unmanageable.

19 However, the Department recommends the following amendment to provide for and
20 safeguard patient or consumer choice and granting immunity to referring facilities:

21 §321-E Referral or transfers to uncertified or unlicensed care facility; immunity. (a) It
22 shall be unlawful for a certified or licensed healthcare provider or certified or licensed care

1 facility to knowingly refer or transfer patients to an uncertified or unlicensed care facility. The
2 department shall be authorized to enforce on any certified or licensed healthcare provider or
3 certified or licensed care facility that knowingly refers or transfers patients to a care home,
4 agency, or facility operating without a certificate or license as required by law, a fine of not more
5 than:

- 6 (1) \$ _____ for the first violation;
7 (2) \$ _____ for the second violation; and
8 (3) \$ _____ for the third and each succeeding violation.

9 (b) In addition to fines imposed under this subsection, the department may initiate
10 administrative proceedings to suspend or revoke the referring or transferring care provider or
11 facility's certificate or license upon a third or any succeeding violation."

12 (c) Notwithstanding (a) and (b) of this section, if the patient or caregiver, family member,
13 or authorized representative of the patient chooses to be transferred to an uncertified or
14 unlicensed care facility following counselling by the healthcare provider, the referring healthcare
15 provider or healthcare facility shall be immune from civil or criminal liability.

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

House Committee on Consumer Protection & Commerce

Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair

H.B. 1911 HD1 Relating to Health

Conference Room 329, 2:00 p.m.
February 14, 2018

*Testimony of John G. McDermott, LSW, ACSW, M.Div.
State Long Term Care Ombudsman*

Position: The Office of the Long Term Care Ombudsman **strongly supports** this measure.

Good afternoon, Chair Takumi, Vice Chair Ichiyama and members of the Committee,

My name is John G. McDermott and I have been the State Long Term Care Ombudsman (LTCO) since August of 1998. The LTCO Program is both federally and state mandated, receives federal and state funding, and is housed in the Executive Office on Aging.

We advocate for [mostly] seniors living in licensed nursing homes, licensed assisted living facilities (ALFs), licensed adult residential care homes (ARCHs), licensed expanded ARCHs (E-ARCH) and certified community care foster family homes (CCFFHs). Note: With the CCFFHs it's the case manager who is required to be licensed.

As of January 12, 2018, the breakdown was 48 nursing homes with 4,456 beds, 17 ALFs with 2,683 beds, 481 ARCHs with 2,599 beds and 1,153 CCFFHs with 2,919 beds. That grand total for the State of Hawaii was 1,699 facilities with 12,657 beds.

Because these residents often suffer from dementia and can have many other physical and mental limitations which make them so vulnerable, the State has always required that facilities caring for these people be licensed or certified. It's the right thing to do.

These facilities are monitored by the Department of Health's Office of Healthcare Assurance (OHCA). They have annual inspections. In 2019 those inspections will also be *unannounced*, as is required by federal law for our nursing homes. Inspection reports are required to be posted on the DOH website. There are staffing requirements, criminal background check requirements, building and fire code requirements, substitute caregiver requirements, Resident Rights requirements, knowledge of CPR requirements, TB clearance requirements, reading and speaking English requirements, housing design and self-preservation requirements, confidentiality requirements, medical records requirements, billing and financial record requirements, medication pass requirements (especially regarding the use of anti-psychotic medications), infection control requirements, waste removal requirements, and I'm sure many more that I'm not remembering at the moment. And, not to be forgotten, there is the right of the resident to access the services of the Long-Term Care Ombudsman when the resident or responsible person needs an advocate and doesn't know where to turn.

I think we would all agree these are good and essential regulations, NOT frivolous, because they protect our most vulnerable kupuna. Unfortunately, the public ...and maybe some members of the Press ... don't understand NONE of these consumer protections exist if someone chooses to move into an *Ageing in Place Home*. You are totally on your own, exchanging all those consumer protections for an *unenforceable promise* to do a good job. "Trust us."

The proponents of the *Aging in Place Home* movement have been very clever in misappropriating a term we are all familiar with. "Aging in Place" is something we all want to do but that term is intended to mean aging in my OWN home, not someone else's home. Installing grab bars in the bathroom, replacing a bathtub with a shower, installing a ramp in place of stairs to get into the home, having bedrooms on the ground floor, even installing a call bell system - in your OWN home - is what most mean by "aging in place." When you move into someone else's home – not related to you - and you pay a fee for the care provided - that by definition is a "care home" and in Hawaii, like almost every other state, care homes must be licensed. This is a business and, like most businesses, they need to be licensed and inspected.

Some have tried to argue this model helps resolve the shortage of affordable housing for our seniors. I disagree. Any senior who can afford to "rent" [just] a room for \$4,000 to \$5,000/month would have no problem finding a place to live. This model actually exacerbates the housing shortage situation. If 4 or 5 seniors are all "renting" bedrooms in the same house for \$4,000/month, that one house is now pulling in \$20,000/month! What landlord would rent a house to a family for \$4,000/month if s/he can now get \$20,000/month?

I would also agree with the ARCHs and CCFFHs who claim the *Aging in Place Homes* are unfair competition. Why would a caregiver subject herself and her family to annual inspections, the Ombudsman dropping in unannounced, having to pay for all the requirements and costs of running a licensed business - if they can drop out of the regulatory system and call herself or himself an *Aging in Place Home* and get away with it? *What message are we sending to all those good caregivers following the rules?* If the Legislature is unable to stop this trend, more licensed facilities will drop out and this will place more seniors at risk.

On January 22nd I walked into Don Quixote on Kaheka Street and taped to the door of the nail salon is a sign proudly declaring "all our staff are licensed." That's how it should be. For our *Aging in Place Homes*, their sign would have to read "none of our homes are licensed." Shouldn't protecting our seniors be at least as important as protecting our fingernails?! The residents I am responsible for need to be protected and that's why I am asking that the Legislature insist that all *Aging in Place Homes* come into compliance with the law and become licensed like everyone else. Mahalo.

Thank you for this opportunity to testify.

John G. McDermott, LSW, ACSW, M.Div
State Long Term Care Ombudsman



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House of Representatives
Committee on Consumer Protection & Commerce
Wednesday, February 14, 2018
2:00 p.m.
Conference Room 329

To: Representative Roy Takumi, Chair
Re: H.B. No. 1911, H.D. 1, Relating to Health

Dear Chair Takumi, Vice-Chair Ichiyama, and Members of the Committee,

My name is Kerry M. Komatsubara and I am the Advocacy Director for AARP Hawaii. AARP is a membership organization of people age fifty and over with about 150,000 members in Hawaii. AARP advocates for issues that matter to Hawaii families, including the high cost of long-term care; access to affordable, quality health care for all generations; and serving as a reliable information source on issues critical to people over the age of fifty.

AARP Hawaii believes further study is needed before imposing new restrictions on Aging-In-Place facilities (AIPs) and home health & home care service providers. Subjecting AIPs and home health & home care agencies to new inspection and transfer requirements of the Department of Health could lead to unintended consequences, including having long-term care recipients in these AIPs to be displaced against their wishes and/or long-term care recipients losing their choice to have home health & care services provided to them at their place of residence. We believe more discussion is needed to fully understand the impacts of legislation on the supply and cost of long-term care facilities and services.

We bring to this Committee's attention that there is much confusion since AIPs are really facilities where the services are delivered to care recipients in their place of residence by home health agencies (HHA) and home care agencies (HCA).

HHA's are licensed pursuant to Section 431-11, HRS, and which are subject to DOH Rules, specifically Title 11, Chapter 97, HAR.

HCA's licensing statute is in Section 321-14.8, HRS, which was initially enacted in 2009 and DOH was given five years to adopt rules to implement the HCA licensing program. DOH was unable to adopt rules within the five years and the 2014 Legislature enacted another law to give DOH five more years (up to June 30, 2019) to adopt implementing rules. DOH has failed to adopt rules to implement the HCA licensing program for the past nine years, and therefore HCA's cannot obtain licensed status through no fault of their own. Furthermore, Section 321-14.8 "drops dead" on June 30, 2019, and it is uncertain as to the impact of the repeal of Section 321-14.8 on the home care service industry come June 30, 2019.

Thank you for the opportunity to present this testimony on H.B. No. 1911, H.D. 1.

AARP
Real Possibilities



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Thank you for the opportunity to present this testimony on H.B. No. 1911, H.D. 1.

AARP
Real Possibilities

HB-1911-HD-1

Submitted on: 2/12/2018 1:25:06 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
annie	ARCA	Support	No

Comments:

To: Representative Roy Takumi, Chair, Representative Linda Ichiyama, Vice Chair, and members of the Consumer Protection & Commerce Committee

**FROM: Wannette Gaylord
ARCA President**

HEARING DATE: Wednesday, February 14, 2018 (2:00 PM, Room)

RE: Relating to Health HB1911 HD1-- Care Facilities, Uncertified, Unlicensed, Enforcement

Aloha, my name is Wannette Gaylord and I have been a caregiver for over 20 years and a licensed Care Home Operator for over 10 years. I am the current President of ARCA, Association of Residential Care home Administrators representing over 200 Licensed Care Homes. Our organization is distraught about the overwhelming number (almost 300) unlicensed homes in our State. Certified foster homes/Licensed care homes are choosing to close or being “forced” to close due to revocation of their license, then opening a few weeks later as an uncertified/unlicensed Care home sometimes displacing Medicaid clients. We, as State licensed providers have oversight and monitoring to ensure the safety and wellbeing of our fragile kupuna. We maintain many requirements to uphold the law.

I humbly ask for your help to fix this growing problem.

Thank you for the opportunity to provide this written testimony in STRONG SUPPORT of HB1911 HD1, and I hope I can be there in person to give my oral testimony, but I am unsure if I can because I am a hands on operator.

Mahalo,

Wannette Gaylord

HB-1911-HD-1

Submitted on: 2/13/2018 3:05:50 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maria Corazon E. Cariaga	Big Island Adult foster home operators	Support	No

Comments:

On behalf of the Big Island Adult Foster Home Association, which is a group of Community Care Foster Family Home and Expanded Adult Residential Care Home Operators, I am in full support of this HB 1911 for the sake and welfare of our Kupunas and the rest of the citizens who needed help in their activity of daily livings. In addition, it is duly unfair for us licensed homes who are following all the rules and regulations because when those clients from unlicensed homes will run out of funds guarantee they will be referred to us. Unlicensed homes will take care of them only if they enough funds yet. These Kupunas will be like a ping pong ball after. Thank you for allowing me to submit my testimony on line.

HB-1911-HD-1

Submitted on: 2/13/2018 10:24:42 AM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ruth Raza	Big Island Adult Residential Carehome	Support	No

Comments:

House Committee on Consumer Protection and Commerce

Wednesday, February 14, 2018

2:00 p.m.

Conference Room 329

To: Chair Takumi, Vice-Chair Ichiyama and Members of the Committee on Consumer Protection and Commerce

Re: H.B. 1911, H.D. 1 Relating to Health

My name is Gary Hironaka and I am the owner of a recently formed non-profit organization called Comprehensive Innovations for Senior Services. We are a group that advocates for measures that will bring new innovations for senior options in a safe, sustainable, and efficiently affordable manner. I grew up in an Adult Residential Care Home (ARCH) operated by my parent's in the early 90s and ventured on my own in 2010. I compare the differences spanning over the 25 years I have been involved in the senior services field and the demographics, consumer preferences, wants, and needs have changed considerably. I want to clarify that I am NOT opposed to the ARCH system. It works very well for the operators who run it properly and for the consumers who like the traditional approach to long term care, for this group of people they are happy with current systems and no change is needed. Now, what of the group of people who want new innovations and greater options to choose from? I am testifying on H.B. 1911, H.D. 1 which authorizes the Department of Health to investigate care facilities reported to be operating without an appropriate certificate or license issued by the department. The measure also establishes penalties for violations and for patient referral or transfer to uncertified or unlicensed care facilities.

I oppose this measure because passage of it will further limit our largely growing senior population from having new innovations and greater options for much needed services. The model of the "Aging In Place" concept is a vehicle that can meet their growing wants and needs.

What is "Aging In Place"? Aging in place is the concept of being able to remain at your place of residence throughout the aging process. It is in line with the philosophy behind Hawaii's Kupuna Care and Kupuna Caregivers Programs.

The key to comprehending this model concept is to recognize that “Aging in Place is the separation of type of care with place of care” (Aging in Place: A New Model for Long-Term Care, Karen Dorman Marek, PhD, MBA, RN and Marilyn J. Rantz, PhD, RN, FAAN). This could be more accurately described as “Services In Place” (SIP) or “In-Home Aging” (IHA).

Looking more closely at this model concept we see that there is in fact two independent components. First, is the chosen place of residence (place of care). Second, are the services our seniors would request when the needs arise (type of care). Currently, there are two main categories of service providers that are not "facilities" but are agencies providing services only. H.B. 1911, H.D. 1 confuses “care facilities” with “agencies providing services only”.

First category of service provider is "home health", an agency licensed by the department of health that is "primarily engaged in providing direct or indirect skilled nursing services" (Title 11 Department of Health Chapter 97 Home Health Agencies) and is generally related to Medicare which is a topic not related to H.B.1911, H.D. 1. The vast majority of seniors who wish to age in place do not utilize "home health" for their everyday practical needs. These services are provided for by the second category of service provider.

This second category is "home care" which is a service that supports non-medical related care such as bathing, toileting, transfers and other assistance with activities of daily living. In 2009 the legislature enacted Act 21 which purpose was to "protect consumers of home care services by requiring home care agencies to be licensed" and “designates the department of health as the home care licensing agency”. No licensing was issued by the department of health between 2009 and 2014. The legislature, by Act 125, then extended Act 21 until June 30, 2019. To date there is an unapproved draft for Home Care Agency rules but it has not yet been adopted and no licensing has been issued.

In summary, it has been 9 years since Act 21 and no action has been taken to adopt the unapproved Home Care Agency rules and provide licensing. Through the implementation of home care licensure it creates a win-win situation by satisfying the concerns for inspection and regulation, as well as, opens up greater service options for our seniors. I understand that the issues are far more complex than just simply adopting rules and creating licensure. I believe we need to, in a timely manner, further educate

each other, discuss the matter, determine what the unintended consequences might be, find compromises, and make a decision.

Thank you for the opportunity to present this testimony on H.B. 1911, H.D. 1 Relating to Health.



February 14, 2018 at 2:00 PM
Conference Room 329

House Committee on Consumer Protection and Commerce

To: Chair Roy M. Takumi
Vice Chair Linda Ichiyama

From: Paige Heckathorn
Senior Manager, Legislative Affairs
Healthcare Association of Hawaii

Re: **Submitting Comments**
HB 1911 HD 1, Relating to Health

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the health care continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

The Healthcare Association of Hawaii would like to thank the committee for the opportunity to provide **comments** on HB 1911 HD 1, which would expand the ability of the Hawaii Department of Health (DOH) to investigate and penalize unlicensed care homes. We agree with the intent of this measure, which is to protect individuals from receiving potentially sub-standard care. However, we have concerns regarding the penalties levied on health care organizations who transfer patients to an unlicensed home.

In response to an inquiry sent out by HAH, the members who responded stated that they do not directly refer patients to unlicensed care homes. However, a patient or their family may elect to go to an unlicensed home based on their own preference. If a patient or their family chooses an unlicensed care home, a hospital or nursing facility is not in a position to impact that decision. Some members have stated that they will inform the patient and their family about the potential consequences of such a placement, but they must honor that choice based on numerous state and federal regulations.

Healthcare facilities must also help patients and their families to transition from their current setting. This transition of care is very important, and hospitals and nursing homes strive to ensure the smoothest transition possible. In some cases, a facility may help to provide information on an unlicensed care home *after the patient and their family has already requested that the patient be transferred to that home*. The purpose of providing this information is not to direct a patient to or make a referral to that facility, but is meant only to help that patient and their family transition

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successfully to their next setting of care and does not include any endorsement of that place of setting.

Because patients may choose an unlicensed care home and facilities must help to ensure a smooth transition, there is a strong concern that the current language of this legislation would unfairly penalize providers who are bound to offer patient choice and must ensure a smooth transition of care, which would be a burdensome consequence for hospitals, nursing homes, and other providers. We also believe that facilities are not the main referral source to unlicensed care homes, and would ask that the committees consider penalizing individuals or referral agencies who are engaged in this practice.

Lastly, another common scenario is that homes may lose their licensure but the DOH website is not updated to reflect that change, and so it is possible that a person may be referred to an unlicensed facility that seems licensed based on the most current information provided by the department.

We would ask for the committees' strong consideration of modifying the penalty section so as to not penalize healthcare facilities for decisions made by patients or their families that are outside of their control, or for lapses in information on licensed homes. There are a few amendments we would suggest:

1. Insert a clear definition of a licensed or unlicensed home.
1. Clarify the instances where immunity may be granted to unlicensed facilities. These cases include the common reasons that patients are transferred to an unlicensed home; and
2. Remove the double penalty of allowing DOH to initiate administrative hearings to suspend or revoke a license. The first penalties in the law are adequate and will allow DOH to enforce this provision.

We recommend the following edits to §321-E (page 3, lines 19-21 and page 4, lines 1-15):

§321-E: Referral or transfers to uncertified or unlicensed care facility; immunity. (a) It shall be unlawful for a certified or licensed healthcare provider or certified or licensed care facility to knowingly refer or transfer patients to an uncertified or unlicensed care facility. The department shall be authorized to enforce on any certified or licensed healthcare provider or certified or licensed care facility that knowingly refers or transfers patients to a care home, agency, or facility operating without a certificate or license as required by law, a fine of not more than:

- (1) \$ for the first violation;
- (2) \$ for the second violation; and
- (3) \$ for the third and each succeeding violation.

(b) Notwithstanding, (1) if the patient or caregiver, family member, or authorized representative of the patient requests to be transferred to an uncertified or unlicensed care facility, (2) if the care facility becomes uncertified or unlicensed after a referral or transfer, or (3) if the healthcare provider or healthcare facility refers or transfer a patient in good faith to a care facility without actual proof or

knowledge of the care facility's uncertified or unlicensed status, the healthcare provider or healthcare facility shall be immune from civil or criminal liability under this section.

~~(c) In addition to fines imposed under this section, the department may initiate administrative proceedings to suspend or revoke the referring or transferring care provider or facility's certificate or license upon a third or any succeeding violation."~~

Thank you for your time and consideration of our comments and amendments.



Kokua Council

The **Kokua Council** is one of Hawaii's oldest advocacy groups. Kokua Council seeks to empower seniors and other concerned citizens to be effective advocates in shaping the future and well-being of our community, with particular attention to those needing help in advocating for themselves.

Legislative Testimony

Prepared by Jim Shon, President, Kokua Council

House on Consumer Protection and Commerce

DATE: Wednesday February 14, 2018
TIME: 2 pm
PLACE: Conference Room 329

BILL: HB 1911 HD1 RELATING TO HEALTH

Kokua Council supports the intent of this bill to tighten up oversight and consumer protection of elder care facilities.

COMMENTS AND RECOMMENDATIONS

The bill as introduced appears to be incomplete. Kokua Council suggests it could be strengthened by adding the following:

1. **A Findings and Purpose Section.** This could be crafted broadly to ensure that additional ideas and strategies can be incorporated later in the session. It also will help advocacy organizations and the general public better understand the intent. We have attached suggested language to illustrate this point.
2. **Definition.** KC is not convinced that there is a legal consensus as to exactly what kinds of facilities would be covered. "I know it when I see it" may not be enough. This is especially true because not all unlicensed facilities were previously licensed, and because new legal and financial models may fall outside of the assumed definition. We have attached suggested language to illustrate this point, not confining the bill's applicability to those previously licensed facilities that have gone off the regulatory reservation. Our suggested definition attempts to include so-called Aging In Place models not previously licensed.
3. **PATHWAY to Legality: Provisional Licenses.** KC is also proposing at least for serious discussion, the creation of a grace period during which the DOH would grant temporary provisional licenses to those facilities that were previously licensed by DOH. The intent here is to encourage a minimum penalty for returning to licensed status, and to remove the red herring of how long it takes to be licensed or relicensed. An additional benefit would be that once "granted"

the temporary license, access to inspect is automatic for DOH, including the Long Term Care Ombudsman.

4. **Streamlining New Licenses.** KC is aware of a narrative that suggests it takes too long for a new applicant to receive a license. We have suggested language that would limit the time to render a decision.
5. **Formal Reporting Procedures.** KC is not convinced that an informal rumor mill approach to initial reporting is adequate. Just because someone leaves an email message may not justify access to a private, unlicensed facility. KC suggests that the DOH be required to adopt written policies and procedures to implement the initial “trigger” for the DOH investigations. We have also suggested language to illustrate this.
6. **Licensing of House Care and Home Health Agencies - Intermediary Placements.** Finally, testimony at several briefings and hearings suggests that there are intermediary agents, case managers, and others that are involved in placements of seniors as they transition from a hospital or home. See HRS 321 – 14.8 (nearly ten years without admin rules) and HRS 321-11 which authorized the DOH to place a wide range of ala carte services under a licensed regime – especially case managers. Apparently, these intermediaries play a valuable role in assisting families. However, they also can be co-conspirators in facilitating placement in unregulated situation. KC does not have suggested language at this time, but would encourage some licensing and oversight of these services to ensure improper placements do not occur.

Mahalo for Seriously Considering this Testimony

See suggested amendments below to illustrate above recommendations.

PROPOSED REVISIONS TO SB 2586

Submitted by Jim Shon, President, Kokua Council

SECTION 1. FINDINGS AND PURPOSE. The purpose of this Act is to

- a) prohibit facilities previously licensed by the department of health from operating as care home facilities without the oversight and consumer protections for vulnerable elders, and to require them to be re-licensed;
- b) streamline and facilitate the relicensing of such previously licensed facilities and those waiting for department approval of license applications;
- c) require the department to adopt policies and procedures for the formal reporting of suspected inappropriate and illegal care home operations;
- d) grant appropriate investigative access to determine whether the operations of community based residential models should be required to be licensed, and whether vulnerable elders in such facilities are afforded appropriate consumer protections and safeguards to prevent financial or other forms of abuse; and provide for appropriate civil and criminal sanctions for violations.

SECTION 2. HRS Section _____ is amended to read as follows:

Definitions. "A Community Based Residential Care facility" shall mean individual homes, townhouses, auxiliary dwelling units, and other residential settings with two or more unrelated vulnerable adults as defined by HRS Section 346-222 and who:

- a) are permanently deficient in two or more activities of daily living and or two or more instrumental activities of daily living; and
- b) either by individual contracts or facilitation by a landlord or resident caregiver, are receiving services from landlords, individual professionals, case managers or case manager type services, or home care agencies as previously defined by HRS section 321-14.8.

SECTION 3. HRS Section _____ is amended to read as follows. No later than January 1, 2019, all previously licensed facilities by the department of health that have discontinued their licensed status with the last three years shall be granted a provisional, temporary six month license that shall be valid until the department conducts a full review to determine if the facility is still providing services to two or more unrelated individuals, and if so, whether they are in compliance with licensing standards of health and safety. In reviewing the status of facilities granted a provisional temporary license under this section, the department shall have the same access to the facilities as it enjoys for other licensed facilities.

SECTION 4. HRS Section _____ is amended to read as follows: The department of health shall adopt policies and procedures to review and render decisions on all applications for facility licenses within _____ days upon receipt of such applications.

SECTION 5. HRS Section _____ is amended to read as follows: No later than January 1, 2019, the department of health shall adopt forms, policies and procedures for home health service providers, case managers, health and human service providers and members of the public to report suspected instances of community based residential facilities, as defined in Section 2 or this Act, are operating without a department license.

SECTION 6. HRS Section 321-14.8. Require that rules be adopted no later than August 1 2018.

CURRENT BILL LANGUAGE WITH SOME AMENDMENTSSECTION 6. Chapter 321, Hawaii Revised Statutes, is amended to read as follows:

"§321-A Investigations. Upon receiving a report in accordance with sections _____ of this Act that a person, corporation, or any other entity may be operating a community based care facility as defined in section 2 of this act, without a certificate or license as required by law and issued by the department, or that a home or any type

of living arrangement may be operating as a care facility without a certificate or license as required by law and issued by the department, the department, **including the long term care ombudsman**, shall conduct an investigation for the purposes of determining whether residents are subject to abuse as defined by HRS Section 346-222, and whether the person or entity is operating without a required certificate or license in accordance with the following provisions:

(1) The department shall request access to the location indicated in the report; or

(2) The department may file a complaint with the district court in the circuit of the location indicated in the report and the district court, upon a finding of probable cause, may issue a search warrant directed to the department and the appropriate county police department, if necessary, to investigate the location pursuant to this section between the hours of sunrise and sunset.

§321-B Action upon investigation. Upon investigation, the department shall take action on confirmed findings that the subject of a report is operating a care facility without the required certificate or license and shall have the authority to do any or all of the following:

(1) Resolve the matter in an informal fashion as is appropriate under the circumstances;

(2) Exercise the department's right of entry under section 321-C;

(3) File a petition with the district court for enforcement, protective, or remedial action; or

(4) Pursue any protective or remedial actions authorized by law.

§321-C Right of entry. The department, including the long term care ombudsman, when engaged in an investigation pursuant to section 321-B shall be authorized to visit and communicate with any person operating the facility, home, or other type of living arrangement that is the subject of a report. Any person intentionally or knowingly obstructing or interfering with the department's right of entry, the department's investigation of a report of operating without a certificate or license, or the department's communication with a vulnerable person reported to be receiving care from an uncertified or unlicensed operator shall be guilty of a misdemeanor.

§321-D Penalty. Any person who intentionally operates a care facility without a certificate or license shall be guilty of a misdemeanor and shall be fined not more than:

(1) \$ _____ for each day of uncertified or unlicensed operation for the first violation;

(2) \$ _____ for each day of uncertified or unlicensed operation for the second violation; and

(3) \$ _____ for each day of uncertified or unlicensed operation for the third and each succeeding violation.

§321-E Referral or transfers to uncertified or unlicensed care facility. It shall be unlawful for a certified or licensed healthcare provider or certified or licensed care facility to knowingly refer or transfer patients to an uncertified or unlicensed care facility. The department shall be authorized to enforce on any certified or licensed healthcare provider or certified or licensed care facility that knowingly refers or

transfers patients to a care home, agency, or facility operating without a certificate or license as required by law, a fine of not more than:

- (1) \$ _____ for the first violation;
- (2) \$ _____ for the second violation; and
- (3) \$ _____ for the third and each succeeding violation.

In addition to fines imposed under this subsection, the department may initiate administrative proceedings to suspend or revoke the referring or transferring care provider or facility's certificate or license upon a third or any succeeding violation."

HB-1911-HD-1

Submitted on: 2/13/2018 1:24:44 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maile Harada	Maile Case Management	Oppose	No

Comments:

To Whom It May Concern, I am opposed to the HB 1911. This bill will give the government more power than our police department. By allowing people to just walk into private residences, the residents will be unnecessarily threatened. Our model of care is safe! The clients are residents of the homes in which they live. The personal care services provided to any AIP residents are directly overseen by a Registered Nurse. All of the accusations that have been made against us are false! We are being attacked unnecessarily. This year will be a great year for the AIP movement. We now have a domestic nonprofit corporation and our board of members has been elected. All AIPs that want certification under our organization, will meet all of the criteria as set forth by our board. This is concept is very much like how Community Ties of America certifies the foster homes. Instead of fighting against an innovative movement that WILL help our senior citizens in Hawaii, you should stop this fight and let us continue to work on this awesome model of care!


Maile Harada, R.N.

President of the AIPA



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
Members, Committee on Consumer Protection & Commerce

From:  Paula Yoshioka, Vice President, The Queen's Health Systems

Date: February 12, 2018

Hrg: House Committee on Consumer Protection & Commerce Hearing; Wednesday, February 14, 2018 at 2:00PM in Room 329

Re: **Comments on HB 1911 HD1, Relating to Health**

My name is Paula Yoshioka and I am a Vice President at The Queen's Health Systems (Queen's). We would like to provide **comments** on HB 1911 HDI, Relating to Health. This bill authorizes the Department of Health (DOH) to investigate care facilities reported to be operating without an appropriate certificate or license issued by the Department. It also establishes penalties for violations and for patient referral or transfer to uncertified or unlicensed care facilities.

At Queen's we are committed to providing care for all the people of Hawaii. While we support the intent of this measure to protect individuals from receiving sub-standard care, we echo the concerns raised by the Healthcare Association of Hawaii (HAH) regarding the proposed penalties levied on health care organizations who refer or transfer patients to an unlicensed home.

It is our standard practice at Queen's to refer patients only to licensed facilities; however, ultimately the decision on where to go is up to the patient or patient's family. Independently, the patient or patient's family may elect to move to licensed facility, an unlicensed facility, or they can elect to return home and not enter a facility at all. At Queen's we honor the decision made by the patient or patient's family regarding where they wish to receive their future care.

Therefore, we ask that the committee strongly consider amendments so as to not penalize health care facilities for decisions made by patients or their families that are outside of our control. We concur with the suggested amendments proposed by HAH. First, we would request that the committee insert a clear definition of licensed or unlicensed home. We would also suggest amendments to:

1. Clarify the instances where immunity may be granted to unlicensed facilities. These cases include the common reasons that patients are transferred to an unlicensed home; and
2. Remove the double penalty of allowing DOH to initiate administrative hearings to suspend or revoke a license. The first penalties in the law are adequate and will allow

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

DOH to enforce this provision.

We recommend the following edits to §321-E (page 3, lines 19-21 and page 4, lines 1-15):

§321-E: Referral or transfers to uncertified or unlicensed care facility; **immunity.** (a) It shall be unlawful for a certified or licensed healthcare provider or certified or licensed care facility to knowingly refer or transfer patients to an uncertified or unlicensed care facility. The department shall be authorized to enforce on any certified or licensed healthcare provider or certified or licensed care facility that knowingly refers or transfers patients to a care home, agency, or facility operating without a certificate or license as required by law, a fine of not more than:

- (1) \$ for the first violation;
- (2) \$ for the second violation; and
- (3) \$ for the third and each succeeding violation.

(b) Notwithstanding, (1) if the patient or caregiver, family member, or authorized representative of the patient requests to be transferred to an uncertified or unlicensed care facility, (2) if the care facility becomes uncertified or unlicensed after a referral or transfer, or (3) if the healthcare provider or healthcare facility refers or transfer a patient in good faith to a care facility without actual proof or knowledge of the care facility's uncertified or unlicensed status, the healthcare provider or healthcare facility shall be immune from civil or criminal liability under this section.

~~[(c) In addition to fines imposed under this section, the department may initiate administrative proceedings to suspend or revoke the referring or transferring care provider or facility's certificate or license upon a third or any succeeding violation.]~~

Thank you for your time and attention to this important issue.

House Committee on Consumer Protection & Commerce
Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair

H.B. 1911 HD1 Relating to Health
Conference Room 329, 2:00 p.m.
February 14, 2018

Testimony of John G. McDermott, LSW, ACSW, M.Div.
State Long Term Care Ombudsman

Position: The Office of the Long Term Care Ombudsman **strongly supports** this measure.

Good afternoon, Chair Takumi, Vice Chair Ichiyama and members of the Committee,

My name is John G. McDermott and I have been the State Long Term Care Ombudsman (LTCO) since August of 1998. The LTCO Program is both federally and state mandated, receives federal and state funding, and is housed in the Executive Office on Aging.

We advocate for [mostly] seniors living in licensed nursing homes, licensed assisted living facilities (ALFs), licensed adult residential care homes (ARCHs), licensed expanded ARCHs (E-ARCH) and certified community care foster family homes (CCFFHs). Note: With the CCFFHs it's the case manager who is required to be licensed.

As of January 12, 2018, the breakdown was 48 nursing homes with 4,456 beds, 17 ALFs with 2,683 beds, 481 ARCHs with 2,599 beds and 1,153 CCFFHs with 2,919 beds. That grand total for the State of Hawaii was 1,699 facilities with 12,657 beds.

Because these residents often suffer from dementia and can have many other physical and mental limitations which make them so vulnerable, the State has always required that facilities caring for these people be licensed or certified. It's the right thing to do.

These facilities are monitored by the Department of Health's Office of Healthcare Assurance (OHCA). They have annual inspections. In 2019 those inspections will also be *unannounced*, as is required by federal law for our nursing homes. Inspection reports are required to be posted on the DOH website. There are staffing requirements, criminal background check requirements, building and fire code requirements, substitute caregiver requirements, Resident Rights requirements, knowledge of CPR requirements, TB clearance requirements, reading and speaking English requirements, housing design and self-preservation requirements, confidentiality requirements, medical records requirements, billing and financial record requirements, medication pass requirements (especially regarding the use of anti-psychotic medications), infection control requirements, waste removal requirements, and I'm sure many more that I'm not remembering at the moment. And, not to be forgotten, there is the right of the resident to access the services of the Long-Term Care Ombudsman when the resident or responsible person needs an advocate and doesn't know where to turn.

I think we would all agree these are good and essential regulations, NOT frivolous, because they protect our most vulnerable kupuna. Unfortunately, the public ...and maybe some members of the Press ... don't understand NONE of these consumer protections exist if someone chooses to move into an *Aging in Place Home*. You are totally on your own, exchanging all those consumer protections for an *unenforceable promise* to do a good job. "Trust us."

The proponents of the *Aging in Place Home* movement have been very clever in misappropriating a term we are all familiar with. "Aging in Place" is something we all want to do but that term is intended to mean aging in my OWN home, not someone else's home. Installing grab bars in the bathroom, replacing a bathtub with a shower, installing a ramp in place of stairs to get into the home, having bedrooms on the ground floor, even installing a call bell system - in your OWN home - is what most mean by "aging in place." When you move into someone else's home – not related to you - and you pay a fee for the care provided - that by definition is a "care home" and in Hawaii, like almost every other state, care homes must be licensed. This is a business and, like most businesses, they need to be licensed and inspected.

Some have tried to argue this model helps resolve the shortage of affordable housing for our seniors. I disagree. Any senior who can afford to "rent" [just] a room for \$4,000 to \$5,000/month would have no problem finding a place to live. This model actually exacerbates the housing shortage situation. If 4 or 5 seniors are all "renting" bedrooms in the same house for \$4,000/month, that one house is now pulling in \$20,000/month! What landlord would rent a house to a family for \$4,000/month if s/he can now get \$20,000/month?

I would also agree with the ARCHs and CCFFHs who claim the *Aging in Place Homes* are unfair competition. Why would a caregiver subject herself and her family to annual inspections, the Ombudsman dropping in unannounced, having to pay for all the requirements and costs of running a licensed business - if they can drop out of the regulatory system and call herself or himself an *Aging in Place Home* and get away with it? *What message are we sending to all those good caregivers following the rules?* If the Legislature is unable to stop this trend, more licensed facilities will drop out and this will place more seniors at risk.

On January 22nd I walked into Don Quixote on Kaheka Street and taped to the door of the nail salon is a sign proudly declaring "all our staff are licensed." That's how it should be. For our *Aging in Place Homes*, their sign would have to read "none of our homes are licensed." Shouldn't protecting our seniors be at least as important as protecting our fingernails?! The residents I am responsible for need to be protected and that's why I am asking that the Legislature insist that all *Aging in Place Homes* come into compliance with the law and become licensed like everyone else. Mahalo.

Thank you for this opportunity to testify.

John G. McDermott, LSW, ACSW, M.Div
State Long Term Care Ombudsman

Hawaii

Illegal Care Homes Are A Growing Problem In Hawaii

The operators of residential care facilities want lawmakers to crack down on what's being called a growing consumer protection issue.

6

By Nathan Eagle    / March 22, 2017

The owners of community-based care homes for the elderly and disabled are pressing state lawmakers, government officials and others to address what they say is a growing trend of illegal care facilities in neighborhoods throughout Hawaii.

They are concerned about the quality of care the clients inside these unlicensed or uncertified homes may be receiving, the broader implications to the long-term care industry and the state's failure to adequately respond despite years of complaints.

“We just want to put a stop to this,” said Robert Tabaniag, owner of Hokulaki Senior Care Home in Kaneohe. “But it seems like the people following the rules sometimes get the wrong end of the stick.”



Robert and Myriam Tabaniag own and operate Hokulaki Senior Living, a licensed care home in Kaneohe. Robert and other care home operators are banding together to pressure the state to address a proliferation of unlicensed care facilities.

The Department of Health’s Office of Health Care Assurance, headed by Keith Ridley, oversees more than 12,300 residents who live in roughly 1,700 long-term care facilities. These range from smaller homes in residential settings with one or two clients per facility to larger institutions with dozens or more beds.

Tabaniag and the owners of other care homes said they have tried to get health inspectors to crack down on the unlicensed facilities but have been rebuffed, often told the department lacks the policing powers necessary to investigate.

They said cases have been referred to the Adult Protective Services division of the Department of Human Services and the Attorney General's office but they have still seen a growing number of homes operating without the required license or certification that helps ensure the facility complies with health and safety regulations and that the caregivers meet the minimum standards of training and experience.

"They don't even turn their heads," Tabaniag said. "They just inspect the home next to it."

Ridley and a spokeswoman for the Department of Health did not respond to requests for comment. The Attorney General's office did not respond to an email seeking comment last week. Messages were also left with Adult Protective Services and Community Ties of America, which licenses foster homes.

Extent Of The Problem Is Unknown

It's difficult if not impossible to know just how many care facilities may be operating under the radar. Several care home operators estimated there were dozens on Oahu alone, and a state lawmaker who works closely with the industry, Rep. John Mizuno, said a conservative estimate would be as many as 200 statewide.

"I would have to say 10 percent of that industry is now illegally run," Mizuno said. "It's a consumer protection issue."

Cory Lum/Civil Beat



Rep. John Mizuno, left, and Hokulaki Senior Living carehome owners Myriam and Robert Tabaniag, are seen here meeting at the Tabaniag's care facility in 2015. Mizuno wrote bills to address unlicensed homes but the legislation died this year.

Mizuno, who serves as House vice speaker, wrote legislation trying to force the unlicensed homes to come into compliance but it died in the Human Services and Health committees, chaired by Reps. Dee Morikawa and Della Au Belatti, respectively.

"I support the chairs' decisions, however, this is an issue that has percolated to the top of the minds of the caregivers," Mizuno said. "You're getting a cottage industry now that's not being regulated."

House Bill 833, which never received a hearing, would have required adult family boarding homes and private homes that provide healthcare to the elderly or disabled to be licensed by the Department of Health.

It also would have established fines for operating an adult residential care home, adult family boarding home or private home

that provides healthcare to elderly or disabled individuals who are unrelated to the caregiver family by blood, marriage, or adoption or hospice home without a license.

Mizuno also put forward a caregiver omnibus bill, House Bill 1510, that included a section aimed at illegal care facilities. It would have required any community-based care home or day care center providing healthcare to the elderly or disabled who are unrelated to the caregiver family to be “licensed or certified and subject to the purview of the department to ensure the health, safety, and welfare of the individuals placed therein.”



Reps. Dee Morikawa, center, and Della Au Belatti, right, did not advance two bills that were trying to address illegal care homes this session.

Morikawa and Belatti gave the omnibus bill a hearing but deferred it indefinitely despite dozens of pages of testimony in support.

The bill was deferred because of its broadness, Morikawa said, and because much of it was contained in other bills.

When asked why HB 833, which focused on the illegal care home issue exclusively, did not receive a hearing, Morikawa said that decision was up to Belatti because she had the lead on it.

“I didn’t even look at it,” Morikawa said.

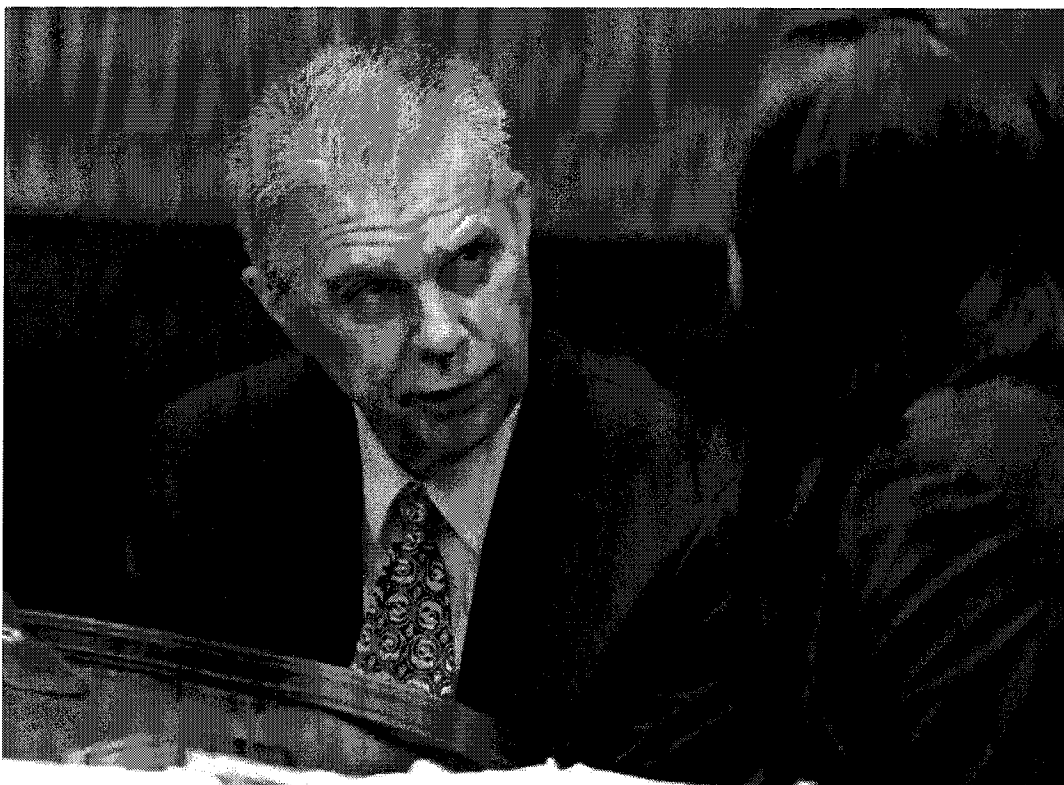
Belatti did not return a message seeking comment Tuesday.

Morikawa said there was concern about the difficulty in getting these illegal facilities to be licensed, such as having to obtain approvals from various agencies, so the plan is to work on a policy to streamline that process during the interim once the legislative session ends in May.

“I don’t see it as a problem here in Hawaii right now,” Morikawa said of the unlicensed care homes. “It’s already being regulated. If you’re caught you’re going to have to pay the consequences.”

The Department of Health was one of the few entities to oppose the measure but it did not take issue with the section relating to illegal facilities in its written testimony.

Cory Lum/Civil Beat



Keith Ridley, head of Department of Health's Office of Health Care Assurance, oversees roughly 1,700 care facilities in Hawaii.

Elderly And Disabled At Increasing Risk For Abuse

Linda Beechinor, who's been a family nurse practitioner in Honolulu for the past 20 years and a nurse for the past 35 years, was among those who testified in support of the bill.

"It is widely known that there are many, many unlicensed and unregulated care facilities for the elderly in our community," she said. "The fact is that elderly persons are placed in homes with lay (not professional) caregivers willing to care for them for remuneration, when family cannot or is not willing to provide ongoing care to the aged."

She pointed to professional research literature that strongly indicates that the elderly and disabled are at an escalating risk for

abuse and neglect as they become more dependent on others for their care.

“We go after someone who serves bad shrimp so why aren’t we going after these with the same vigilance?” said John McDermott, the state’s only long-term care ombudsman.

He has fielded complaints about illegal care facilities ever since he took the position 18 years ago.



Licensed care home operators are concerned that illegal facilities could bring down the entire industry if there were to be a fatal case of neglect or abuse.

“If the Department of Health is not going after them because they don’t have enough staff, or the will or the legislation that allows them to do that, it looks like we have some homes that have called their bluff,” McDermott said.

“You’re strictly at the mercy of that caregiver,” he added. “They may be good, they may be bad. But there’s no inspection, there’s no one you can complain to and it’s unfair to those following the rules.”

Tabaniag serves on the board of directors of the Alliance of Residential Care Administrators, which represents a couple hundred licensed adult residential care homes.

He said the board is working with an attorney on a letter to state Health Director Virginia Pressler, Attorney General Doug Chin, advocates for the elderly and all 76 members of the Legislature that points out the problems with this burgeoning underground industry.

A draft of the letter notes how operating an unlicensed care home may be “lucrative and attractive,” given the avoidance of costs and time to comply with state licensing requirements. The letter also notes that some licensed care home and foster home operators have “jumped ship” and started operating illegally instead.

Ramon Sumibcay, a care home operator in Makakilo, said a death due to neglect or abuse in an unlicensed facility would be devastating to those running care homes legally.

“If we don’t do anything now it will destroy us later,” he said. “It’s a growing trend. Are we just going to close our eyes and look the other way and let them operate as we hear stories?”

He encouraged anyone looking to place an elderly or disabled member of their family into a care facility to make sure the operator is licensed by the state.

Share your story with Civil Beat. This new reader engagement tool allows you to post your experience with care homes directly in the

form below. Your responses will be confidential. If you choose to provide your contact information, our reporter may reach out to you for further conversation.

Share your story.

1. Have you or a loved one been a resident of an unlicensed care facility? *

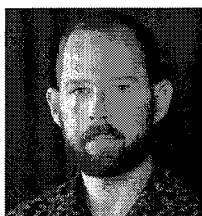
Tell us about your experience.

2. Would you be willing to speak to one of our reporters? *

A. Yes

B. No

About the Author



Nathan Eagle   

Nathan Eagle is a reporter for Civil Beat. You can reach him by email at neagle@civilbeat.org or follow him on Twitter at [@nathaneagle](https://twitter.com/nathaneagle) and Facebook [here](#).

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Community Voice

Why So-Called Illegal Care Homes Are Not Illegal

Our clients are simply renters who are getting home care services.

7

By Maile Harada  / March 29, 2017

I am a Registered Nurse in Hawaii and owner of Maile Case Management, LLC. I have been in business for 8 years now and have worked as a nurse in Hawaii for approximately 20 years. Additionally, my husband is a well-respected physician in the Central Oahu area. I am currently finishing the remaining two years of my Ph.D. program and have a desire to write academic articles, especially those pertaining to health care, the elderly, and community care facilities.

As a nurse who case manages patients in the Department of Health (DOH) care homes, in private homes, and for home care companies,

I feel that I have a lot to offer the public in the way of experience and knowledge of this business. The reason I am writing you today is because I feel frustrated by the recent attack on what has been called "illegal care homes in Hawaii."

First of all, I am one of the original nurses involved in the model of care that is currently under attack, and I want to say that this model was born out of necessity! The aging-in-place model is something that I'm proud to be involved with here in Hawaii, and I believe it will continue to grow.

As many people know, the DOH is tremendously overloaded with their responsibilities, and I believe this is a contributing factor to the extremely long wait periods in order to secure a care home license. The long waiting period is what has led many people to look for answers elsewhere.



I remember when I was first approached by a care home operator for help. I was shocked by her story (but I also knew many other people in her same situation). She had been a care home operator who unfortunately was given notice by her landlord. The care home operator called her DOH inspector telling her of what happened and was advised to rent a new home and fill out the DOH application paperwork. She was also told that they would rush the application through.

After months of waiting, and almost having to claim bankruptcy for a home she could not afford, this former care home operator was devastated and needed help. The DOH claimed to have not received the first application packet that she submitted, and even when the care home operator drove the paperwork to the DOH in person, there were continuous obstacles keeping her from getting the new license.

Her story is something that I'm hearing everyday now. People are calling me in desperate need of help, and unless a care home operator goes through this, he/she cannot understand how stressful this event is.

Sadly, when landlords know that a home is going to be used as a care facility, they charge very high monthly rates. It is nearly impossible for someone who is not bringing in any income to pay the high rate month after month, for years!

So now that I've established that there are problems related to obtaining a DOH care home license, let's look at this new model-of-care (that many are attacking) closer. Many people are calling it an "illegal or unlicensed care home."

The new model of care is simply not illegal, and I'm getting tired of hearing this. As stated in the recent article in Honolulu Civil Beat, care home operators are worried about the safety of the elderly in the "illegal care homes." Besides this complaint, I have heard other care home operators complain about a lack of supervision and oversight of the patients in the aging-in-place facilities. I have also heard people say that this model of care is "stealing all of the patients."

Although I do believe that some care home operators feel worried about the safety of the elderly in the community, I do not believe this is the driving factor for all of the many complaints. I feel that there is a lot of competition in this industry and the anger is the result of jealousy.

Why do I say this? I get calls all the time from care home operators and foster home operators begging me to open an aging-in-place facility with them. They say things like, "I know I can get patients if I work with you," and "I know I can make a lot more money."

This theme runs through most of the comments I hear. I have also heard people say that the aging-in-place facilities are stealing all of the patients. All of these comments have obvious undertones of jealousy.

The fact is, these homes are not care homes at all. If they are not care homes, than how can they be "illegal care homes?"

We have never claimed to be a care home, and we never tell our clients we are running care homes. We simply tell them the truth! Our clients are simply renters who are getting home care services. If someone can prove that it is illegal to be a renter in Hawaii, I'd love

to see that. Also, if someone can prove that it's illegal to get home care services, I'd love to see that as well.

By trying to close down this model of care, people would be basically taking away a patient's right to choose where he/she can live. Does a person have a right to live anywhere they want to? Yes!

Before I finish this letter, I'd like to say that even though many people are turning us in to the DOH, APS, and the attorney general, we are still thriving and growing! Not only do the aging-in-place facilities that I case manage provide great care, we also have nursing oversight for every patient getting home care services, and have much positive feedback from the patients and family members.

I personally ask everyone to stop judging something you know nothing about. If you want to run a care home, run it well. If you want to run an aging-in-place facility, run that well. Keep providing excellent care for our elderly and disabled. This is what we all want!

Community Voices aims to encourage broad discussion on many topics of community interest. It's kind of a cross between Letters to the Editor and op-eds. This is your space to talk about important issues or interesting people who are making a difference in our world. Columns generally run about 800 words (yes, they can be shorter or longer) and we need a photo of the author and a bio. We welcome video commentary and other multimedia formats. Send to news@civilbeat.com.

About the Author



Maile Harada ↗



Maile Harada is a registered nurse who has been working as an R.N. for approximately 20 years. She has owned and operated Maile Case Management LLC for the past eight years.

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COMMENTS (7)

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Jane Lee Mar 29

Care homes are a business, maybe a needed service, but nevertheless, a business. If these care homes are for "renters" to avoid being identified as a legit care home. It's an open invitation for abuse. Unfortunately, abuse of the elderly in care homes is not a secret, however, often long undetected because of their family's neglect to make regular visits to insure their safety and well being. Our most vulnerable, elderly and children, in the care of others is at risk, no matter how well intended the caregiver may seem or our public health concerns. Monitoring is a necessary function and "renter" care homes cannot be disguise as such to avoid "inspection?" This, unfortunately, is a reality!

2 Reactions

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Maile Case Management, LLC Mar 30

Hi Jane, as mentioned in my article above, these are not care homes or "renter" care homes as you stated. The clients that I place in the aging in place facilities have signed rental agreements and they consider the facilities their home. Home care services are initiated upon the request of the client and/or family if the resident is unable to care for himself/herself. This might surprise you, but I do have clients who just want to live in a group setting and are able to handle any/all care themselves. If home care services are started, an R.N. is overseeing the home care services. All of the aging in place facilities that I work in have oversight and every client is seeing a nurse monthly and as needed. I know that elder abuse happens, and I appreciate your concern, but abuse can even happen in a person's own home (and oftentimes does). We all (as a community) need to watch out for signs of abuse. Maile

Flag React Reply



Judy Gribble Peckenpaugh

Mar 29

I own a house in the northeast side of Oahu that is presently rented long term. My high school friends and I often joke that when we can no longer take care of ourselves, (we're all turning 70 this year) that we're all going to move into my house, hire a live-in nurse and be taken care of. I am an RN myself but I figure I may come to a point in my life that I'll need the care as well. As we age, this joke may become a reality that is way more affordable than a nice traditional assisted living/care home situation. The house could easily accommodate 5 elderly needing assistance or care and a separate living quarters for a care giver/nurse. We'll see as we age, if this becomes our reality!

★ 3 Reactions

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Maile Case Management, LLC

Mar 30

Hi Judy, getting personal care services is very expensive and oftentimes leads people to think creatively. I can see that you are already thinking creatively for yourself and your friends. I think sometimes we forget that a person has the right to choose how he/she wants to be cared for, and how he/she wants to live. If we

infringe upon a person's free will, we are no longer upholding the ideals of a democratic state. Maile

Flag React Reply



Curtis Kropar
Mar 31

Like how the state was forcing an older couple to live at separate locations. Hawaii's "care" rules forced a couple married for 60 years to live separately. It even made national news.

<http://www.nbcnews.com/id/30367555/ns/health-aging/t/couple-married-years-reunite-home/>

Flag React Reply



aiea7
Mar 31

how much are the "renters" paying for "home care services"? how is the compensation determined? does the rental unit have fulltime staff to administer medical services, personal services like cooking and cleaning, help in grooming, help with going to the doctor's office, etc, how are these services being charged to the renter. this looks like a way to avoid government regulation of providing care homes services without supervision which could lead to substandard care and abuse. even in regulated care homes there are many abuses. what makes you think such landlords will not take advantage of the system? and in the end, not sure if a "renter" will save any more money than a person in a regulated care home.

Flag React Reply



Maile Case Management, LLC
Apr 28

I welcome you to call me to discuss all of your questions. I will be more than happy to answer any/all questions you have. Just to let you know, all home care services are supervised by a Registered Nurse. Each and every client has R.N. oversight. I conduct a lot of research in this industry, and I do not see any evidence that this model of care is any less safe than a DOH licensed care home. A state license by no means secures a person's quality-of-care. If you have any evidence

(actual research) to prove otherwise, I would love to see it. Hawaii tends to be a less progressive state when it come to elder care in the community. In fact, Washington (state) advertises both "licensed" and "unlicensed" homes on their DOH website, and in the state of Texas, a person can care for 3 elderly clients in their home without a license.
We are behind the trends (as usual). Maile

Flag React Reply

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Hawaii

Why Hawaii's Unlicensed Elder Care Industry Is Out Of Control

UPDATED. Lawmakers have introduced a bill with the backing of the industry and some elderly-rights groups but the measure faces a long road to passage.

By Nathan Eagle    / January 23, 2018

Story updated 12:51 p.m., 1/23/2019

A growing number of long-term care facilities for the elderly and disabled have “gone rogue,” operating in the shadows without a license or state oversight, according to industry representatives, state lawmakers and health officials.

Inspectors have been denied entry into homes, there have been allegations of deaths linked to the transfer of patients to illegal

facilities and an underground pipeline of referrals has persisted with high headhunter fees, they said.

Care home operators, case managers, industry regulators and others filled a conference room Monday at the Capitol for a tense briefing about the consumer protection, fairness and enforcement issues that these unregulated facilities present.

Rep. John Mizuno, chair of the Health and Human Services Committee, said he and health officials have crafted a bill that they hope cracks down on the problem.

“We cannot lose any more kupuna,” he said. “No one else dies. That’s it.”



Rep. John Mizuno, right, and Rep. Bert Kobayashi listened to representatives of the long-term care industry during a briefing on unlicensed facilities.

The situation has gotten to the point that some health officials are worried that Hawaii’s rapidly aging population may end up with unsafe options for their care.

“If the Legislature is unable to stop this trend, more licensed facilities will drop out and this will place more seniors at risk,” said John McDermott, who has served as Hawaii’s long-term care ombudsman since 1998.

Mizuno, working with the Department of Health and the Attorney General’s office, introduced House Bill 1911 last week as a solution. The measure would give state health officials more authority to investigate unlicensed care facilities, establish fines for violations and make it illegal for health care providers to refer patients to unlicensed homes.

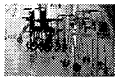
Case managers and care home operators, concerned in part about leveling the playing field, said it is as important to shut down the unlicensed facilities as it is the underground “pipeline” that’s transferring patients to so-called aging-in-place homes.

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Illegal Care Homes Are A Growing Problem In Hawaii

MARCH 22, 2017



Why So-Called Illegal Care Homes Are Not Illegal

MARCH 29, 2017

Lolita Ching, a case manager based in Waipahu, said nearly 300 care facilities have voluntarily closed over the past 30 months. But many are still in operation, she said, just without a state license or certificate.

She and several others in the industry shared anecdotal stories about Medicaid patients being transferred out of homes in exchange for clients who can

afford to pay out of pocket at much higher rates. Three people are feared to have died due to “transfer trauma,” she said.

Mizuno said the names must be kept confidential due to pending investigations by the state Attorney General's office, which has sent out letters and worked with health department inspectors to shut down the unlicensed homes.

The department's Office of Health Care Assurance, headed by Keith Ridley, handles licensing and inspections for 1,699 facilities that provide 12,657 beds.

Ridley said the latest figures he has received show that in 2016, there were 76 homes that closed with no reason and in 2017, there were 74 that closed with no reason.

There is a big concern, he said, with the "very small but growing number" of caregivers who appear to be opening unlicensed homes.



John McDermott, the state long-term care ombudsman, was applauded by care home operators and others after telling the House Health and Human Services Committee that the state must bring unlicensed facilities into compliance with the law.

His office has had “mixed results” in addressing the problem, he said. Some facilities have been shut down but a few refused to allow health inspectors to enter to determine if the home was licensed.

Ridley told Mizuno and the two committee members who joined him at the briefing, Reps. Bert Kobayashi and Lei Learnmont, that his office wants to respond to complaints within five days but that means either pulling inspectors off of other duties, which could delay other survey work, or getting more funding for additional inspectors.

Advocates for aging-in-place facilities, such as Maile Harada of Maile Case Management, one of the first nurses to be involved with this model in Hawaii, have said that delays in the licensing process have pushed caregivers in this direction.

Proponents have said the unlicensed homes maintain a high standard of care and are not illegal because the clients are told upfront that they are renters who are receiving home care services.

Unlicensed and licensed care home operators have been sentenced in the past for elder abuse, including fatal incidents.

But critics, such as McDermott, point at the list of regulations unlicensed facilities do not have to follow, including: annual inspections, staffing requirements, criminal background checks, building and fire code requirements, substitute caregiver requirements, resident rights requirements, CPR certification, TB clearance, reading and speaking English requirements, housing design and self-preservation requirements, confidentiality requirements, medical records requirements, billing and financial record requirements, medication pass requirements (especially

regarding the use of anti-psychotic medications), and the right of the resident to access the services of the long-term care ombudsman when the resident or responsible person needs an advocate and doesn't know where to turn.

"You are totally on your own, exchanging all those consumer protections for an unenforceable promise to do a good job," McDermott said.



Keith Ridley, who heads the state Office of Health Care Assurance, said a few of his inspectors have been denied entry into a home while trying to determine if the facility was licensed.

He said he agrees with the licensed care operators who have described aging-in-place homes as unfair competition.

"Why would a caregiver subject herself and her family to annual inspections, the ombudsman dropping in unannounced, having to pay for all the requirements and costs of running a licensed business if they can drop out of the regulatory system and call

herself or himself an aging-in-place home and get away with it? What message are we sending to all those caregivers following the rules?”

Mizuno tried last year to address the issue but was unsuccessful. One bill never received a hearing and another was indefinitely deferred by the Human Services and Health committees, which were separate at the time but have since been merged into one committee that he now chairs. Its members include Mizuno, Kobayashi, Learmont, Della Au Belatti and Andria Tupola.

Update The bill, which is scheduled for a hearing Thursday morning, faces a tough road ahead. It has to get through three committees before a final vote by the full House, at which point it would cross over to the Senate if approved.

The measure's first stop is Mizuno's committee, then it would go to the Consumer Protection Committee, chaired by Rep. Roy Takumi, followed by the Finance Committee, chaired by Rep. Sylvia Luke, who is one of 10 co-sponsors of the bill.

“What message are we sending to all those caregivers following the rules?” — Long-term care ombudsman John McDermott

The bill gives the health department the option of investigating complaints and says it “may request access to the location indicated in the report” or go to court for a search warrant to investigate the location “between the hours of sunrise and sunset.”

The measure mandates action by the department if its investigation confirms someone is operating a facility without a license or certificate. At that point, the bill says the department has “right of entry” and can resolve the matter “in an informal fashion” or through court.

The bill leaves blank the amounts for penalties. When Mizuno said the fines could be \$25,000 or even \$50,000, care home representatives said that would not be enough to deter unlicensed facilities that could be bringing in \$50,000 a month with 10 clients.

The measure also makes it “unlawful for a certified or licensed health care provider or certified or licensed care facility to knowingly refer or transfer patients to an uncertified or unlicensed care facility” and gives the department the authority to enforce the law.

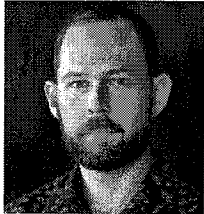
While Mizuno has support from some elderly rights groups and the industry, which operates numerous facilities in his Kalihi district, he has yet to secure the backing of AARP, which has been a potent lobbying force in the past.

AARP Advocacy Director Kerry Komatsubara said he wants to talk to all the parties involved first.

“Our concern is how we get to the bottom of this,” he said. “These are grave concerns and alarming accusations. How do you come to a fair resolution? How do we avoid unintended consequences?”

Mizuno said he and his supporters “will fight as long as it takes.”

About the Author



Nathan Eagle [✈](#) [✉](#) [📺](#)

Nathan Eagle is a reporter for Civil Beat. You can reach him by email at neagle@civilbeat.org or follow him on Twitter at [@nathaneagle](https://twitter.com/nathaneagle), Facebook [here](#) and Instagram [here](#).

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A care home operating in a neighborhood of single-family dwellings? Neighbors don't

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HAWAII NEWS

'Aging in place' facilities trigger debate

By [Rob Perez](#)

Posted October 15, 2017

October 15, 2017



BRUCE ASATO / BASATO@STARADVERTISER.COM

Aging-in-place facility resident June Kozuma, 89, proudly displays some of the artwork she created and keeps in her room.

Over the past two years, dozens of unlicensed residential facilities offering elder care have opened in neighborhoods around Hawaii, embracing a new model that its proponents herald as safe, effective and the wave of the future.

But critics contend the homes flout state law and circumvent oversight designed to protect vulnerable seniors.

The debate over these businesses, called “aging in place” facilities, is expected to be taken to lawmakers in the upcoming state legislative session and likely will trigger broader discussions about the state’s ability — some say inability — to effectively oversee an industry that needs to grow substantially to care for Hawaii’s mushrooming elder population.

ADVERTISING



Even as the state Department of Health pursues legal steps to try to close some of these new facilities, others are popping up.

One of the aging-in-place model’s chief proponents estimated that more than 100 and possibly even 200-plus have opened within the past several years, and she said she gets at least two calls a week from people interested in opening others. Many callers already run licensed care or adult foster homes but want to convert to the AIP model.

“It’s taken off like wildfire,” said Maile Harada, a registered nurse and case manager who has assisted operators in opening facilities. Last week, she registered with the state a nonprofit called the Aging in Place Association, an advocacy group that plans to adopt membership standards designed to maintain good quality care.

What has attracted operators to the AIP model also has attracted the scrutiny of regulators and the wrath of licensed care home operators.

A new model for care

Proponents said these facilities can provide good care to seniors without having to be subjected to what they describe as an onerous, inefficient and inconsistent state licensing and inspection process. They are able to do that, supporters maintain, by treating the residents as renters.

Under the model pushed by Harada and the association, residents sign a boarding

agreement with the homeowner, setting the monthly rent. They sign a separate agreement with a home health care company, specifying a set rate each month for care that can be as basic as getting help with daily living activities or as complex as nursing-home- level services.

Sometimes, the home and care company are owned by the same person.

The care is overseen by independent nurses, referred to as case managers, who monitor their clients to ensure their needs are being met.

Harada said AIP facilities are not care homes, which require state licenses, but are rental homes in which the residents get health care. She said three lawyers have reviewed the model and concluded that it complied with Hawaii law.

What's more, Harada noted, the state can't dictate where someone rents a home or whether the person is able to get care in that home.

"We think this is a good model that will provide a really good service to Hawaii," Harada said, adding that the owners are not "trying to get around the Department of Health."

Questions of legality

But Keith Ridley, chief of the agency's Office of Health Care Assurance, which oversees state-licensed facilities in Hawaii, told the Honolulu Star-Advertiser that he believes the AIP operators are trying to skirt the intent and spirit of state law. Hawaii statutes require caregivers to have a state license to provide care in a home to a non-relative for a fee.

"They seem to be trying to get around that," Ridley said.

Following up on complaints, he said his agency has investigated several facilities and is pursuing legal measures to force them to cease operating.

Harada said none of the homes using the association's model have been shut down.

While the legality of the AIP homes ultimately may have to be decided in the courts, the state is pursuing a legislative fix as well.

Ridley said his agency is working with a legislator on a bill that would make it easier for the state to shut down unlicensed operations. The measure is expected to be considered in the upcoming legislative session.

Ramon Sumibcay, a licensed care home owner and president of the Alliance of Residential Care Administrators, said allowing AIP facilities to operate without state oversight is unfair to all the licensed facilities that must comply with state regulations.

The state, for instance, inspects the latter typically once or twice a year; checks to

ensure that the care, building safety, environmental, training and other standards are met; and posts inspection results online so the public can get easy access. The state provides no such oversight to unlicensed places.

If 1,700-plus licensed elder care facilities have to abide by such regulations, the AIP homes should have to as well, otherwise everyone should be free of regulatory oversight, Sumibcay and others argue.

"It's not fair that we are subjected to all those regulations and yet you're letting 200 (unlicensed) homes operate," Sumibcay said in an interview. "That's not right."

John McDermott, the state's long-term care ombudsman, expressed similar concerns.

"The aging-in-place model is not licensed and doesn't allow for these safeguards," McDermott wrote in an article for the December edition of *Generations Magazine*. "And until they do, they should be shut down."

Continuum of care

But Harada, AIP operators, and some residents and their loved ones defended the AIP model.

They said case managers ensure that the AIP residents get the services they need. And unlike with care homes, the AIP facility can provide a full continuum of care, including hospice, so the residents can remain in one place the rest of their lives, according to proponents.

"The quality of care and service is just amazing," said Allen Kaanana, whose 93-year-old mother, Helen Kaanana, has been in a Salt Lake AIP home since January.

The home, which has eight residents, was opened three years ago by Helen Ferrer, who previously ran a licensed adult foster home. She opened her AIP facility after waiting about a year to get a care home license, which she eventually stopped pursuing.

"I could not wait anymore," said Ferrer, who added that she can provide better care as an AIP operator because she is not as pressured in dealing with inspections and other state regulations.

Jeanne Shibuya, 92, one of the eight residents in Ferrer's home, said she enjoys living there. "The people are really nice, the food is really nice," she said.

Fight over oversight

Harada said the AIP movement in Hawaii was born out of frustration from people waiting months or even years to get licenses approved by the Health Department or being adversely affected by inconsistent, subjective inspections.

The AIP proponents said a state license does not necessarily mean the care at that facility is high quality, noting that inspections are too infrequent to ensure that.

“To me, it’s only looking at paperwork and making sure they’re dotting the i’s and crossing the t’s,” said Harada, who has clients in licensed facilities. “The results of the inspections are not improving safety.”

Harada said she and other AIP proponents have been trying to meet with those who have expressed concerns about this model, but no one is returning their calls. While she said she would like to see a resolution reached through compromise, Harada vowed not to back down from a court fight.

Because the AIP homes aren’t licensed or certified by the state, they are not able to accept patients covered by government-funded Medicaid. That limits their market to private-pay clients only.

Costs can be similar to licensed facilities. Skilled nursing care, for instance, can run around \$5,000 to \$6,000 a month, according to AIP operators.

Cullen Hayashida, a gerontologist and former Kapiolani Community College professor, says he would tend to steer people away from facilities that are not licensed.

At the same time, however, Hayashida said that if the AIP model has merit, it should be evaluated, perhaps through a waiver of Health Department rules and the monitoring of a sufficient sample of residents and other data over several years.

“If this is in fact innovative, let’s document the evidence so that we can improve our overall system of caring,” he wrote in an email. “Let’s not stifle innovation if it is in fact innovation and not just the circumvention of the rules.”

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WARNING: 'Aging In Place' Homes

by John G. McDermott, State Long-Term Care Ombudsman, Executive Office on Aging

Many seniors are aware of the Long-Term Care Ombudsman Program and its role as their advocate if they have a problem or concern regarding a nursing home, adult residential care home, assisted living facility or community care foster family home.

What they may not know, however, is that if they choose to live in what is called an “aging in place” facility, residents are very much on their own. The Long-Term Care Ombudsman Program does not have access to these facilities, and their “renters” are not protected by federal or state regulations that govern licensed settings.

There is some debate as to whether or not these homes are actually “unlicensed” care homes taking advantage of loopholes in the current law. But there is no debate that AIG Homes have:

- NO annual inspection by the Department of Health.
- No public posting of the inspection by the Department of Health.
- NO TB clearance requirements for the caregivers or staff.
- NO building or fire code requirements or plans regarding emergency evacuations.
- NO access to the Ombudsman or consumer protection.

Since these homes are not licensed, and don't want to be licensed, another significant concern is this: Why would a social worker, case manager, doctor, nurse or other professional make such a recommendation? Do they bear some liability if the person is abused, mistreated or neglected? Would healthcare providers, such as Kaiser or HMSA, place a patient in an unregulated, unmonitored home?

The Long-Term Care Ombudsman Program has already received complaints about loved ones be-

ing denied access. A man called complaining that his relative was in an “aging in place” home, and every time he visited, she would have new, mysterious bruises. He complained to the caregiver, but to no avail. Then he noticed the caregiver started covering up the bruises in various ways to hide them. He took pictures and sent them to the person with the placement responsibility over his relative who, unfortunately, didn't live in Hawaii. That person forwarded the pictures to the caregiver, and she immediately banned the man from visiting. He called our Office to request help, as he is the only relative on the island and hasn't been allowed to visit since April.

“A man called complaining that his relative was in an ‘aging in place’ home, and every time he visited, she would have new, mysterious bruises.”

He wanted to know if I could do anything to lift the ban. Sadly no. Our Office can't do anything because the home is unlicensed. Representatives from our Office could be arrested for trespassing on private property.

Most of us believe if you are taking care of someone in your home for a fee—and that person is not related to you—then you need to be licensed by the state, so we can try to ensure your safety. Licensed facilities are regulated by laws, which allow the state to do what is necessary to ensure the safety and security of our residents through compliance with building and safety codes, health inspections, emergency plans, care plans, medication management, and training and experience for caregivers.

The “aging in place” model is not licensed and doesn't allow for these safeguards. Until they do, they should be shut down. ■

DO YOU HAVE COMPLAINTS AND QUESTIONS?

Please call John G. McDermott, the State Long-Term Care Ombudsman, at **808-586-7268** or refer to the Department of Health's website at www.health.hawaii.gov/ohca/state-licensing-section/.

Larry Geller
Honolulu, HI 96817

HB1911
CPC
Wednesday February 14, 2018
2:00 p.m.
Room 329

COMMITTEE ON CONSUMER
PROTECTION & COMMERCE
Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair

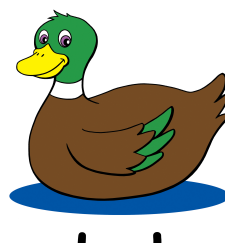
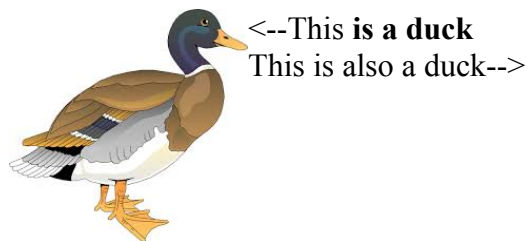
February 12, 2018

Re: HB1911 Relating to Health

In Support with comments

Dear Rep. Takumi, Rep. Ichiyama and members of the Committee:

You've heard the phrase "**if it looks like a duck, walks like a duck and quacks like a duck, then it's a duck**"



A facility operating as a licensed care home but without a license is still a care home, and there should not be any doubt or hesitation to shut it down, with appropriate penalties.

Another analogy might be someone setting up an office, wearing a stethoscope and writing prescriptions who is not licensed to practice medicine. We don't hesitate to terminate that kind of operation. What is happening is instantly recognizable.

I suggest that the objective of this and any other legislation intended to enforce the existing law should be that **the penalties are so sure and so adequate that facilities operating without a license will, of their own volition, promptly shut down.**

In order to do that, legislation should avoid use of "**may**", as in this bill, and use preferentially "**shall.**"

This is because I submit that we cannot count on the Department of Health rigorously enforcing the measures defined in this bill. News articles have highlighted the issue of long waits for inspection and licensing of facilities due to DOH not following the clear requirements of existing law.

Another example would be legislation passed during the 2013 legislative session mandating the posting of care home inspection reports on the web starting January 1, 2015, which the DOH chose to ignore, resulting in Kokua Council very reluctantly filing a lawsuit to compel compliance.

--Larry Geller
Honolulu

HB-1911-HD-1

Submitted on: 2/12/2018 7:48:10 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall	Individual	Support	No

Comments:

HB-1911-HD-1

Submitted on: 2/12/2018 10:00:22 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ramon Sumibcay	Individual	Support	No

Comments:

It is about time that the operation of any unlicensed care facilities need to be investigated. For the last 3 years, these unlicensed facilities have sprouted like mushrooms. They are able to operate because the Office of Health Care Assurance has no police power even to knock on the doors of these facilities. Unlicensed care facilities is a consumer protection issue. These facilities operate with no oversight. Operators of these facilities are openly doing business without regard to the safety and general welfare for the elders placed in their facilities. They don't have respect to the rule of law. Professionals who are involved in the operation of these unlicensed homes need to be penalized to the maximum provision of the law.

02-13-18

Testimony in support of HB1911 HD1

As a Social Worker and an Episcopal Priest, I am for our kupuna who live in our community, many with loved ones caring for them, but also many who must avail themselves to live in home and community based licensed/ regulated licensed nursing homes, licensed assisted living facilities (ALFs), licensed adult residential care homes (ARCHs), licensed expanded ARCHs (E-ARCH) and certified community care foster family homes (CCFFHs), where it is the Case Manager who is required to be licensed. The point is that these various facilities and levels of care are regulated for care standards and consumer protection. In an aging society, we are all consumers of services, no matter how independent or dependent we are, for our care and comfort. So, with these various facilities, because many kupuna in them often suffer from dementia and can have many other physical and mental limitations which make them so vulnerable, I know that they need to continue to be licensed or certified. I know it is the right thing to do. It is right because, ultimately, we all share a common quality of life, with dignity and aloha, throughout all of life.

Our kupuna, wherever they live, but especially in these licensed facilities, deserve quality care and to self-advocate or, if they aren't able to advocate for themselves, to have others advocate for them. I do know that licensed facilities allow this to happen. I think we would all agree that licensing of these facilities is a good and essential thing and is not frivolous. These licensures protect our most vulnerable kupuna. Ultimately, they protect all of us. Thus, I am very concerned that the growing number of ***Aging in Place Homes (AIPH)***, where one is "totally on your own". There are no guaranteed consumer protections, only a promise, perhaps foundationed on little or no confirmed "trust" that the job will be done and that one will be cared for with more than a modicum of comfort, safety and dignity. Thus I believe that ***AIPH*** must be licensed, certified and otherwise regulated like all the other licensed facilities where our kupuna reside.

Mahalo me ka 'oia'i'o,

John A. H. Tomoso+, MSW, ACSW, LSW
51 Ku'ula Street
Kahului, HI 96732-2906
808-280-1749
John.a.h.tomoso@gmail.com

HB-1911-HD-1

Submitted on: 2/13/2018 10:41:01 AM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Francis Nakamoto	Individual	Oppose	Yes

Comments:

To: Representative Roy Takumi, Chair

Re: HB. No. 1911, H.D. 1, Relating to Health

Chair Takumi and Members of the Committee:

Thank you for allowing me to testify against HB. No. 1911. My name is Francis Nakamoto and I am testifying as a private citizen.

HB No. 1911 would authorize the Department of Health to conduct investigations of any complaints alleging that a person or entity was operating a home care facility without a license issued by the DOH. It would allow the DOH access to the facility for the purpose of investigating the complaint by petitioning the District Court to issue a search warrant. Upon finding an unlicensed operation, the DOH may petition the court for “protective or remedial actions authorized by law.”

While the purposes and intent of HB No. 1911 are meritorious (ostensibly to prevent the potential abuse of seniors requiring home care services), the history of this legislation is not encouraging. Earlier law to extend DOH regulation to “home care” as opposed to “home health care,” which passed in 2009 (SB No. 415, SD 2, HD 1, CD 1) authorized the DOH to promulgate rules to extend licensing requirements to “home care” agencies. It was reauthorized in 2014 by HB No. 2094, HD 1, SD 1, CD 1 after the DOH failed to

write regulations (which it still hasn't done). The DOH in 2018 still hasn't promulgated regulations. The Attorney General hasn't reviewed any proposed rules to date.

I urge the Legislature to proceed carefully given this abysmal history to avoid serious unintended consequences.

Among the unintended consequences is the chilling effect HB No. 1911 will have on seniors who have in good faith hired home care providers to assist them in their own residence because they have no other alternative. They may not have family or friends to assist them or choose not to be institutionalized or cannot afford to live in a licensed care home. They would rather "age in place" in their own home, owned or rented. Does the Legislature really intend to strike fear in their hearts that they be may booted out of the homes because the DOH may shut down their current accommodations?

To be sure, there appears to be some confusion as to whether the combining of a rental residence with the provision of home care services, licensed or unlicensed, converts a senior's home into a home care facility subject to immediate DOH regulation. There should be no opposition to a homeowner or renter, even a senior citizen, to independently contract for and enjoy home care services that are suitable and affordable, absent evidence of abuse or mistreatment.

There is scant evidence that a serious problem actually exists that warrants licensing and regulation which may prevent seniors to find adequate and affordable home care services they need in their own homes. In its December 2017 report to the Legislature regarding announced and unannounced visits and inspections of licensed care facilities, the DOH admitted that of 390 unannounced visits and 201 announced inspections of Adult Residential Care Homes, which are most similar to home care arrangements, its inspectors found only four violations, all involving the absence of a caregiver in the immediate presence of the resident. Bear in mind that these inspections are required for health care facilities, which require the caregiver to provide some level of health or medical assistance.

Over-regulation will serve no purpose but to reduce affordable choices to our kupuna and force them into undesirable, albeit regulated, living conditions, which the DOH report suggests no problem currently exists even in home health facilities like ARCHs.

1. be sure, HRS Section 26H-6 first requires the Legislature to refer this attempt at regulation to the State Auditor for analysis of the probable effects of extending regulation of hundreds of private homes not currently needing government oversight. A finding that home care agencies providing care to homeowners or renters under privately negotiated contracts, under the guise of protecting the welfare of seniors, should first require a finding of abuse by providers of the services to determine if regulation is needed. That, to my knowledge, has not been done.

For the above reasons, I urge the Legislature to move cautiously to regulate reasonable, desirable alternatives now available for seniors and caregivers without more deliberation and research.

HB-1911-HD-1

Submitted on: 2/13/2018 3:21:21 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maria E. Cariaga	Individual	Support	No

Comments:

LATE

HB-1911-HD-1

Submitted on: 2/13/2018 7:20:51 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dann	Individual	Oppose	No

Comments:

LATE

**ADULT FOSTER HOMECARE
ASSOCIATION OF HAWAII**

P.O. Box 970092, Waipahu, Hawai`i 96797

Feb. 14, 2018

RE: **HB 1911 - Testimony in STRONG SUPPORT** – CPC 2/14/18 – Rm. 329 2:00 p.m.

Dear Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

We **STRONGLY SUPPORT HB 1911 increased enforcement and state oversight of unlicensed care homes**, which are a threat to our Kupuna and disabled.

Over the last two years, we have received an increasing number of reports from our clients and from prospective clients about “private pay” care homes that offer the services our members provide at lower costs. These unlicensed “private” homes have no oversight whatsoever and no quality assurance. Families who are looking for care for their Kupuna are often emotional and desperate. These unlicensed “private” homes prey upon the emotions of the Kupuna and their families assuring them that they will provide a quick and easy solution, but a quick fix almost never exists. Many times, the unlicensed homes will not honor the promised price knowing that Kupuna and their families have little choice.

Unlicensed “private” homes have no oversight by the State of Hawaii or any other party. They can claim to have experience and promise quality care, but there is no assurance their representations are authentic or genuine. Their credentials could be expired or simply bogus. These homes are not subject to mandatory criminal background checks, immunizations, and periodic inspections. This is a very dangerous situation for Kupuna and the disabled who often are unable to care for themselves.

Our members proudly operate community care foster family homes and are subject to both announced and unannounced inspections by the Department of Health. We also have case managers, fully certified Registered Nurses, that are licensed and regulated by the State of Hawaii to ensure quality of care. At least once a week Case Managers assess all of our patients, they inspect our homes and check on our patients. We are constantly being inspected to ensure high standards of care. We are even required to take continuing education each year. Unlicensed “private” homes have none of these safeguards.

As we have consistently maintained, WE CARE ABOUT OUR KUPUNA! We have

come before the Legislature in the past. Some people have characterized us as greedy, but WE SIMPLY WANT THE BEST FOR OUR KUPUNA. Although we understand the financial plight that caregivers have been pushed, we must enforce the rules against these unlicensed homes. It's already hard for us financially. More and more will let their licenses expire and contract "privately" to get more money. The lack of pay increases has forced some of us to the brink, but we nevertheless stand strong against unlicensed homes. Therefore, we **STRONGLY SUPPORT HB 1911**.

Very truly yours,
Maribel Tan
President

About AFHA

The Adult Foster Home Association of Hawaii (AFHA) is the industry trade association of providers under the Community Care Foster Family Home program under the Department of Human Services, State of Hawaii. With a membership of almost 750 providers, AFHA's mission is to promote the interests of providers as well as resident clients. AFHA members provide 24-hour care to resident clients 7 days a week, 365 days a year.

HB1911 HD1- RELATING TO HEALTH

LATE

DATE: February 14, 2018

TIME: 2:00PM

PLACE: CONFERENCE ROOM 329

STATE CAPITOL 415 SOUTH BERETANIA STREET

Committee on consumer protection & commerce

Rep. Roy M. Takumi, Chair

Rep. Linda Ichiyama, Vice Chair

And Committee members:

Good afternoon Chair, Vice Chair and members;

My name is Lilia Fajotina, I have been a carehome administrator for 20 years.

I Strongly Support HB1911. HD1. I believed any person who open an adult family home or private home and provide healthcare to elderly or disabled individual who are unrelated to the caregiver family by blood, marriage or anybody without licensed shall be guilty of misdemeanor and that person shall be fine or punished.

The unlicensed facilities don't have government oversight for safety and consumer protection. Also, this unlicensed facilities are undermining the government, not only because they are not following rules and regulating by the state, but they also be evading tax obligations. Everyone, needs to be fair and equal as we all work together in caring for our kupuna.

Thank you, for allowing me to testify.

Lilia Fajotina

(Carehome Administrator)

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair



Committee on Consumer Protection and Commerce

From: Ruthie Agbayani, Vice President, United Caregivers of Hawaii
Date: Wednesday, February 14, 2018, 2:00 p.m., Conference Room 329
Subject: Support for HB 1911, HD 1, Relating to Health

Aloha! My name is Ruthie Agbayani; my family and I have been Community Care Foster Family Home (CCFFH) providers since 1998. We are certified by Community Ties of America (CTA), the State of Hawaii Department of Health's agency on certification and licensure, to care for up to three clients in our home, providing a family-like environment for the aging, rather than institutional nursing home settings. CCFFH is a program for Medicaid recipients, but private pay individuals can also be accepted into this program.

Aside from my family and business obligations, I volunteer my time in advocacy and lobbying with the United Caregivers of Hawaii (UCH). The mission of UCH is for caregivers, families, and communities to work together to achieve the common purpose of outstanding quality care for our kupuna.

We strongly support HB 1911, HD 1, Relating to Health, which would authorize the Department of Health to investigate care facilities reported to be operating without an appropriate certificate or license issued by the Department. We also support the Department of Health's ability to establish penalties for violations and for patient referral or transfer to uncertified or unlicensed care facilities.

We need to emphasize the dangers of families placing their love ones, elderly, physically disabled, mentally challenged kupuna in unlicensed care facilities. There is no government oversight for safety and consumer protection. This is the healthcare field. And everyone should follow the law mandating licensure and healthcare management.

Unlicensed facilities are not following the rules and regulations on annual inspections, staffing requirements, criminal background checks, building and fire code requirements, primary and substitute caregiver requirements, resident rights requirements, CPR and first aid certification, TB clearance, reading and speaking English requirements, emergency procedure requirements, confidentiality requirements, medical records requirements, billing and financial record requirements, medication requirements (especially regarding the use of anti-psychotic medications), and the right of the resident to access the services of Community Care Case Management Agencies that comprise of nursing and social work coordination between client, caregiver, health care providers, and families.

In addition, unlicensed facilities are undermining the government, not only because they are not following rules and regulations set forth by the Department of Health and Human Services, but they may also be evading tax obligations by indicating to their clients and families that they are "renters who are receiving home care services." Everything needs to be fair and equal as we all work together in caring for our kupuna.

We urge the committee to support and pass HB 1911, HD 1. Thank you for this opportunity to submit my testimony online.

LATE

HB-1911-HD-1

Submitted on: 2/13/2018 11:09:41 PM
Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mila Beltran	Individual	Support	No

Comments:

My name is Milagros Beltran and i have been the Primary Caregiver and owner of a Licensed

Adult Residential Care Home for 35 years. I would like to voice my concern which is in accordance

with the majority of the members of our organization ARCA (Association of Residential Care

Administrators) ,regarding the growing number of unlicensed homes in our state.We, as state

licensed care providers are strictly monitored and regulated to ensure the safety and well-being

of the kupuna and other fragile clients that we care for and serve.We maintain many requirements to uphold the law and our residents' safety.The unlicensed homes are not state

regulated. Therefore , I am in strong support of HB 1911. Thank you .

LATE

HB-1911-HD-1

Submitted on: 2/13/2018 11:51:17 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marylo Farinas	Individual	Support	No

Comments:

February 13, 2018

RE: HB1911, HD1 (HSCR227-18) RELATING TO HEALTH – Unlicensed (Private) Care Home

Hearing Date: Wednesday, February 14, 2018 2:00 P.M. Room #329

POSITION: Strongly Support

Dear Chair Representative Roy M, Takumi, Vice Chair Representative Linda Ichiyama, and Members of the Committees.

My name is Marylo Farinas and I have been a licensed Adult Foster Home operator since year 2008. As an owner of a licensed Adult Foster Home I find it very challenging not only taking care our elderly but most to keep up with paper works such as daily documentation (examples: vitals, medication logs, flow sheets, progress notes) about our clients. In addition, we also required background check, TB clearance, and attend continuing education which cost us roughly \$300.00 (fingerprint \$80, CNA recertification \$150, First Aid/CPR \$60 & etc..). Just sometime middle of last year 2017 we were asked to pay \$500 for Medicaid Provider registration fee that caused many caregivers gave up their license, discharged Medicaid clients and convert themselves into private (unlicensed) home which I have also considered doing once.

If these unlicensed (private) home are continuously free with all the requirements a licensed home have, I afraid Medicaid clients will be displaced and possibly hard to find a licensed home to placed them. Chance for a licensed home converting to unlicensed (private) is high since unlicensed will be a lot less requirements and higher pay too.

In order to stop rapid decline on available beds for Medicaid clients who really need the help, I encourage you to please pass HB1911 Relating to Health – Authorizes the Department of Health to investigate Unlicensed (Private) Home Facilities.

Thank you for your attention and consideration of this opinion.

Marylo N Farinas



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 1911, H.D. 1, RELATING TO HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Wednesday, February 14, 2018 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Angela A. Tokuda, Deputy Attorney General

Chair Takumi and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to enable the Department of Health to investigate care facilities reported to be operating without the appropriate certificate or license issued by the Department and to establish penalties for operating an uncertified or unlicensed facility. This measure also establishes penalties for certified or licensed healthcare providers or care facilities for referring or transferring patients to uncertified or unlicensed care facilities.

The Committee on Health and Human Services requested an opinion from the Attorney General in House Standing Committee Report No. 227-18, in the event that the measure be heard in this Committee, asking “whether section 1, permitting the Department of Health to conduct investigations in response to a report of a possible uncertified or unlicensed care facility, should be amended to instead require investigations.” H. Stand. Comm. Rep. No. 227-18, at page 2.

There are no legal concerns with the current draft of this bill, including with the question posed by the Committee on Health and Human Services. Therefore, we take no position on whether the suggested amendment should be made.

Thank you for the opportunity to testify.

LATE

HB-1911-HD-1

Submitted on: 2/14/2018 10:46:33 AM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Julie Cambe	CHCAOH	Support	No

Comments:

Authorizes the doh to investigate care facilities to be operating without appropriate certificates or licensed design by the department. Establish penalties for violations and for patient referrals to uncertified unlicensed care facilities