

JAN 25 2023

A BILL FOR AN ACT

RELATING TO UNLICENSED CARE HOMES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to expand
2 protections for vulnerable senior citizens, the public at large,
3 and residents of care homes by ensuring compliance with
4 licensure requirements by clarifying the group of professionals
5 who are prohibited from knowingly referring or transferring
6 patients to an uncertified or unlicensed care facility, and by
7 repealing the landlord exclusion.

8 The department of health has conducted investigations on
9 221 alleged unlicensed care homes during the past 48 months and
10 has closed 11 homes and assessed \$2,489,800 in administrative
11 penalties. Investigations on 89 unlicensed homes are underway
12 or pending. Meanwhile, unlicensed care homes continue to
13 operate and pose a danger to the public and to frail, elderly,
14 and vulnerable populations. Licensed care operators and other
15 persons continue to refer or transfer patients to unlicensed
16 care homes unbeknownst to patients. This practice places
17 patients at risk and better enforcement on the sources of these
18 referrals must be put in place. In addition, at least 21

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1 unlicensed care homes have used the landlord exclusion to avoid
2 the department's consumer protections through its regulatory
3 oversight. This, too, places patients at risk. By repealing
4 the landlord exclusion, the department has the ability to
5 conduct an investigation to determine whether unlicensed
6 activity is occurring or not.

7 SECTION 2. Section 321-487, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) It shall be unlawful for [~~a certified or licensed~~
10 ~~healthcare provider or certified or licensed care facility~~] any
11 person, corporation, or any other entity to knowingly refer or
12 transfer patients to an uncertified or unlicensed care facility.
13 The department may impose a fine on any [~~certified or licensed~~
14 ~~healthcare provider or certified or licensed care facility~~]
15 person, corporation, or any other entity that knowingly refers
16 or transfers patients to a care home, agency, or facility
17 operating without a certificate or license as required by law;
18 provided that "knowingly" includes, but is not limited to,
19 failing to determine whether the care home, agency, or facility,
20 has the required certificate or license; provided further that
21 the fine shall be no more than:

22 (1) \$500 for the first violation;

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1 (2) \$1,000 for the second violation; and
2 (3) \$2,000 for the third and each succeeding violation."

3 SECTION 3. Section 321-488, Hawaii Revised Statutes, is
4 repealed.

5 [~~§§321-4881 Exclusion. For purposes of this chapter, a~~
6 ~~landlord, as defined in section 521-8, shall not be deemed to be~~
7 ~~providing home care services or to be operating a care facility~~
8 ~~requiring a license under this chapter solely due to a landlord~~
9 ~~permitting a tenant to receive care services from persons~~
10 ~~licensed to provide care services, if licensing is otherwise~~
11 ~~required by law, and the landlord does not require a tenant to~~
12 ~~use or pay for care services as a condition of the rental~~
13 ~~agreement. For the purposes of this section, an operator means~~
14 ~~an individual or entity that operates or manages a healthcare~~
15 ~~facility or similar facility that provides care services in that~~
16 ~~facility."]~~

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act, upon its approval, shall take effect
20 on July 1, 2023.

21 INTRODUCED BY: *Wm. N. M.*

22 BY REQUEST

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Report Title:

Care Homes; Unlicensed; Landlord Exclusion

Description:

Clarify the group of professionals who are prohibited from knowingly referring or transferring patients to an uncertified or unlicensed care facility, and repeal the landlord exclusion.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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JUSTIFICATION SHEET

DEPARTMENT: HEALTH

TITLE: A BILL FOR AN ACT RELATING TO UNLICENSED CARE HOMES.

PURPOSE: To clarify the group of professionals who are prohibited from knowingly referring or transferring patients to an uncertified or unlicensed care facility, and repeal the landlord exclusion.

MEANS: Amend section 321-487(a) and repeal section 321-488, Hawaii Revised Statutes.

JUSTIFICATION: The department has conducted investigations on 221 alleged unlicensed care homes during the past 48 months and has closed 11 homes and assessed \$2,489,800 in administrative penalties. Investigations on 89 unlicensed homes are underway or pending. Meanwhile, unlicensed care homes continue to operate and pose a danger to the public and to frail, elderly, and vulnerable populations. Licensed care operators and other persons continue to refer or transfer patients to unlicensed care homes unbeknownst to patients. Better enforcement on the source of referrals is needed to safeguard the public. In addition, at least twenty-one unlicensed care homes have used the landlord exclusion to avoid the department's consumer protections through regulatory oversight. Repeal of the exclusion allows the department to conduct an investigation to determine whether unlicensed activity is occurring or not.

Impact on the public: Expands consumer protections for vulnerable populations and the public at large and residents of care homes by ensuring compliance with licensure requirements.

Impact on the department and other agencies:

The department's enforcement powers will be greatly enhanced, because it will take away the ability of caretakers to hide behind a landlord defense and will eliminate this scheme that lures unsuspecting people into their care.

GENERAL FUND: N/A.

OTHER FUNDS: N/A.

PPBS PROGRAM
DESIGNATION: HTH-720.

OTHER AFFECTED
AGENCIES: N/A.

EFFECTIVE DATE: July 1, 2023.