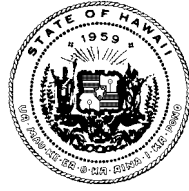


DAVID Y. IGE
GOVERNOR



CATHY BETTS
DIRECTOR

JOSEPH CAMPOS II
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

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

February 10, 2022

TO: The Honorable Representative Aaron Ling Johanson, Chair
House Committee on Consumer Protection & Commerce

FROM: Cathy Betts, Director

SUBJECT: **HB 1746 HD1 – RELATING TO HEALTH**

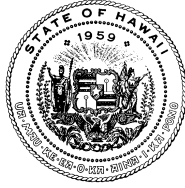
Hearing: Friday, February 11, 2022, 2:00 p.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides comments and defers to the Department of Health.

PURPOSE: The purpose of the bill clarifies the group of professionals who are prohibited from knowingly referring or transferring patients to an uncertified or unlicensed care facility. Repeals the landlord exclusion. Requires the Department of Health to prioritize complaint allegations based on severity for inspections of state-licensed or state-certified care facilities. Effective 7/1/2060. (HD1)

As drafted, the passage of this bill would not change the delivery of services provided by DHS Adult Protective and Community Services Branch (APCSB). For the Legislature's information, when DHS receives a report of alleged abuse in a suspected uncertified or unlicensed home or facility, DHS procedure is to cross report to the Department of Health, Office of Health Care Assurance. However, DHS is not required to do so.

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



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

**Testimony in SUPPORT of H.B. 1746, HD1
RELATING TO HEALTH.**

REPRESENTATIVE AARON LING JOHANSON, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Hearing Date: Friday, February 11, 2022

Room Number: Video Conf.

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department SUPPORTS H.B. 1746, H.D. 1 and appreciates the
3 Legislature's and the House Committee on Consumer Protection and Commerce's support in our
4 mutual aim to safeguard the public, protect aged and vulnerable consumers, and ensure quality of
5 care by requiring and enforcing that all residential care homes and other health care facilities,
6 agencies and organizations are licensed pursuant to state law. The purpose of this bill is to
7 protect the public and, specifically, vulnerable consumers of health care services in residential
8 care facilities.

9 The Department is actively investigating 69 complaints from a total of 200 complaints
10 received over the past two (2) years. Enforcement actions were taken to protect consumers and
11 the public. Some investigations were closed without further action and other investigations are
12 pending. Enforcement includes issuing notices of violation and orders (NOVOs) which include
13 immediate cease and desist orders, the required discharge or transfer of residents to licensed care
14 homes or facilities, and issuing administrative penalties. To date, the Department has closed
15 seven (7) homes or facilities and collected approximately \$175,000 in administrative penalties,

1 and several other homes are in the appeal hearings process. The Department anticipates being
2 successful in the appeals hearings so additional homes will become closed and additional
3 administrative penalties collected.

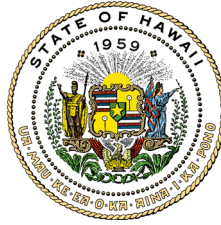
4 In addition, there are a small but growing number of care homes appearing to masquerade
5 as rental homes with several unrelated tenants all requiring care services. Homes usually meet
6 the definition of residential care homes, but landlords cite the exclusion clause to avoid the
7 state's enforcement of licensing requirements. The state is concerned that more of these homes
8 will open or that current licensed care homes will surrender their license and claim the exclusion,
9 increasing the risk of substandard quality of care or living conditions on consumers and our
10 vulnerable population. The home is the environment of care and should be inspected along with
11 the caregiver services to ensure optimal health outcomes for consumers. This would prevent
12 consumers who require care from being in accommodations which could be hazardous to their
13 health, safety, or welfare, such as homes or bedrooms without smoke or fire detectors, or
14 inadequate ingress and egress points for persons in wheelchairs or with walkers or other assistive
15 devices to escape in case of fire or other emergency, or cramped and overcrowded bedrooms, or
16 dilapidated living conditions, or homes or bedrooms that don't meet county codes for occupancy,
17 or have inadequate utilities.

18 Enforcement activities are a critical component of the state's regulatory efforts to ensure
19 the health, safety, and welfare of consumers and our *kupuna*, and such actions deserve our
20 support.

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

DAVID Y. IGE
GOVERNOR OF HAWAII

ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH



CAROLINE CADIRAO
DIRECTOR

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STATE OF HAWAII
EXECUTIVE OFFICE ON AGING
NO. 1 CAPITOL DISTRICT
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HONOLULU, HAWAII 96813-2831

Testimony in SUPPORT of HB1746 HD1
Relating to Health

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
REPRESENTATIVE AARON LING JOHANSON, CHAIR
REPRESENTATIVE LISA KITAGAWA, VICE CHAIR

Testimony of Caroline Cadirao
Director, Executive Office on Aging
Attached Agency to the Department of Health

Hearing Date: February 11, 2022
2:00 PM

Room Number: 329
via Videoconference

1 **EOA's Position:** The Executive Office on Aging (EOA), an attached agency to the Department
2 of Health, is in strong support of HB1746 HD1, Relating to Health.

3 **Fiscal Implications:** There are no fiscal appropriations included with this measure.

4 **Purpose and Justification:** The purpose of this bill is to bolster the Department of Health's
5 enforcement activities to protect the health, safety, and welfare of the State's elderly and
6 vulnerable populations by:

7 (1) More clearly defining the group of professionals who are prohibited from knowingly
8 referring or transferring patients to an uncertified or unlicensed care facility;

9 (2) Repealing the provision that a landlord, under specified conditions, shall not be
10 deemed to be providing home care services or operating a care facility that requires a
11 license; and

12 (3) Requiring the Department of Health to prioritize complaint allegations based on
13 severity for investigations of state-licensed or state-certified care facilities.

1 Elder abuse and neglect continue to be a hidden epidemic. Unlicensed care facilities are often
2 operating in single family homes in residential neighborhoods and are hidden in plain sight.
3 Unlicensed care facilities pose serious potential risks to the health and safety of the elderly and
4 vulnerable adults and are in danger of potential abuse and neglect. While increased monitoring
5 and investigation of unlicensed and uncertified care facilities are encouraged it is just as
6 important to stop those who are referring patients to these facilities. This measure will make it
7 illegal for any person or corporation in the healthcare or human services community to
8 knowingly refer a patient to an unlicensed or uncertified care facility and establishes fines for
9 such violations.

10 This measure will also enhance the authority of State health officials to make unannounced visits
11 and inspections for state-licensed and state-certified facilities. Unannounced visits and
12 inspections will help to make care facilities more accountable and can ensure that the quality of
13 care and conditions of the facility are maintained regularly and not just for an announced visit.

14 **Recommendation:** The EOA strongly supports HB1746 HD1 which will protect elder rights
15 and ensure the quality of care for the State's elderly and vulnerable populations.

16 Thank you for the opportunity to testify.



HB1746 Refer to Unlicensed Facility, Fine for Counselors

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Aaron Ling Johanson, Chair

Rep. Lisa Kitagawa, Vice Chair

Friday, Feb 11 2022: 2:00 pm : Videoconference

Hawaii Substance Abuse Coalition Oppose HB1746:

ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization for substance use disorder and co-occurring mental health disorder treatment, prevention, and harm reduction agencies.

We recommend removing Substance abuse workers from this bill because they may knowingly refer to another facility but would be unknowing whether it is licensed.

It is the state's job to license, monitor or close inappropriate facilities.

Providers would likely not know the licensure status of a facility that they would make a referral because **the state doesn't inform providers.**

The state licenses facilities in stages.

1. New facilities need 1 year of operation to qualify for licensure.
2. State issues temporary license but is many months behind in issuing the temporary licensure.
3. State passes facility for licensure but is many months behind in issuing the permanent licensure.
4. If a facility is performing poor or has concerns about licensure, then the state could inform providers.

Providers have no idea if facility is licensed, has a temporary license or a permanent licensure.

What providers do know is the immediate need to find a bed for a patient and refer.

- The patient makes the final decision about where to go and must make the final arrangements for payment and transition.
- The patient is responsible for checking on insurance coverage. Many facilities don't accept all insurances. Insurances don't always contract with all facilities.

If a staff or agency is accepting kickbacks, then they are violating the law and subject to legal actions and fines.

- **If this is what this bill is about then needs clarification.**

We understand that the state is overwhelmed with work and understaffed, **but providers are not in the position nor have the information to do the state's job.**

Please remove substance use disorder agencies and workers from this bill

- **or provide much more clarity.**

We appreciate the opportunity to provide testimony and can answer any questions.

HB-1746-HD-1

Submitted on: 2/10/2022 1:51:00 PM

Testimony for CPC on 2/11/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
MYRIAM TABANIAG	Alliance of Professional Primary Caregivers	Support	Yes

Comments:

Honorable Chair, Representative Aaron Ling Johanson, Honorable Vice Chair, Representative Lisa Kitafawa and Committee Members, Good Afternoon.

My name is Myriam Tabaniag, a Registered Nurse, who owns and runs two licensed 8-bed carehomes in Kaneohe for over 21 years now. I am also the First Vice President of Alliance of Professional Primary Care Administrators (APPCA).

Our newly formed organization, Alliance of Professional Primary Care Administrators (APPCA), is about 3 years old now but with members of strong voices, lobbying here at the Capitol for almost 2 decades now, advocating for the frail elderly in the State of Hawaii.

With our new organization, we are a very strong force because we are not just comprised of Carehomes, but we have in our “pack”, Community Care Foster Family Homes (CCFHS), which include the Big Island; Developmental Disabilities Domiciliary Homes (DD Dom Homes) and Disabled Adult Foster Homes (DAFH).

I strongly **SUPPORT** the intent of the Bill, HB1746.

The caregiving business is a regulated industry. Therefore, it would be unlawful to run any business without a valid license or certificate. These unlicensed homes and facilities should have not been in existence in the first place. We have been fighting for the closures of these unlicensed / uncertified homes for the past 7 years. Honorable Chair, Vice Chair and Committee Members, it has been very frustrating and disheartening to know that these unlicensed/uncertified homes are still open and in operation up to today; being allowed to do businesses knowing that our frail and disabled kupunas’ lives are in jeopardy. So, please legislators, pass the law to make it unlawful for any person, corporation or any other entity to refer or transfer residents to any facility without a license or certificate, as these facilities DO NOT have trusted government agency(ies) for a thorough inspection and/or oversight. I truly agree that they should be imposed a large amount of fine.

Carehome operators and caregivers in the unlicensed/uncertified homes, facilities or agencies do not have to follow required health and consumer protection regulations such as not securing TB

clearances and CPR/First Aid; no criminal background checks, no formal caregiving education and experience; no knowledge in nutrition especially in the procurement of food and management in food service and no menus to follow, etc.

These unlicensed / uncertified home operators most times have multiple homes that they are operating and have up to 8 or more residents in each home. In a licensed Type II care home with 8 residents, or if a care home operator in a licensed home owns and is running multiple homes, it is mandated by the State licensing division that we have a Registered Dietitian on board as a part of the team together with the nurse / case manager to protect the health, safety and welfare of the State's elderly and vulnerable population.

I totally and strongly agree that **Section 3, Section 321-488, of the Hawaii Revised Statutes is totally repealed.** This has always been the cop out of the unlicensed/uncertified homes and operators as they are considering their residents as "renters" or "tenants", therefore these homes to them are not considered unlicensed or uncertified, even though these operators are housing them and also providing care services to the so called "renters/tenants".

In the unlicensed / uncertified homes, the resident or resident's representative would be signing two contracts. One would be the rental contract and the second one would be the Caregiving Services rendered to them paid in the amounts of \$7000 to \$10,000 per month or more. They have a lot of money, and can always afford to hire the top lobbyists in the State and lawyers to back them up.

With that said, the frail, helpless kupunas are not being considered or thought of if they can even evacuate if there's a fire in the unlicensed/uncertified homes/facilities that they are living in, because these homes with up to 10 residents or more are at fire risks / hazards as there are no sprinkler systems in these ordinary homes, no fire codes that were implemented before starting the business.

Another set of landlords are those current care home operators of unlicensed homes that have made a lot of money who are buying and building 12-15 bedroom homes to be used as unlicensed care home facilities and being rented to care home operators or agencies who want to start an unlicensed/uncertified home. Because these homes being bought or built do not follow building and fire codes, they are ready to be used as unlicensed homes right away. Different in a licensed carehome where the operator would need a minimum of \$350,000 to renovate the home to be in compliant of the building codes and fire codes for the safety of the residents and caregivers.

There are also rich investors in town that are procuring homes or building new homes in the more elite area of the State and renovating them for rentals to the "more able to pay" population.

In summary, we beg you, Legislators to see to it that there should not be any resident being placed in these unlicensed/uncertified homes; fine any individual, group of professionals or placement agencies that are placing residents to these unlicensed/uncertified homes at maximum fine allowable by law; closure of the unlicensed/uncertified homes has been way overdue. It should not take 8 years to close down unlicensed homes in a regulated industry.

Thank you for the opportunity to testify.

Myriam Tabaniag

HB-1746-HD-1

Submitted on: 2/10/2022 1:56:43 PM

Testimony for CPC on 2/11/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Samantha Alexandra Cazin	Individual	Support	No

Comments:

I strongly support this bill.



LATE

**Testimony to the House Committee on Consumer Protection and Commerce
Friday, February 11, 2022; 2:00 p.m.
State Capitol, Conf. Room 329
Via Videoconference**

RE: HOUSE BILL NO. 1746, HOUSE DRAFT 1, RELATING TO HEALTH.

Chair Johanson, Vice Chair Kitagawa, 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 **OPPOSES** House Bill No. 1746, House Draft 1, RELATING TO HEALTH.

By way of background, the HPCA represents Hawaii's Federally Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines to over 150,000 patients each year who live 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.

Among other things, this bill would:

- (1) Clarify the group of professionals who are prohibited from knowingly referring or transferring patients to an uncertified or unlicensed care facility;
- (2) Repeal the provision that a landlord, under specified conditions, not be deemed to be providing home care services or operating a care facility that requires a license; and
- (3) Require the Department of Health to prioritize complaint allegations based on severity for investigations of state-licensed or state-certified care facilities.

This bill would take effect on July 1, 2060.

According to SECTION 2 of this bill, ". . . any person, corporation, or any other entity in the health care or human services community. . ." who ". . . knowingly refer[s] or transfer[s] patients to an uncertified or unlicensed facility. . ." would be subject to an administrative penalty of \$500 for the first violation, \$1,000 for the second violation, and \$2,000 for the third and each succeeding violation.

This provision places the onus on health care providers to determine the licensure and certification status of any and all care facilities prior to referring a patient to the facility. During the provision of primary care to Hawaii's Medicaid population and rural and underserved communities, it is not uncommon for our physicians or support service personnel to occasionally make referrals to adult residential care homes and other facilities regulated under Chapter 321, Hawaii Revised Statutes.

When such referrals are made, FQHC performs its reasonable due diligence to make sure that the facility to which the patient is referred is operating lawfully. However, the HPCA recognizes that the certification and licensure standards for these facilities are extensive, and that conceivably such a facility might violate a condition or requirement for many reasons beyond anyone's control. Examples that come to mind include:

- (1) A power outage that prevents medication to be refrigerated at the site where care is provided;
- (2) A nurse calls in sick and the facility experiences difficulty in finding a replacement before the shift is scheduled to start;
- (3) The check that was sent in for a licensure fee is received late.

In discussions with our medical staff, because it is unclear whether the protections provided to FQHCs under the federal Tort Claims Act would apply to liability resulting from this statute, the enactment of this provision will likely result in FQHCs no longer referring patients to these types of care facilities. This will place even more pressure on patients and their families to address their immediate needs.

It is for this reason that the HPCA respectfully urges this committee to file this bill.

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.

LATE

HB-1746-HD-1

Submitted on: 2/11/2022 12:23:31 PM

Testimony for CPC on 2/11/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lila Mower	Individual	Support	No

Comments:

I support this measure.