

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony COMMENTING on HB314
RELATING TO MANDATORY REPORTING.

REP. RYAN I. YAMANE, CHAIR
HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS

Hearing Date: February 4, 2021 Room Number: N/A

1 **Department Testimony:** The Department of Health (DOH) appreciates the intent of this
2 measure which is to assure public health and safety, as well as responsible fiduciary management
3 of public funds by State contractors.

4 The department recommends further discussion to identify and exempt programs that already
5 have rigorous duty-to-report, penalty, and audit provisions, in particular federal health care
6 programs funded by the US Centers for Medicare and Medicaid Services, US Substance Abuse
7 and Mental Health Services Administration, and US Centers for Disease Control and Prevention.
8 To the extent possible, state and federal provisions should align to minimize confusion and
9 duplication of effort.

10 Thank you for the opportunity to testify.

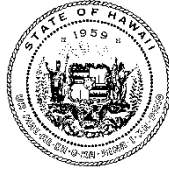
11 **Offered Amendments:**

12 An alternate solution may be to amend this measure with generalized wording to this effect.

13 "This part shall not apply to contracts with provisions required
14 by federal law or regulation, or by conditions of a federal
15 cooperative agreement or grant, relating to duty to report and
16 annual financial reports."

17

DAVID Y. IGE
GOVERNOR



BONNIE KAHAKUI
ACTING ADMINISTRATOR

STATE OF HAWAII
STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO
THE HOUSE COMMITTEE
ON
HEALTH, HUMAN SERVICES, & HOMELESSNESS
FEBRUARY 4, 2021, 9:00 am

HOUSE BILL 314
RELATING TO MANDATORY REPORTING

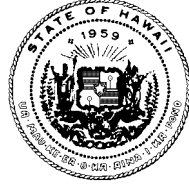
Chair Yamane, Vice Chair Tam, and members of the committee, thank you for the opportunity to submit testimony on HB314. The State Procurement Office (SPO) supports the intent of this bill, but opposes the amendments to Chapter 103F, Hawaii Revised Statutes (HRS), that would obligate providers to report any violation of the law and require providers to file and submit annual financial reports.

Comments: Chapter 103F, HRS, Purchases of Health and Human Services, and Chapter 103D, The Hawaii Public Procurement Code, are intended to provide guidance and definitions for the methods and procedures of procurement. The proposed amendments to address specific contract terms for violation and annual reports would not be appropriate in either Chapter 103F or Chapter 103D, HRS. The amendments would be more appropriate in the HRS Chapter and Hawaii Administrative rules pertaining to the Department of Health and Human Services.

Recommendations: Remove in its entirety the language in Sections 2 and 4 from HB314.

Thank you.

DAVID Y. IGE
GOVERNOR



CATHY BETTS
DIRECTOR

JOSEPH CAMPOS II
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

February 3, 2021

TO: The Honorable Representative, Chair Ryan I. Yamane, Chair
House Committee on Health, Human Services, & Homelessness

FROM: Cathy Betts, Director

SUBJECT: **HB 314 – RELATING TO MANDATORY REPORTING.**

Hearing: Thursday, February 4, 2021, 9:00 a.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the measure, respectfully requests clarification, and provides comments.

PURPOSE: The purpose of the bill requires that providers of services for the department of health or department of human services report any rule or law violations they observe. Requires that providers of health or human services file annual financial reports and that the reports be disclosed to the department of taxation.

Mandated reporting laws do not necessarily automatically result in the improved health and safety for the most vulnerable residents as one may expect. For example, this table shows the number of reports of potential child abuse and neglect received by Child Welfare Services for the last ten years.

State Fiscal Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Total	5,606	3,324	3,893	4,055	3,481	3,704	3,572	3,711	3,631	4,585
Confirmed	1,976	1,345	1,421	1,361	1,337	1,458	1,418	1,354	1,202	1,321
% Confirmed	35%	40%	37%	34%	38%	39%	40%	36%	33%	29%

While the numbers of reports are always sobering as each call may reflect a child and family that may need some kind of assistance, the 10 year average number of confirmations is at 36.1% of reports received.

For the other 63.9% of calls not confirmed, it is important to consider that a child welfare investigation, like any investigation by a state administrative or law enforcement agency is not a benign transaction. Relationships suffer, and we know families become more fearful of protective services and less trusting of others, especially positions of authority, like teachers and health care providers, social workers, law enforcement, professions trained to help others. The essential element for human services providers to be effective is the ability to form a trusting relationship; without trust the work is very difficult.

Mandated reporters are the majority of reporters of child abuse and neglect, and during the stay at home orders during the pandemic, reports to child welfare dipped as stay at home orders reduced children's encounters with mandated reporters such as teachers, and health care providers. We don't know if, though we surmise, that better training or more training would improve reports of child abuse and neglect, and we don't know whether mandated reporters are calling because they witnessed something and felt compelled to report because of their potential liability if they failed to report. In this situation, intake and investigation resources are stretched responding to all reports.

Consequently, we have concerns if all of DHS' contracted providers were mandated to report a violation of any law or rule, as it would basically render human services providers as quasi law enforcement and reduce our ability to provide effective assistance to those most in need. As written, an example of unintended consequences is the mandate would be a burden on homeless service providers. Case managers, social workers, medical personnel often do outreach, provide health or case management services for individuals who are houseless and living on the streets, parks, or in camps on government or private land. The camps are often illegal or violate zoning laws. Nonetheless, in order to gain trust and help individuals and families find permanent housing, frequent visits to the "illegal" locations must be made. Taken to an extreme, with quasi law enforcement responsibilities, DHS providers may be required to "mirandize" their clients on every encounter.

To comply with this law the provider of those services would be required to report all the individuals living in the camps to DHS each and every time they visited, within 24 hours. If any actions were taken against the individuals or families, trust may be irreparably broken, and the individuals further from the goals of a permanent home. We are already challenged to find solutions for at risk youth, who need shelter and assistance, but who are already wary of the services that can help them.

A blanket reporting mandate would likely render many of our contracted services difficult to procure and difficult to deliver. It would also likely reduce the number of community providers who would be willing to contract with the State. From a contract compliance perspective, it would be difficult for DHS to provide oversight or verify that a crime was observed and reported until a conviction or finding.

DHS conducts investigations of programs that it regulates or has oversight authority over, but we do not have authority or knowledge over all laws or rules. There are existing systems to make reports of crime or rule violations that if observed individuals should be encouraged to report to law enforcement or the appropriate agency with the authority to act. In addition to child abuse and neglect, DHS is required by federal and state law to identify and investigate suspected fraud, waste, and abuse by either providers or beneficiaries, and DHS is also required to have robust administrative review processes.

DHS receives numerous complaints and reports of alleged welfare fraud, child care violations, homeless encampments, custody disputes, and complaints about contracted providers. The Benefit, Employment & Support Services Division (BESSD) has the Investigation Office (INVO) that investigates reports of fraud and other program violations; Child Care Licensing ensures compliance with child care licensing laws and regulations to ensure health and safety, Human Resources provides a process to address Civil Rights complaints, and the Administrative Hearings Office conducts fair hearings in contested cases. The Attorney General's office has the Medicaid Fraud Control Unit dedicated to investigating Medicaid fraud.

DHS offices regularly receive calls about any host of alleged violations and in most cases, we refer the caller to the appropriate agency. To receive the required provider reports within 24 hours proposed by this measure, would require an additional staff of investigators as well as

a significant general funds appropriation to implement and operate. Federal match funds would not be available for administrative costs as this would be a State law requirement. We also anticipate protests to contract terminations based upon a failure to report as well as significant delay as an event is not a crime or rule violation until due process is exhausted and a conviction or other final adjudication is rendered.

If a provider is to be burdened with the responsibility for enforcement as proposed by this bill, or face potential termination for their awarded contract, then training on the monitoring of these requirements must be developed and made available to current and interested providers in order to implement this as intended. Additionally, training would also need to be developed and implement for the agencies that are responsible for such procurement. Already providers are required to take antidiscrimination, sexual harassment training, submit to criminal history checks, and maintain other policies and abide by laws of the state. Consequently, we respectfully request clarification as to the kinds of offenses the bill is trying to address.

Regarding the requirement to file IRS Form 990 with the department, these forms are readily accessible on line at <https://www.irs.gov/charities-non-profits/copies-of-990-returns-available>. IRS Form 990 is for tax exempt corporations, so as drafted this section would create different requirements for vendors based upon their corporate status. As above, there are other agencies with authority and oversight capacity that perform the functions intended by this section of the measure. These additional requirements would make contracting with the government unduly burdensome.

The fundamental mandate of DHS and its purchase of service providers is to provide critical benefits, services, and programs to support the self-sufficiency and protect the health and safety of Hawaii's residents. There are multiple state and federal legal mandates DHS must comply with and enforce to ensure compliance with legal requirements related to its benefits, programs, and services. If DHS and its providers are mandated to report on each and every law violation, it will take away from serving the needy and vulnerable residents of Hawaii.

Thank you for the opportunity to provide comments on this measure.



**Testimony to the House Committee on Health, Human Services, & Homelessness
Thursday, February 4, 2021; 9:00 a.m.
State Capitol, Conference Room 329
Via Videoconference**

RE: HOUSE BILL NO. 0314, RELATING TO MANDATORY REPORTING.

Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **COMMENTS** on House Bill No. 0306, RELATING TO MANDATORY REPORTING.

The bill, as received by your Committee, would:

- (1) Establish an affirmative duty on the part of any contract provider of health or human services under Chapter 103F, Hawaii Revised Statutes (HRS), to report any violation of law or rule while fulfilling the contract within 24 hours;
- (2) Provide that failure to report the violation of law or rule be grounds to amend or terminate the contract, or reduce the payment to the provider; and
- (3) Establish annual financial reporting requirements for contract providers under Chapter 103F, HRS.

By way of background, the HPCA represents Hawaii Federally-Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

The Federally Supported Health Centers Assistance Act of 1992 and 1995 of 1992 [**See**, (P.L. 102-501) and FHSCAA of 1995 (P.L. 104-73), later codified as 42 U.S.C. Section 233 (g) – (n).] granted medical malpractice liability protection through the Federal Tort Claims Act (FTCA) to HRSA-supported health

Testimony on House Bill No. 0314

Thursday, February 4, 2021; 9:00 a.m.

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centers, such as FQHCs. Under this Act, FQHCs are considered Federal employees and are immune from lawsuits, with the Federal government acting as their primary insurer.

Arguably, should this bill be enacted, this bill might be construed to create a cause of action against health and human services contractors under State Law for malpractice resulting from the failure of the contractor to report any violation of law or rule. While the affirmative duties of a health care provider in a clinical or diagnostic setting are clearer (i.e., evidence of child abuse observed during a physical examination, and the provider's obligation to report the situation to authorities.), because many contractors such as FQHCs provide care in non-traditional settings, the contractors might not have an opportunity to adequately assess the situation to meet the affirmative duty that this bill would establish.

For example, FQHCs have served an integral role in immunizing the community with the COVID vaccine. While most of the people served are FQHC patients, many are merely individuals new to FQHCs who are benefiting from free clinics offered to the general public. In these instances, the health care provider is meeting the patient for the first time, does not provide a full examination of the patient, and merely gives the patient a shot of the vaccine.

In this scenario, what is the obligation of the health care provider if the provider observes a bruise on the arm of the patient? Would the provider be obligated to report this as a possible case of abuse?

Because this bill would establish an affirmative duty on the FQHC under State law, it is unclear whether the FTCA would provide malpractice liability protection in these kinds of situations.

While we agree that the intent of this measure is admirable, we caution this Committee that this bill might have unintended consequences to the providers of essential health and human services.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.



To: The Honorable Ryan I. Yamane, Chair
The Honorable Adrian K. Tam, Vice Chair
Members, House Committee on Health, Human Services, & Homelessness

From: Colette Masunaga, Director, Government Relations & External Affairs, The Queen's Health Systems

Date: February 4, 2021

Re: Comments for HB314: Relating to Mandatory Reporting

The Queen's Health Systems (Queen's) is a nonprofit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, and more than 1,500 affiliated physicians and providers statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates and concurs with the intent of HB314, relating to mandatory reporting, to ensure the protection of some of Hawaii's most vulnerable residents. However, we are concerned that the bill as written could create an additional financial and reporting burden on the hospital and providers and may not accomplish the ultimate goal of the bill. We are particularly concerned with subsection (a) of the bill that requires "any provider and employee of a provider" to report a violation. This would require hospitals and providers to train every employee to know requirements of state contracts as well as clinical and medical procedures in order to ensure all applicable requirements are met.

We would also note that the reporting requirements Section 4 (a) may be duplicative and unnecessary since annual audited financial statements and IRS form 990 are already public record. Further, the ten day filing threshold under subsection (b) could present an unrealistic turnaround time.

Queen's is committed to working with the Department of Human Services, Department of Health, and other stakeholders to further educate and inform providers about recognizing and reporting violations as they pertain to 103F HRS. Thank you for allowing Queen's to provide these comments regarding HB314.

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.



Testimony to the House Committee on Health, Human Services & Homelessness
Representative Ryan Yamane, Chair
Representative Adrian Tam, Vice-Chair
Thursday, February 4, 2021, 9:00 a.m.
Via Videoconference
HB 314, Relating to Mandatory Reporting

Dear Chair Yamane, Vice-Chair Tam and members of the HHH Committee:

On behalf of the Hawai'i Alliance of Nonprofit Organizations, I would like to provide the following comments for HB 314, Relating to Mandatory Reporting.

Hawai'i Alliance of Nonprofit Organizations (HANO) is a statewide, sector-wide professional association of nonprofits. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i. Our member organizations provide essential services to every community in the state.

Part I of HB 314 would require health and human service providers and their employees who observe a violation of any law or rule while fulfilling a contract to report the violation to the purchasing agency within 24 hours. Failure to report any observed violation would be grounds for contract termination, payment reduction, or other remedy.

HANO believes this language that would include violation of any law or rule is much too broad. Service providers cannot be expected to know and enforce all laws and rules. Further, while the bill attempts to limit the scope of a provider's or employee's knowledge or skills to that which is required to fulfill the contract, this language is ambiguous and subjective, and therefore unfair to the service providers. Lastly, Chapter 350, HRS, already contains specific language as to who is mandated to report suspected child abuse or neglect which would include health and human service providers.

Part II of this bill would require health and human service providers procured via Chapter 103F, HRS, to file annual financial reports, including IRS and audit reports. HANO has no objections to the requirement of filing such reports but would like to strongly encourage the development of a coordinated interagency system for the filing and maintenance of such documents. Service providers are often contracted by multiple State and county agencies and must file a variety of documents that are standard to the procurement and contracting processes for all government agencies. HANO would like to see a universal system, a common documents repository if you will, in which all providers would be able to file required documents that all State – and perhaps, county – agencies could readily access. Such a system would save time and effort by all parties involved.

Mahalo for the opportunity to provide written testimony.

Lisa Maruyama
President and CEO



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