

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
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doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of S.B. 2586
RELATING TO CARE FACILITIES.**

SENATOR JOSH GREEN, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

SENATOR BRIAN T. TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date: Monday, February 5, 2018 Room Number: 16

- 1 **Fiscal Implications:** None known.
- 2 **Department Testimony:** Thank you for the opportunity to testify in SUPPORT of this measure.
- 3 This measure authorizes the Department of Health (Department) to investigate care facilities
- 4 reported to be operating without an appropriate certificate or license issued by the Department.
- 5 It provides the Department a right of entry to conduct investigations and establishes penalties for
- 6 violations and for patient referral or transfer to uncertified or unlicensed care facilities.
- 7 The language in this bill was modeled after HRS Sections 346-152.3, 346-156, 346-227,
- 8 346-228, 346-229, which is language from the Department of Human Services (DHS) statutes on
- 9 child care and adult protective services (APS). Specifically, Section 346-229 HRS is the APS
- 10 statute on Right of Entry.
- 11 The Department of Health, Office of Health Care Assurance (OHCA), has the regulatory
- 12 authority to issue health care facility licenses and to conduct surveys (inspections) to ensure
- 13 compliance with licensing requirements.

1 OHCA had seen a small but growing number of “caregivers” opening care homes and
2 providing care as possibly unlicensed care homes. OHCA has investigated these homes with
3 mixed success. Some homes voluntarily close once they are notified of licensing requirements,
4 or perhaps they simply moved locations. Other home owners have refused entry by DOH OHCA
5 investigators citing private property concerns.

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

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

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

**COMMITTEE ON HUMAN SERVICES
SEN. JOSH GREEN, CHAIR
SEN. STANLEY CHANG, VICE CHAIR**

**COMMITTEE ON COMMERCE, CONSUMER PROTECTION
AND HEALTH:
SEN. ROSALYN H. BAKER, CHAIR
SEN. JILL N. TOKUDA, VICE CHAIR**

**COMMITTEE ON JUCICIARY
SEN. BRIAN TO TANIGUCHI, CHAIR
SEN. KARL RHOADS, VICE CHAIR**

**Date: February 5, 2018
Time: 3:00PM
Place: Conference Room 16
State Capitol
415 S. Beretania St.**

Good Morning Chairs, and Vice Chairs;

**My name is Lilia Fajotina, I have been a carehome administrator for 20 yrs.
I STRONGLY SUPPORT SB 2586. I believed any person who open and 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 any license shall be guilty of misdemeanor and that person shall be fine or punished.
Thank you, for allowing me to testify.**

Lilia Fajotina

(Carehome Administrator)



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COMMITTEE ON HUMAN SERVICES
COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH
Monday, February 5, 2018,
3:00 P. M.
Conference Room 16

SB2586

Relating to Care Facilities

TESTIMONY

Joy A Marshall, Legislative Committee, League of Women Voters of Hawaii

Chairs Dr. Green and Taniguchi, Vice Chairs Chang and Rhoads and Committee Members:

The League of Women Voters of Hawaii supports SB 2586 which authorizes the Department of Health (DOH) to investigate care facilities reported to be operating without an appropriate certificate or license issued by the DOH. It also establishes penalties for violations and for patient referral or transfer to uncertified or unlicensed care facilities.

There may be as many as 200 such facilities in Hawaii. Licensing, certification and even more important inspection is a layer of protection for our most vulnerable citizens. This process does not ensure high quality, but can assure that best practice standards are being observed.

I, like many seniors, am planning to age in place, however, should that time come that I need support outside my home, I would appreciate that the facility I am referred to meets the quality standards as designed by the State of Hawaii and the Department of Health.

Thank you for the opportunity to submit testimony

SB-2586

Submitted on: 2/4/2018 3:19:52 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
gladis simpson		Oppose	No

Comments:

Dear Sir/Madam,

My name is Gladis Rivera-Simpson and I am a Licensed Social Worker. I would like to testify AGAINST SB 2586 relating to care facilities. I have worked with many of our elderly citizens and their families as a social worker for almost 20 years. I am opposing SB 2586 as I believe it is against people's civil rights. People should have the right to choose where they want to reside and whom they want to receive care from. I understand that the intent of this measure is to protect individuals from sub-standard care in unlicensed homes from abuse or neglect. However, I believe that "quality" of care is not defined whether a home is licensed or not. Client and/or their family should be free to make their own choices in regards to this matter. I sincerely hope that people's rights to free choice will not be taken away. Again, I am against this bill, SB 2586, as it will be taking people's right to choose.

Thank you for your time and hope that you will also vote AGAINST SB 2586,

SB-2586

Submitted on: 2/4/2018 6:32:34 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Julieta Bonilla		Oppose	No

Comments:

I very much oppose of this bill because I believe every person has the right to choose. Person has right to have an option on where they want to live, has the right to receive a care from a provider with whom they are comfortable. Person has the right to find another entity that will provides safe place for them.

Thank You.



February 5, 2018 at 3:00 PM
Conference Room 016

Senate Committee on Human Services

Senate Committee on Commerce, Consumer Protection, and Health

Senate Committee on Judiciary

To: Chair Josh Green
Vice Chair Stanley Chang

Chair Rosalyn H. Baker
Vice Chair Jill N. Tokuda

Chair Brian T. Taniguchi
Vice Chair Karl Rhoads

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

Re: **Submitting Comments**
SB 2586, Relating to Care Facilities

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 committees for the opportunity to provide **comments** on SB 2586, which would expand the ability of the Hawaii Department of Health 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 refer or transfer patients to an unlicensed home.

In response to an inquiry sent out by HAH, the members who responded state 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.

Phone: (808) 521-8961 | Fax: (808) 599-2879 | HAH.org | 707 Richards Street, PH2 - Honolulu, HI 96813

Affiliated with the American Hospital Association, American Health Care Association, National Association for Home Care and Hospice, American Association for Homecare and Council of State Home Care Associations

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 pertinent 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 or make a referral to that unlicensed facility, but is meant only to help that patient and their family transition 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 instead penalizing individuals or referral agencies who are engaged in this practice.

In conclusion, we would ask for the committees' strong consideration of modifying this section so as to not penalize healthcare facilities for decisions made by patients or their families that are outside of their control. Thank you for your time and consideration of our comments.

SB-2586

Submitted on: 2/4/2018 10:13:28 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marylo Farinas	AFHA of Hawaii	Support	No

Comments:

Dear Chair Senator Green, Baker, & Taniguchi, Vice Chair Senator Chang, Tokuda, & Rhoads, and Members of the Committees,

I am very pleased about SB2586 "Relating To Care Facilities" (Unlicensed Care Home) I **strongly SUPPORT**. I find unlicensed Care Homes are NOT being fair to us licensed Adult Foster Home. I have been in the industry for about 10 years now and for the past few years have been experiencing difficulty finding clients because of unlicensed care homes. I truly feel, the system is very unfair to us licensed Adult Foster Homes if unlicensed care home continues to exist.

I encourage the entire committee to please pass SB2586, I am confident that passing this bill allows all licensed Adult Foster Homes to grow.

Thank you for your attention and consideration of my opinion.

Sincerely,

Marylo Farinas



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1-866-295-7282 | Fax: 808-537-2288 | TTY: 1-877-434-7598
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Senate Committee on Human Services
Senate Committee on Commerce, Consumer Protection & Health
Senate Committee on Judiciary
Monday, February 5, 2018
3:00 p.m.
Conference Room 16

To: Senator Josh Green, Chair
Senator Rosalyn Baker, Chair
Senator Brian Taniguchi, Chair
Re: S.B. No. 2586, Relating to Care Facilities

Dear Chairs Mizuno, Baker and Taniguchi, Vice-Chairs Chang, Tokuda and Rhoads, and Members of the Joint Committees,

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.

Thank you for the opportunity to present this testimony on S.B. No. 2586.



SB-2586

Submitted on: 2/4/2018 11:50:59 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
grace c andres	ccffh	Support	No

Comments:

Senate Committee on Human Services
Senate Committee on Commerce, Consumer Protection and Health
Senate Committee on Judiciary

Monday, February 5, 2018
3:00 p.m.
Conference Room 16

To: Chair Green, Vice Chair Chang and Members of the HS Committee;
Chair Baker, Vice Chair Tokuda and Members of the CPH Committee; and
Chair Taniguchi, Vice Chair Rhoads and Members of the JUD Committee

Re: S.B. 2586 Relating to Care Facilities

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 S.B. 2586 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. There are misunderstandings and disconnects of what "Aging In

Place” and an “AIP” actually is that need to be understood before progress can be made.

What is “Aging In Place”? Aging in place is the concept of being able to remain at home throughout the aging process. The disconnect is thinking that the concept of “Aging In Place” is the same as what is being termed by news articles, the Department of Health, and even proponents of the model, as “AIP”.

What is “AIP” or an “AIP”? An “AIP” is not a designation like an ARCH or ICF or SNF, it is not a “facility”, it is simply an abbreviation of the term “Aging In Place”. The significance is not in the name “AIP” but in the concept of it, a concept that has shaped this model of innovation in Hawaii to allow older adults greater influence in the direction of their own care and empower them to take greater control of their environment and well-being. This model of innovation is more accurately described as “Services In Place” (SIP) or “In-Home Aging” (IHA).

The key to comprehending this model is to understand 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). Properly structured “AIP” models are regarded as “SIP” or “IHA” where services and accommodations are completely independent of each other.

In an environment where “type of care” and “place of care” are separate and completely independent of the other, consumers have a naturally built in shield of protection as ALL of the options provided through this model concept is self-directed and controlled by the consumer. Consumers are able to easily hire and fire care providers that do not provide satisfactory services. Long term care costs can be managed effectively and efficiently because services are only paid for as needed. In certain situations cost sharing between friends, family, or others utilizing this model concept can reduce long term care costs by as much as 50% month over month. Regulatory measures are stringent as properly structured “AIP” models will require the home care companies to have mandatory record audits and client care quality assurance checks conducted by a third party registered nurse licensed in the State of Hawaii at a minimum of once per month and will also require all clients with any health and/or medical related needs to contract with a nurse case manager who is also licensed in the State of Hawaii to provide them with increased oversight, plan of care, further quality of care assurance checks, monthly inspections, trainings, delegations, and on-call 24/7 availability.

The main purposes of the Aging In Place model is to provide our seniors with greater control of their well-being, higher levels of satisfaction and above all, provide the means where they can maintain their quality of life all while ensuring their safety and protection.

Thank you for the opportunity to present this testimony on S.B. 2586 Relating to Care Facilities

February 2, 2018
The Honorable John Mizuno
415 S Beretania St # 439
United States House of Representatives/United State Senate
Honolulu, HI 96813

Dear Representative/Senator John Mizuno:

My name is Seyeranne Lat. I am the daughter of Rowena Lat who works as a Primary Caregiver for an Adult Foster Home. I personally have experienced how my mother has work with AIP Home, and have experienced its impact in my life.

Growing up, both my parents took up the profession of caregiving. There was a lot that not only my parents had to sacrifice but so did my brother and I. My brother and I weren't able to attend as many extra-curricular functions that we would have liked, and sometimes my parents were not able to make it to our programs. Most times, because they were working, only one parent would be able to come.

In 2013, my mother went through a complication with her care home. Because of this complication, I almost had to withdraw from college due to financial incapability since our only income was through my parents working as caregivers.

I am more than grateful to AIP because, without their involvement in my life, I would not be graduating on time from Creighton University this May. I could say that because of AIP, I am able to continue to work towards my goal and future career.

Sincerely,
Seyeranne Lat
98-845 Iliee St. Aiea, HI 96701
(808) 478-1876
seyerlat@creighton.edu

Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair
Committee on Human Services

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Committee on Commerce, Consumer Protection and Health

Senator Brian T. Taniguchi, Chair
Senator Karl Rhoads, Vice Chair
Committee on Judiciary

From: Ruthie Agbayani, Vice President, United Caregivers of Hawaii
Date: Monday, February 5, 2018, 3:00 p.m., Conference Room 16
Subject: Support for SB 2586, Relating to Care Facilities

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 SB 2586, Relating to Care Facilities, which authorizes the Department of Health to investigate care facilities reported to be operating without an appropriate certificate or license issued by the Department, and establishes 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 support SB 2586 to authorize investigations and the Department of Health’s entry to investigate alleged unlicensed facilities, as well as to take actions based on their investigation, especially when the facility is deemed unlicensed.

We are aware of a report last month, January, that an unlicensed so-called aging-in-place care home was closed in October 2017 and fined \$325,000. We support SB 2586 in imposing penalties for intentionally operating a care facility without a certificate or license, as well as imposing penalties for referrals or transfers to unlicensed/uncertified care facilities.

We urge the committee to pass SB 2586. Thank you for this opportunity to submit my testimony online.

February 2, 2018
The Honorable John Mizuno
415 S Beretania St # 439
United States House of Representatives/United State Senate
Honolulu, HI 96813

Dear Representative/Senator John Mizuno:

My name is Rowena Lat. I'm a Primary Caregiver for an Adult Foster Home and I personally have experienced working with AIP Home. I have observed the AIP Homes' impact when it came to care and staffing.

I do agree that AIP provides excellent care for the elderly because of the sufficient care provided by the rotation of its staff compared to those working as Adult Foster Home Primary Caregivers. Primary Caregivers are stuck at home because they hardly can afford to get someone to take their place and pay per hour. Most times, Primacy Caregivers sacrifice time with their own family due to the cost of a substitute to pay per hour, whereas with AIP, the staff rotates and the schedule us flexible. This way, everyone is creating a happy environment.

The following anecdote is my personal experience in which AIP has helped me. Till this day, this experience stays on my mind and still gives me anxiety when thinking about it.

In 2013, we used to have an Adult Residential Care Home under the DOH and under a friend's name, whom I will not mention for privacy. We had 5 clients, but the owner of the house decided to put the house up for sale so we were given a 30 day notice to vacant the place and notify the DOH. Once we found an appropriate place for our clients, we processed a building permit to be submitted to the DOH for approval. The DOH advised us to move our clients to another home due to an undecided date of availability for inspection. One of the case management agency recommended a home to me to respite our 5 clients. The caregiver of this home was aware that when our house got approved, we were taking the clients all back; all families of the clients were aware and being cooperative.

After many months, I followed up with the DOH and yet received no definite answer of when they were going to inspect the house. Just so that we would not lose our clients, I was the one who brought them to their MD appointments without anything in return just to let them know that I am still with them and had not forget about them. After a while, the caregiver confronted me saying that I cannot take them back anymore. I cried in front of her asking why, and she responded that all the clients wanted to stay with her. She also refused to let me get near them. I knew from my heart that this wasn't true.

After a few months, 4 of them passed away; assuming that the clients were traumatized and had a hard time adjusting. During that time as well, my daughter left for college and almost had to stop her education due to financial problems since caregiving is the profession of my husband and I. In addition, we were renting the place for \$4,500 without anyone living there until it was approved.

I am thankful now that the AIP provider came along and my daughter was able to continue her college education and hopefully graduate this May of 2018.

Sincerely,
Rowena Lat
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(808) 487-1876
rowena75lat@gmail.com



CGPTA
Chinatown Gateway Plaza
Tenant Association
Since 2006

To: Committees on Human Services; Commerce, Consumer Protection, and Health; Judiciary
From: Chinatown Gateway Plaza Tenant Association (CGPTA)
Date: Monday, February 5, 2018, 3:00 PM
Place: Conference Room 16, State Capitol, 415 Beretania St.

Re: Comments on SB2586, Relating to Health Care Facilities

Aloha e Chairs Green, Baker, and Taniguchi; Vice Chairs Chang, Tokuda, and Rhoads; and Members of the Joint Committees,

My name is Steve Lohse, a founding member and chair of the Chinatown Gateway Plaza Tenant Association (CGPTA), organized by residents in 2006 to keep ourselves informed and engaged in matters of concern to our CGP resident community. **Thank you for this opportunity to submit Comments on SB2586.**

We agree with the position of AARP in this matter, **there has not been enough discussion to understand the possible consequences** of new investigation and violation regulations on Aging-In-Place (AIP) facilities and home health and care service providers.

We appreciate the concern for quality patient care, but that same **concern should caution us against new regulations that could displace care recipients** against their wishes or cost them their choices for health and care services in their places of residence.

The current system is not perfect, but any rush to judgement without understanding the consequences could be worse! Please, let's fully understand the costs of any regulation before we close (how many?) facilities and displace (how many?) care recipients. Thank you!

Aloha no,
Steve Lohse
Chinatown Gateway Plaza Tenant Association (CGPTA)
CGP.Tenant.Association@gmail.com

Senate Committee on Human Service

Sen. Josh Green, Chair
Sen. Stanley Chang, Vice Chair

Senate Committee on Commerce, Consumer Protection and Health

Sen. Rosalyn H. Baker, Chair
Sen. Jill N. Tokuda, Vice Chair

Senate Committee on Judiciary

Sen. Brian T. Taniguchi, Chair
Sen. Karl Rhoads, Vice Chair

S.B. 2586 Relating to Care Facilities

Conference Room 16, 3:00 p.m.
February 5, 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, Chairs Green, Baker, Taniguchi, Vice Chairs Chang, Tokuda and Rhoads and members of the three Committees,

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). 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.

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 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 \$3,000/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

SB-2586

Submitted on: 2/1/2018 8:43:23 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
GEMMA LAU		Oppose	No

Comments:

I am against this bill SB2586. I opposed it!

SB-2586

Submitted on: 2/2/2018 9:29:26 AM

Testimony for HMS on 2/5/2018 3:00:00 PM

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

Comments:

Thank you for allowing me to testify against SB No. 2586. My name is Francis Nakamoto and I am testifying as a private citizen.

SB No. 2586 would authorize the Department of Health to conduct investigations of any complaints alleging that a person or entity was operating a 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 SB No. 2586 are meritorious to prevent the potential abuse of seniors requiring home care services, as originally intended when the Legislature passed SB No. 415, SD 2, HD 1, CD 1 in 2009 and reauthorized in 2014 by HB No. 2094, HD 1, SD 1, CD 1 after the DOH failed to promulgate regulations (which it still hasn't done), the Legislature should proceed carefully to avoid serious unintended consequences.

Among the unintended consequences is the chilling effect SB No. 2586 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 intent to strike fear in their hearts that they will be booted out of the homes unless (or because) the DOH regulates their current accommodations.

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. Superficial licensing to expose any prior criminal record, as envisioned by SB No. 415, will not prevent abuse by persons without a criminal history. The well-known inadequacies and inabilities of DOH to conduct effective licensing and inspection of existing care home facilities under current law and funding gives little confidence to the public that more regulation will make any positive difference.

Without documented, verified evidence that there is a serious problem of abuse of seniors who contract for their home care services in their own home they wish to age in place, over-regulation will serve no purpose but to reduce affordable choices to our kupuna and force them into undesirable, albeit regulated, living conditions.

To 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 renter under privately negotiated contracts under the guise of protecting the welfare of seniors, should first require a finding of abuses by providers of the services to determine if regulation is desirable. 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.

SB-2586

Submitted on: 2/2/2018 12:05:42 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
WADE OGANEKU		Oppose	No

Comments:

I am against SB2586 requiring care facilities to have a state certificate or license. I have my mother in a Aging in Place (AIP) home which has provided exceptional care for over 6 months. This AIP home has provided complete care including doctor visits and hospice care with compassion and kindness. After searching for state certified homes, they were unaffordable and burdensome because they piece-meal every additional activity such as transportation to and from medical appointments. The focus became more on the money versus the patient, my mother. It would also cause additional time and money because state certified homes would only provide care as long as she was walking and not wheelchair bound, then we would have to find another facility once she could not walk anymore - and go thru this entire process again. By passing this bill you will create undue burden on many families who find affordable AIP homes for their loved ones. With AIP homes, from our experience, trust is established between the family and the caregiver, so we know that our family member's health and wellness is priority when we are not there. Do not create more bureaucracy and let families do their own due diligence in finding the care they feel comfortable for their loved ones.

Sincerely,

Wade Oganeku

SB-2586

Submitted on: 2/2/2018 2:08:25 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maile Harada	Maile Case Management	Oppose	Yes

Comments:

Testimony against the SB 2586 by Maile Harada, R.N. (Maile Case Management, LLC)

Hello, my name is Maile Harada, and I'm a Registered Nurse in Hawaii and the forerunner of the aging in place movement. I'm here today to verbalize my opposition of the bill (SB 2586). This bill, which is a "companion bill" of the HB 1911, is directly targeting the aging in place model of care, and I'm here to be a voice for the AIP. Our movement began approximately 5 years ago when I received a phone call from a care home operator who had been displaced from her care home due to the sale of that home. Although this person's DOH inspector promised the lady that she'd "rush through" the application for a new care home, the ex-care home operator (who was paying over \$5,000 per month for the new home) waited and waited until she almost went bankrupt. It was at that time, me, the ex-care home operator, and an attorney started the first AIP home. After the word got out about our new model of care, I began getting dozens of phone calls every week. People would share their stories of how they'd taken out equity loans on their homes to build their eventual care home but would then sit there waiting for years and years with no help from the DOH. I have countless numbers of clients who have waited over 3 years and some even over 4-5 years. My heart goes out to the people who are suffering. They cannot make a living or even pay for their children's education. The DOH has caused this problem. They are the root of this problem. I have become a voice for the people, a "voice (if you will) for the forgotten care home applicants."

Since beginning the AIP model, we have had nonstop harassment from the DOH and government officials. We are being labeled as "non-licensed care homes," but our model (at least the one being represented by myself and our team) is not illegal. We are not unlicensed care homes. The clients that we serve are living in their own homes and in their place of residence, and we provide the personal care assistance they need. The care is not being provided by the person who owns or rents the home, and for this reason, it does not meet the criteria to be an unlicensed care home. The question posed to you right now is this; "does a person have the right to live where they want to live?" The answer to that question is a definitive "YES!" The state has no authority to tell people where they can and can't live. The next question posed to you is this; "does a person have the right to appoint someone to care for them in their own home?" The

answer to this question is also “YES.” A non-licensed person can care for another person (and even do skilled nursing procedures for that person) with their permission if they’re in their own home. An example of this would be how skilled nursing facilities and home health agencies teach people (who have been authorized by the family) to provide skilled nursing services in the home setting.

Our aging in place (AIP) model of care is nothing more than what I’ve just described above. The state government DOES NOT and SHOULD NOT have jurisdiction over the choices that are made from Hawaii’s residents with regards to where their loved ones live, and who cares for their loved ones while in their home. To do this would be to go against what our Constitution deems lawful. It would be unconstitutional! I stand here today stating that our AIP model of care is legal. This bill (SB 2586) should be stopped!

Thank you,

Maile Harada, R.N

SB-2586

Submitted on: 2/2/2018 2:08:53 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
ericson calaycay		Oppose	No

Comments:

To whom it may concern,

I disagree to the bill S.B. NO. 2586 being introduced by Rep. Mizuno. And I do not want you to vote in support of it.

Living in America is living in Freedom, freedom of choice and freedom to act with our own will.

It is our human right to decide; our Freedom of choice,

Aging in place is a choice

Deciding you wish to age in place means you are choosing:

- how you want to spend your [retirement](#) years
- how you want your home to be set up
- where you want to reside
- what your health care choices will be
- which types of assistance are right for you
- what your wishes are for major life events (sickness, housing transitions, financial decisions)

Making these choices gives you control over your independence, quality of life and dignity. Most importantly to note, aging in place does not mean you have to do everything yourself; that's where the plan comes in. It means you get to plan how your needs are met, who meets them and when.

No one should be dictated on how they've planned for their future. This is the right that everyone deserves. Please respect the rights of others to ensure their needs are met and wishes are respected.

SB-2586

Submitted on: 2/2/2018 2:12:24 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
israel dioquino		Oppose	No

Comments:

I disagree to the bill SB#2586 being introduced by Rep. Mizuno. I do NOT want you to vote in support of it.

We placed our love ones in an "Aging in Place" home where we feel the most secured and cared for our loved ones.

Over 3.2 million adults living in nursing homes and other long term care facilities in the U.S. As many as 40 percent of all adults will enter a nursing home at some point during their lives and as the U.S. population ages, the number of nursing home residents is expected to grow. Many of these elders are well-cared for but many may be the victims of abuse.

Elder abuse, particularly when it involves a patient in a residential care facility, can be difficult to detect and for every reported case of abuse, more than five cases may go unreported.

Nursing home abuse is a serious concern and seniors who have been abused have a 300 percent greater chance of death in the 3 years following the abuse than those who aren't abused. Up to 1 in 6 nursing home residents may be the victim of abuse or neglect every year.

Hence we prefer to have our love ones in an aging in place home where we trust the people that will provide the care and services needed.

SB-2586

Submitted on: 2/2/2018 2:45:49 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Casey Suyeyoshi		Oppose	No

Comments:

I do not support Bill SB2586.

At the beginning of 2018 I went to school and learn the importance of care. The Omnibus Budget Reconciliation Act (OBRA); explains the right of an individual.

Omnibus Budget Reconciliation Act 1987 identified the important rights for individuals in a long term health care facility. Resident Rights indicate how residents must be treated while living in a facility. These rights includes;

- The right to participate in their own care, treatment and discharge.
- The right to refuse medication, treatment, care or restraints.
- An individual has has the legal and ethical right to direct what happens to his or her own body.
- The right to make independent choices. An individuals able to decide and make choices about their doctors, treatment and care.

Bill SB2586 takes these rights away from individuals receiving care. The freedom to make their own decision of care and where to receive them.

When I get old I want to have the ability to choose my choice of care and choose where I want to be. On the days when I am incontinence and unable to perform daily activities, I want to be comfortable, pain free and cheerful.

SB2586 takes away that choice. My freedom.

I will be highly uncomfortable if forced to be place in a facility that I did not choose. Everyone should be able to make their own decision. It's their life. It's my life. It's their decision. It's my decision.

We all know it is easy to make a decision for someone. To choose what they should wear, eat, do, and how they should spend the rest of their finals days. However this is not a game, nor playing with dolls.

This is life, and we are granted the ability to have the freedom and right to make choices of our own. Having the authority makes each and every person comfortable as they have a peace of mind of their own personal care treatment plan.

When I get old. I want to be where I want to be. To be taken care of by the people I trust. To be happily comfortable that I am well taken care of.

We deserve the quality of life. To receive the best care available. Dignity, choice and independence are important parts of quality of life.

I do not support SB2586.

SB-2586

Submitted on: 2/2/2018 2:49:35 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrew D. Smith	Andrew D. Smith LLLC	Oppose	No

Comments:

I strongly OPPOSE the bill, as drafted, on the following grounds:

1. The bill (as drafted) is clearly unconstitutional. It infringes on the "right of people to be secure in their persons, houses, papers and effects," and does not afford adequate protection against unreasonable searches and seizures.
2. The bill would give State officials police powers in excess of what would ordinarily be available to HPD when conducting a **criminal** investigation.
3. The AIPA model involves private residences, rather than "facilities." It therefore does NOT involve "care homes" as defined under HAR, and should not be confused with so-called "unlicensed care homes."
4. The bill also also violates the **Contract** Clause under the United States **Constitution**, Article I, section 10, clause 1, which **prohibits states from enacting any law that retroactively impairs contract rights**.
5. The AIPA model actually reduces the possibility of "transfer trauma" cited by the sponsor of HB1911, because residents can stay put rather than being transferred depending on their level of care (per State licensing requirements).
6. Many (if not all) of the vocal supporters of this bill (and HB1911) directly compete with other providers of home care services, and are using the legislative process to force the return of their former residents who have sought higher quality care elsewhere.
7. The State does not have a compelling interest to justify interfering with family members who privately contract for care of their loved ones. Families should not be forced to send their loved ones to substandard facilities solely due to licensing status, when they have found cleaner, safer and better run alternatives under case management supervision.
8. The demand for elder care is growing exponentially, and the DOH has not been able to keep up with this demand. Delays and inefficiencies in processing licensing applications have forced many applicants to give up altogether when trying to establish "licensed" care homes. Delays of 1 -3 years are common.
9. The bill will be the subject of litigation if forced through, as it does not pass constitutional muster.
10. Finally, the State should be investing our tax dollars in the DOH, so that it can hire and train sufficient workers to meet the flood of applications. SB 2586 seeks to remedy an issue which has arisen from the DOH's proven inability to timely process these applications.

Respectfully submitted, Andrew D. Smith. Esq.

SB-2586

Submitted on: 2/2/2018 2:52:01 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gary Yamanaka		Oppose	No

Comments:

I strongly oppose the passage of bill SB2586. It would harm my efforts to find care and support for my parents. Please do not pass this bill.

SB-2586

Submitted on: 2/2/2018 3:00:09 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bernice Takabayashi		Oppose	No

Comments:

Please DO NOT Vote for SB2586. My dad is not Medicaid, he is private pay. He should be able to go where ever he can get Good Care without fear of punishment, penalty or government intervention.

SB-2586

Submitted on: 2/2/2018 3:01:34 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
emmanuelle		Oppose	No

Comments:

I highly disagree to the bill SB#2586 being introduced by Rep. Ihara. I do NOT want you to vote in support of it.

Freedom should not be fought for. Freedom is a given right. Freedom should not be measured by those in power and authority.

Since this bill has been introduced it has given stress to the families of the tenants. These individuals has the right to make a choice; these families and residents of USA are losing their rights because of this bill. Let's not forget that we are entitled to our CIVIL RIGHTS and let's respect that.

SB-2586

Submitted on: 2/2/2018 3:07:00 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Magauran		Oppose	No

Comments:

I understand the origins of this Bill, borne out of a genuine frustration in dealing with the real world problem: housing our aged and aging population. However, this is not the direction we should be pursuing and this Bill appears to be purely punitive.

We must recognize that societal innovations or initiatives always precede the formation of official laws and regulations. The initiation or adjustments in the law are in response to societal growth, taking into account changing norms and needs.

The renowned Peruvian economist, Hernando de Soto, expounded extensively on the virtues of Western law and how it has allowed economic protection and advancement to its citizens, creating great wealth. In 2000, Mark Stone of the International Monetary Fund wrote, in describing de Soto's work, the following:

“The primary lesson of the US experience is that ignoring extralegal arrangements or trying to stamp them out – without a plan to channel those arrangements into the formal legal structure – is a strategy doomed to failure.

Instead, De Soto said, the government in these countries should uncover the existing social contracts (on property established by the poor) and integrate them into the official law.

Once governments have uncovered information on existing social contracts, they can begin the work of organizing the contracts into temporary formal statutes, comparing informal arrangements with existing formal law, and deciding how each has to be adjusted to build a common regulatory framework for all citizens. According to DeSoto,

this is how Western Law was built: 'by gradually discarding what was not useful and enforceable and absorbing what worked.'"

This Bill unfortunately fails to do this.

The State should be working at crafting a solution rather than criminalizing a perhaps imperfect way of addressing the very real problem of housing for our aged and aging population.

I agree that there is a problem, but this Bill is definitely not the solution.

Thank you for your consideration,

John Magauran, MD

SB-2586

Submitted on: 2/2/2018 3:10:38 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jo Ann Sakai		Oppose	No

Comments:

I am very much against SB2586 . Please do not vote in support of it.

After much heartache, prayer and critical evaluation, as I am a state licensed and nationally certified Speech Language Pathologist, I chose an aging in place home to care for my elderly father, after his recent hospitalization and rehabilitation. He has received excellent care evidenced by positive reports from his internist, ophthalmologist, and others. We visit 1-2 times per week and he is happier and calmer than he was at Maunalani or the Care Center of Honolulu, both of which have the reputation of being good facilities. **We are paying privately without government assistance and feel that we should have the right to choose this option, even if it is not licensed.** They are following state guidelines and have an RN managing his case.

There is a shortage of affordable care options, licensed care homes or facilities in Hawaii. The state is also inefficient in the licensing process which may take years after applying. Having a license does not guarantee appropriate care due to many factors, including limited monitoring and follow up.

At home, I currently care for my husband with Stage 4 Gastro Esophageal Cancer that has metastasized to his bones, liver, and lungs. I also care for my mother who was diagnosed with Alzheimer's Disease in 2013 and a hemorrhagic stroke in May 2017.

In addition, I worked half time and cared for My father with the assistance of home care CNAs until October 2017. (Dad was diagnosed with Alzheimer's Dementia in November 2016 after multiple strokes, heart attacks, and surgical removal of a brain tumor). My father is no longer able to walk up the 15 stairs to our home and I am no longer able to care for him at home due to the severity of my husband's cancer.

If you pass this bill, I will be forced to move my father, which would be unbearable, especially at this time.

Thank you for your consideration. Please feel free to contact me with any questions.

Sincerely,

Jo Ann S. Sakai

SB-2586

Submitted on: 2/2/2018 4:47:29 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mae Ann		Oppose	No

Comments:

I am definitely against SB2586 as it violates the right of the people to exercise their civil rights. The bill denies to the family of the tenants their right to choose the people who will take care of their elderly parents. But it should be noted that they have a deep and acceptable reason why they choose to let their parents be taken cared of by private individuals. The State should not therefore interfere with such right and civil liberties.

SB-2586

Submitted on: 2/2/2018 7:22:23 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dann		Oppose	No

Comments:

SB-2586

Submitted on: 2/4/2018 2:41:31 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

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

Comments:

Good afternoon, I am Maria Corazon E. Cariaga a provider of the Community Care Foster Family Home. I am the president of the Big Island Adult Foster Home Operators. We the licensed foster homes and care homes abides the rules and regulations that are implemented by the Department of Health to be able to care for the elderly and disabled population of our community. While the illegal care homes doesn't have rules and regulations to follow. So I know it is not safe for them to give a care for the needy population of our community and it's for them to be stopped with their illegal homes. As a legal caregiver I strongly support the SB2586 for the sake of our Kupunas, disabled citizens and all of the needy people that are housed in a legal foster homes or in a legal care homes. Thank you for allowing me to submit my testimony for the SB2586.

SB-2586

Submitted on: 2/4/2018 2:49:59 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

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

Comments:

I am Maria Corazon E. Cariaga a CCFFH PROVIDER. I strongly support the SB2586.

Thank you for allowing me to submit my testimony

SB-2586

Submitted on: 2/4/2018 2:54:25 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Frances Marie	CCFFH	Support	No

Comments:

I strongly support the SB2586 to stop illegal care homes for the sake of elderly & disabled population of our community.

SB-2586

Submitted on: 2/4/2018 2:54:43 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Debbie Kim Morikawa		Oppose	No

Comments:

SB-2586

Submitted on: 2/5/2018 9:26:23 AM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
MARFE RETUNDO	CCFFH	Support	No

Comments:

I am Marfe Retundo. I am 1 of the ccffh member. N I support this bill to stop the unlicense care home.

To: Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair
Committee on Human Services

Senator Rosalyn Baker, Chair
Senator Jill Tokuda, Vice Chair
Committee on Commerce, Consumer Protection & Health

Senator Brian Taniguchi, Chair
Senator Karl Rhoads, Vice Chair
Committee on Judiciary

FROM: Sarah Suzuki, MBA, BSN, RN
Managing Partner, Blue Water Resources, LLC
94-408 Akoki Street Suite 202
Waipahu, Hawaii 96797
(808) 678-3661 Office
(808) 678-3662 Fax

HEARING DATE: Monday, February 5, 2018 (3:00 PM, Conference Room 16)

RE: **Relating to Care Facilities SB 2586**

My name is Sarah Suzuki. I have been a registered nurse for over 25 years and a community case manager for over 16 years. I am the past-President of the Case Management Council and continue to be an active member. The Case Management Council is comprised of agencies who provide case management services to the aged, blind, and disabled population.

We have expressed our concern about the growing number of unlicensed homes in the past two years to the State. All of us, at one point or another, have experienced the phone call from a caregiver who reports that they decided to cease operating their foster home because of an "emergency." The Case Managers provide the operators with support and encourage them to stay open, only to find that a few weeks later, they decided to open an unlicensed home.

The typical scenario would be that the Medicaid client is displaced and quickly relocated elsewhere while the Private pay client is lured to stay with the caregiver who has opted to operate an unlicensed home.

The local news highlights how some of the unlicensed homes are operators who had their certificates revoked by the State. But many of the operators who chose not to renew their certificates were also good caregivers. Over the last two years, we have lost many good caregivers.

While some may argue that our current system has flaws, there clearly are benefits to our Kupuna. Those benefits include, but are not limited to: State licensed providers, State certified and licensed facilities or homes, oversight, and monitoring.

If this continues, we will see a rapid decline on available beds, especially for the vulnerable Medicaid clients. Who, then would, care for our Kupuna who really need the help? We ask you to help us fix this growing issue.

Thank you for the opportunity to provide this testimony.

To: **Senator Josh Green, Chair, Senator Stanley Chang, Vice Chair, and members of the Committee on Human Services**
Senator Rosalyn Baker, Chair, Jill Tokuda, Vice Chair and members of the Committee on Commerce, Consumer Protection, & Health
Senator Brian Taniguchi, Chair, Senator Karl Rhoads, Vice Chair, and members of the Judiciary Committee
Senator Donovan Dela Cruz, Chair, Senator Gilbert Keith-Agaran, Vice Chair, and members of the Committee on Ways and Means

FROM: BLANDINA S. RETUA

ARCA MEMBER

HEARING DATE: February 5, 2018 Monday (3 PM, Conf. Room 016)

FAX NUMBER: 808-586-9391, 808-586-6071, 808-586-6460, 808-586-6091

RE: Relating to Care Facilities SB 2586-

My name is BLANDINA RETUA have been a caregiver for over 34 years and a licensed Care Home Operator for over 24 years. 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 SB2586. I wish I could be there in person to give my oral testimony, but I am a 24/7 caregiver.

Mahalo,

Blandina S. Retua

Feb. 1. 2018 4:42PM

No. 4003 P. 1/1

To: **Senator Josh Green, Chair, Senator Stanley Chang, Vice Chair, and members of the Committee on Human Services**
Senator Rosalyn Baker, Chair, Jill Tokuda, Vice Chair and members of the Committee on Commerce, Consumer Protection & Health
Senator Brian Taniguchi, Chair, Senator Karl Rhoads, Vice Chair, and members of the Judiciary Committee
Senator Donovan Dela Cruz, Chair, Senator Gilbert Keith-Agaran, Vice Chair, and members of the Committee on Ways and Means

FROM: *Vicky Cedig Bayan*
ARCA Board Members

HEARING DATE: February 5, 2018 Monday (3 PM, Conf. Room 016)

FAX NUMBER: 808-586-9391, 808-586-6071, 808-586-6460, 808-586-6091

RE: Relating to Care Facilities SB 2586-

My name is *Vicky C. Bayan* I have been a caregiver for over 46 years and a licensed Care Home Operator for over 46 years. 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 SB2586. I wish I could be there in person to give my oral testimony, but I am a 24/7 caregiver.

Mahalo,

SB-2586

Submitted on: 2/5/2018 12:44:00 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

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

Comments:

I strongly support the bill sb2586.authorizes the department of health to investigate care facilities reported to be operating without an appropriate certificate or license issued by the department.established penalties for violations and for patient referrals to uncertified unlicensed care facilities



94-366 Pupupani Street Suite 208A - Waipahu, Hawai'i 96797
Tel: (808) 842 7634 / Fax: (808) 842-7640

From: Lolita Ching, MSN, RN
President/Owner of Quality Case Management, Inc.
President of the Filipino Nurses Organization of Hawaii

To: Committee on Human Services- Senator Josh Green, Chair
Committee on Commerce, Consumer Protection, and Health- Senator Rosalyn H. Baker, Chair
Committee on Judiciary- Senator Brian T. Taniguchi, Chair

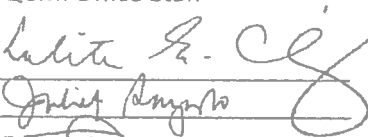



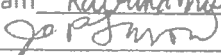
RE: SB 2586 - Relating to Care Facilities

Date: February 5, 2018

My name is Lolita E. Ching and I've been a Registered Nurse for 40 years and 18 years as a Community Case Manager in the State of Hawaii. Based on the statement and presentation of this bill, **I am and together with my staff, we are fully in support for this bill.**

We believe that we have the moral and ethical duty to provide to our vulnerable KUPUNAs, the aged, the blind and disabled the care that they deserve. We must ensure that their safety, health and welfare is the priority while living outside of their own homes. As a family member, lay person or health care providers, we refused to be driven by a person without a driver's license, albeit be defended by a paralegal secretary in front of the circuit court. We demand that our vehicle is driven by a licensed driver or being defended by an Attorney. So then, why are our vulnerable KUPUNAS being placed in an illegal home? Wake up and do not be like an OSTRICH where the head is buried in the sand for quite some time. As a family member exercise your right that your love one is being cared by a licensed home under the guidelines and oversight of various State Department/ Agency. It is just a matter of time. DO NOT WAIT until some harm or negative event occurs to our KUPUNA while living in an unlicensed home. BE PROACTIVE. Your live one relies on your love and judgement to do the right thing. Be HONEST and MAINTAIN YOUR INTEGRITY. DOING THE RIGHT THING EVEN NO ONE IS WATCHING. Placing your love one in an UNLICENSED HOME is dangerous due to **NO oversight by the people or professional health care providers who follow the LAW.**

Submitted and Signed by: QCMI Office Staff

1. Lolita E. Ching 
2. Juliet Raymundo 
3. Leitisha P. Padeken 
4. Katrina Agliam 
5. Jo Faraon 

SB-2586

Submitted on: 2/5/2018 2:10:44 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Helen Sumoba Sapla	Big Island Adult Foster Home Organization	Support	No

Comments:

SB-2586

Submitted on: 2/5/2018 7:43:59 PM

Testimony for HMS on 2/5/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Noreen Montijo	ARCA	Support	No

Comments:

I am licensed foster home care provider and I support this bill.

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To: Senator Josh Green, Chair; Senator Stanley Chang, Vice Chair, and members of the Committee of Human Services

Senator Rosalyn Baker, Chair; Jill Tokugawa, Vice Chair and members of the Committee on Commerce and Consumer Protection and Health

Senator Brian Taniguchi, Chair; Senator Karl Rhoads, Vice Chair and members of the Judiciary Committee
Senator Donovan Dela Cruz, Chair; Senator Gilbert Keith-Agaran, Vice Chair, and members of the Committee on Ways and Means

Hearing Date Feb 5, 2018 Monday 3pm Room 016

Fax#: 808-586-9391, 808-586-6071, 808-586-6460,808-586-6091

From: Milagros S. Beltran, ARCA Board of Director

Re: Relating to Care Facilities SB 2586

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 (Adult Residential Care Administrators) regarding the overwhelming number of unlicensed homes in our state. We, as state licensed 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 do not have regulations to monitor the health safety of their residents, yet they claim that they are able to provide the same standard of care as regulated homes, which I do not find is appropriate to state. It is becoming increasingly common for state certified foster homes and licensed care homes to choose to close or feel forced to close to compete in the business sense with these unlicensed homes or due to revocation of their license. After closing, they would reopen within a few weeks as an unlicensed / uncertified care home often displacing their Medicaid clients.

As I am unable to attend the hearing in person, I would like to submit and share my written testimony in Strong Support of SB2586.

Mahalo,

Milagros S. Beltran

M. about change on #



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

Senate Committees on Human Services, Commerce Consumer Protection and Health, and Judiciary

DATE: Monday February 5, 2018
TIME: 3 pm
PLACE: Conference Room 16

BILL: SB 2586 RELATING TO CARE FACILITIES

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. Provisional Licenses.** KC is also proposing at least for serious discussion, the granting of temporary provisions licenses to those facilities that were previously licensed by DOH. The intent here is 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.

no testimony

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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. **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. 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.

321 - Rules
 Home
 K. Aguirre

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.

CURRENT BILL LANGUAGE WITH SOME AMENDMENTS SECTION 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."



ALL ISLAND CASE MANAGEMENT CORPORATION

Your Case Management of Choice

To: Committee on Human Services,
Committee on Commerce, Consumer Protection, and Health
Committee on Judiciary

I'm in strong support for Senate Bill 2586.

1. The DOH must investigate care facilities reported to be operating without an appropriate certificate or penalties. The mushrooming of unlicensed care homes / facilities is very alarming. It's a safety issue for our vulnerable adults. Once placed in these homes, who will be monitoring for their health and safety. There need to be checks and balances from the State. That's more of a reason that before sending them to a place, the discharging facility have a duty to check at the DOH data base if the home or facilities they are sending the clients is truly a licensed or certified home / facility. I have heard of many instances that client is being pick-up from a facility by Handi-transport services and being delivered to these unlicensed homes.
2. Penalty for a person who intentionally operates a care home / facility without a certificate or licensed shall be guilty of misdemeanor and penalties must be enforced. These caregivers / homes are preying on the family who are desperate to find homes for their loved ones in dire need. Licensed / Certified Homes display their certificate and GE Tax license for easy visibility for people who are visiting the home. These homes must be eradicated for the purpose of consumer protection. There are so many out there pretending to be licensed / certified. Not unless they can see a proof, they, they are considered illegal / fake homes.
3. Referral or Transfers to Unlicensed or uncertified care facility. For the discharging facilities, I suggest that they need to refer to the DOH list of licensed homes. Caregivers who are coming to assess the client, it must be mandated that they show their certificate to the SW / RN. Referrals should go the Licensed Case Management Agencies. That list is also available on the DOH list.
4. Referral Agencies that claimed and advertised that they are a legitimate business are not. They are listed under DCCA but no certification under the DOH. These group of individuals are very aggressive in driving around, looking for open beds, bringing families to this available open beds / homes. This referral agencies claimed that they are free of charge to the families, but in actuality, they are charging the caregiver half the amount of one month pay. (between \$2000-4000). They don't care if this home is licensed or not. They are in the business of finding a home only, so they can place a client and collect their fees. This is abuse and neglect. Abuse and neglect because they are not checking whether the caregiver can provide care for the client. Whether the other resident in the home matches the behavior of this incoming client? This referral agencies are in the business of mainly placing clients in some homes to receive their referral fee.

Submitted by:

Elsa P. Talavera RN
Elsa P. Talavera RN, CMC.