



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
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**Testimony in OPPOSITION to HB 488**  
**RELATING TO INSPECTIONS OF CARE FACILITIES.**

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

Hearing Date: Tuesday, February 2, 2021

Room Number: 329

1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's  
2 Executive Budget Request for the Department of Health's (Department) appropriations and  
3 personnel priorities. Funding needs would be significant if this bill passes.

4 **Department Testimony:** Thank you for the opportunity to testify in OPPOSITION to this bill.  
5 The intent of this bill is laudable but not practical. If this bill passes OHCA would be required to  
6 post the inspection reports within 5 days of exiting a facility, although the bill is unclear but  
7 based on our interpretation. OHCA cannot meet the requirements of this bill without a  
8 significant increase in staff resources. The major reason for this is OHCA's survey workload and  
9 process as described below, which cannot be overcome by wishful thinking.

10 Let me use skilled nursing facilities (SNF) as an example. SNF are surveyed (inspected)  
11 by as many as 4 – 5 surveyors for as many as four (4) days, sometimes longer. Surveys are a  
12 combination of federal recertification surveys and state license renewal surveys. Surveys look at  
13 the multi-disciplinary processes of a facility's operation to ensure compliance with federal and  
14 state regulations to protect the health, safety, and welfare of patients. Surveyors prepare for a  
15 day prior to beginning a survey by looking at prior survey reports or complaints to include on the

1 survey. Then they are onsite for as many as four (4) days looking at everything from governance  
2 to management oversight to nursing services to multi-disciplinary care planning upon admission,  
3 discharge planning, patients' rights, kitchen and dietary, social services and activities,  
4 maintenance and housekeeping, medication management, fire and life safety, the always  
5 important infection control and, currently, COVID-19 prevention and mitigation.

6 From time to time, surveys are extended especially if surveys uncover many potential  
7 deficiencies and pertinent evidence is required to substantiate those deficiencies or to prove the  
8 facility's compliance. Surveyors then have ten (10) days to write reports but typically the report  
9 writing can take a month or longer due to the extensive and detailed nature of the report and to  
10 ensure accuracy.

11 Surveyors are often assigned back-to-back surveys, which delays the report writing on  
12 the first survey. These survey teams also survey critical access hospitals (CAH), intermediate  
13 care facilities for individuals with intellectual disabilities (ICF-IID), end stage renal dialysis  
14 facilities (ESRD), home health agencies (HHA), adult day health centers (ADHC), ambulatory  
15 surgical centers (ASC), complaint investigations, and others.

16 The process is similar for smaller residential care homes but there are many more of  
17 them, i.e., over 1,200 community care foster family homes (CCFFH) conducted under contract  
18 by Community Ties of America (CTA), over 450 adult residential care homes (ARCH), and also  
19 assisted living facilities (ALF), developmental disability domiciliary homes (DDDhomes),  
20 special treatment facilities (STF), therapeutic living program (TLP), home care agencies (HCA),  
21 adult day care centers (ADCC), unlicensed care home investigations and other complaint  
22 investigations, dietitian licensing, and others.

1           As a result, a report cannot be completed and posted within 5 days of exiting the facility.

2           The workload is too great, and the resource level is too small to accommodate the requirement.

3           And this assumes that current resources remain intact under the state's current budgetary stress.

4           **Offered Amendments:** None.

5           Thank you for the opportunity to testify in OPPOSITION on this measure.

Committee on Health, Human Services & Homelessness  
H.B. 488 Relating to Inspections of Care Facilities

Testimony of *John G. McDermott*, LSW, ACSW, M.Div. (586-7268)  
State Long Term Care Ombudsman

February 2, 2021

Good Morning, Chair Yamane, Vice Chair Tam and Members of the Committee,

My name is John G. McDermott and I am the State Long-Term Care Ombudsman. For those of you who are not familiar with our program, the Office of the Long-Term Care Ombudsman Program is a federally and state mandated program housed within the Executive Office on Aging.

Our responsibility, per the Older Americans Act of 1965, is:

*to serve on a full-time basis and shall, personally or through representatives of the Office, identify, investigate, and resolve complaints that are made by, or on behalf of residents, and relate to action, inaction, or decisions that may adversely affect the health, safety, welfare and rights of residents.”*

We advocate for residents living in licensed nursing homes, community care foster family homes, assisted living facilities, adult residential care homes and expanded ARCHs. I am here today to testify in **opposition to H.B. 488** which

*“Specifies that plans of correction and the status of corrective actions for care facilities shall be added to reports by the department of health within five working days. Clarifies, for reporting purposes, that the conclusion of an inspection occurs after the initial visit to a facility is completed.”*

I think there is some misunderstanding of what goes into an inspection. HB488 would apply equally to both small CCFFHs with 3 residents as well as larger facilities like Hale Nani with 288 residents. I worked at Hale Nani as Director of Social Services for 7 years before becoming the State Long-Term Care Ombudsman in 1998. A typical inspection at Hale Nani takes a full week. The *Exit Interview* is usually on a Friday. At that meeting the State Surveyors report all they found wrong and the facility has an opportunity to present evidence - at that time - that there was a misunderstanding, something was misfiled, it was an honest mistake, whatever. It's a very open conversation with both sides listening to one another. Sometimes the facility wins and sometimes their evidence isn't convincing enough.

Posting the inspection **5 days after the initial visit** is impossible since the surveyors have 30 days to write their Inspection Report. A CCFFH has at most 3 beds. A nursing home like Hale Nani has 288 beds. You can't determine how many days it should take for the surveyors to complete their written report based on the smallest facilities, you must use the largest facility, which currently is Hale Nani. I get

copies of ALL the nursing home inspections and some of them are over 100 pages long. That can't be written in 5 days. The report is not written by one surveyor but by a team of surveyors who each have their own section to focus on. Once back at their office the surveyors talk out what each one observed, compare notes, follow up with phone calls to family members who made complaints, review the regulations, decide the best way to phrase what they saw and why it's a deficiency. It's a complicated process with legal consequences. DOH/OHCA has no vested interest in slowing down the release of these reports but they need time to get them right.

They eventually send their written findings to the facility with (left column) what the regulation says and what was the *Deficiency* and the right column is left blank for the facility to respond and write their *Plan of Correction* for each deficiency. It's an inter-disciplinary plan. It's also not written by one person. Nursing has a section, Social Services has a section, Activities has a section, Pharmacy has a section, Medical Director has a section, etc. depending on what were the deficiencies. It takes time to get everyone to do their part. Medical Directors only come in once a week (at least when I was at Hale Nani) and Pharmacists only as needed.

The facility has 30 days to submit their *Plan* and get it back to DOH's Office of Healthcare Assurance (OHCA). We're not done yet. Now OHCA has 30 days to review it. They can accept as is (which would now be 60 days after the inspection) or send it back and ask the facility to tweak it some more. OHCA, and the feds' CMS, want Systemic Change. "*Don't tell me what you will do about a particular deficiency. Tell me what systems you will put in place, so this never happens again to anyone.*"

If that happens, the facility has another 30 days to get their plan right and accepted so there is a possibility it could take as much as 90 days for this process to be completed. **HB488 should really say the Annual Inspection should be posted 5 days AFTER this whole process is completed (which current law Act 213 already requires!)**

(b) Each report shall be posted on the department of health's website within **five working days** of the conclusion of each inspection and shall include the following information:

It would be of no use to the public to see only the left column listing *Deficiencies* without seeing the right column with the *Plan of Correction*.

One last point: After the facility receives their Deficiency Report, they may want to appeal and request an *Independent Informal Dispute Resolution (IIDR)*. Serious deficiencies have serious consequences. The three areas the surveyors look at are *Scope, Severity, and Pattern*. Is the deficiency in one unit or throughout the facility? Is the deficiency serious enough to cause the death of a resident? Is the deficiency continuing to happen year after year? If the surveyors believe the deficiency rises to the level of "Immediate Jeopardy," CMS can remove the administrator, stop all Medicare payment, prevent any new admissions, fine a facility up to \$10,000/day until the deficiency is corrected, etc. Facilities will often hire very sharp attorneys to contest the report - and if they win, the deficiency(s) may be removed from the final report so that is another reason why we have to honor the process and it will be posted for the public as soon as that process is completed. When the administrator and DOH sign off on FORM CMS-2567 that both agree with Deficiencies found and Plan of Correction, then it's pau. Anything before that is misleading, half the story, not of any real help to the public.

Some people will refer to the Yukio Okutsu Veterans State Home 2020 survey, which is now on the DOH website. It can be found at <https://health.hawaii.gov/ohca/files/2020/12/Yukio-State-2567-Final-12-3-2020.pdf>. It states "There were 77 residents and 37 staff members infected with the COVID-19 virus. Twenty-seven (27) resident deaths were related to the COVID-19 outbreak."

That's truly terrible BUT it had nothing to do with HB488. COVID-19 caught all of us by surprise. Initially none of us knew a person could be asymptomatic and still be spreading the virus. The facility made avoidable mistakes regarding infection control prevention and not only did they get cited but the management company (Avalon) was replaced by HHSC. I don't believe that has ever happened before in Hawaii. It's a big deal.

Inspection reports are just a snapshot taken while the surveyors were in the facility. The facility has been told what they did wrong. They start working on the corrections immediately. I know because I worked at Maunalani and Hale Nani for 9 years. Many are even corrected before the end of the Exit Interview. They in-service their staff. They ALL want to be a 5 Star facility. They certainly know everyone can see their annual Report Card. If you were admitted to that same facility a week after the inspection, it would now be a different facility. Whatever was "broke" is fixed or being fixed.

Families make a mistake putting all their eggs in that one report basket. They can review past inspection reports on Medicare.gov's *Nursing Home Compare*. (<https://www.medicare.gov/care-compare/?providerType=NursingHome&redirect=true>). They can call my office regarding concerns they may have. They can request a tour and see for themselves what kind of food is served, what Activities are available, what is the staffing ratio, how do staff treat the residents, etc. COVID-19 devastated our LTC staff. Many became infected and had to stay home for the 14 days. Many had family members infected so had to stay away from work for 14 days. Many had to figure out what to do with kids not going to school. Many were afraid of catching the virus and may have quit. It was so bad we had to hire nurses from the Mainland to fill in the gap because even our nursing agencies had no additional staff to provide facilities. If the surveyors came into a facility short-staffed because of COVID-19 for the "unannounced" annual inspection, that facility could end up with a terrible report but that wouldn't be an accurate reflection of the typical care provided.

I really believe 5 days after the inspection report is completed is "timely." Until the *Plan of Correction* is agreed upon by both DOH and the facility, it's not an *Inspection Report*, it's only a "Deficiency Report" and it may not even be accurate since the facility has the right to appeal. In America everyone has a right to their day in court so if the facility believes the surveyors were not being fair or not interpreting the regulations correctly, they have the right to be heard.

Regarding "troubled facilities," they can be placed on the *Special Focus* list (<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/SFFList.pdf>) which mean TWO inspections a year instead of just one. If you don't make improvements, you don't stay on the *Special Focus* list indefinitely, you lose your license. No facility wants that.

Mahalo for giving me this opportunity to testify.



Hawaii's Voice for a Better Future

COMMITTEE ON HEALTH, HUMAN  
SERVICES, & HOMELESSNESS  
Rep. Ryan I. Yamane, Chair  
Rep. Adrian K. Tam, Vice Chair

HB488  
HHH  
Tuesday, February 2, 2021  
9:30 p.m.  
Room 329

January 31, 2021

**Re: HB488 Relating to inspections of care facilities**

**In Strong Support**

Dear Rep. Yamane, Rep. Tam and members of the Committee:

When a spouse or parent is about to be discharged from a hospital, families need to quickly choose which permanent or temporary care home placement is best. On-line posting of all inspection reports fulfills the need for information, and that is why the Legislature passed the law in 2013 requiring the prompt posting of all reports. This bill proposes simple amendments that seek to ensure that the Department of Health cannot arbitrarily delay or fail to post inspection reports entirely—as has recently occurred. **There is no appropriation needed to implement this amendment.**

The amendment calls for the posting, without exception, of an inspection report within five days. The wording is simple and clear, and reasonable since the DOH can provide a list of deficiencies even for the largest facilities within five days of the end of the inspection visit and **the statute allows them to update as more components and information become available.**

The objective of the 2013 law was to provide critically needed information to the public, and specifically, to families needing to make placement decisions for loved ones with often only two or three days notice, and needing to know if a facility is either safe or potentially very troubled.

As to DOH's failure to post reports entirely, there was a recent high-profile illustration. According to media reports, DOH inspected the Yukio Okutsu State Veterans Home on September 9-10 and 14. **Those inspection reports have yet to be posted.** In correspondence with their deputy AG, the claim is made that those inspections are federal surveys and do not have to be posted. It appears that some copies of the report were distributed to reporters and then retracted.

This bill seeks to close that loophole, if in fact it exists (the current law makes no exception for a "federal survey").

**Clearly, this law was justified in 2013 and on-line posting of this information is still critical to the well-being of our kupuna today.**

Our objective remains that DOH promptly post each and every care home inspection report.

Kokua Council strongly recommends that the Committee pass this bill.

for Kokua Council, by  
Larry Geller  
President Emeritus and board member

Kokua Council advocates, informs, and educates to improve laws, policies and practices impacting the well-being of seniors, their families, and our community.



**HB-488**

Submitted on: 2/1/2021 7:40:51 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lila Mower	Individual	Support	No

Comments:

Timely and transparent reporting of care facility inspections are necessary for consumers to make knowledgeable choices and to reduce risks.

**HB-488**

Submitted on: 2/1/2021 9:11:31 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara J. Service	Individual	Support	No

Comments:

I encourage your strong support of HB488, to ensure that DOH provides timely reports of nursing home inspections. The public depends on this, as decisions regarding choosing a nursing home often needs to be made very quickly.

Mahalo for your consideration.

Barbara J. Service MSW (ret.)