
A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The legislature finds that the State has nearly
2 two thousand licensed long-term care facilities serving
3 approximately thirteen thousand residents. However, there are
4 many care facilities that have closed and others that continue
5 to operate without a license or certification by the department
6 of health.

7 The legislature also finds that the prevalence of
8 unlicensed care homes and facilities in the State continues to
9 pose significant health and consumer protection issues for
10 Hawaii's elderly and vulnerable populations. Over the past
11 three years, the department of health has received hundreds of
12 complaints regarding unlicensed care homes and facilities, which
13 has resulted in the closure of several homes and facilities and
14 the significant collection of fines by the department. Since
15 December 2019, the department has closed at least seven
16 unlicensed adult residential care homes and two unlicensed



1 special treatment facilities or therapeutic living programs and
2 imposed over \$800,000 in fines.

3 The legislature further finds that unbeknownst to long-term
4 care patients, certain licensed care home operators and other
5 persons are referring or transferring patients to unlicensed
6 care homes and facilities. This illegal practice has cost some
7 patients thousands of dollars due to denied insurance
8 reimbursements. The practice also endangers patients' health
9 and safety, as unlicensed care homes and facilities do not have
10 to follow required health and consumer protection regulations,
11 which include liability insurance requirements, criminal
12 background checks of employees, building and fire code
13 requirements, standards for qualified staff, and billing and
14 financial record requirements. The tragedy of unlicensed and
15 uncertified care homes is played out daily across the State,
16 victimizing kupuna, people with disabilities, and families
17 trying to do the best they can to retain care for the patients.

18 The purpose of this Act is to bolster the department of
19 health's enforcement activities to protect the health, safety,
20 and welfare of the State's elderly and vulnerable populations
21 by:



- 1 (1) Repealing the provision in existing law that requires
2 the department of health to conduct unannounced visits
3 and inspections, including inspections for relicensing
4 or recertification, of state-licensed special
5 treatment facilities;
- 6 (2) Requiring the department of health to prioritize
7 investigations of complaints against state-licensed or
8 state-certified care facilities based on the severity
9 of the allegations;
- 10 (3) Clarifying who is prohibited from knowingly referring
11 or transferring patients to an uncertified or
12 unlicensed care facility; and
- 13 (4) Repealing the provision in existing law that a
14 landlord, under specified conditions, shall not be
15 deemed to be providing home care services or operating
16 a care facility that requires a license.

17 SECTION 2. Section 321-1.9, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[+]§321-1.9[+] Inspections; visits; state-licensed or
20 state-certified care facilities. (a) The department of health
21 shall conduct unannounced visits and inspections, including



1 inspections for relicensing or recertification, for the
2 following state-licensed or state-certified care facilities on
3 an annual basis and at [~~such~~] intervals as determined by the
4 department to ensure the health, safety, and welfare of each
5 resident:

6 (1) Adult day health centers;

7 (2) Adult day care centers;

8 (3) Community care foster family homes;

9 (4) Developmental disabilities domiciliary homes;

10 (5) Adult foster homes; and

11 (6) Long-term care facilities, including but not limited
12 to:

13 (A) Adult residential care homes;

14 (B) Expanded adult residential care homes;

15 (C) Assisted living facilities;

16 (D) Intermediate care facilities;

17 (E) Nursing facilities; and

18 (F) Skilled nursing facilities [~~+~~ and

19 ~~(7) Special treatment facilities]~~.

20 (b) Unannounced visits may be conducted during or outside
21 regular business hours. All inspections relating to follow-up



1 visits, visits to confirm correction of deficiencies, or visits
2 to investigate complaints or suspicion of abuse or neglect shall
3 be conducted unannounced during or outside regular business
4 hours. Annual inspections for relicensing or recertification
5 may be conducted during regular business hours or at intervals
6 determined by the department. Annual inspections for
7 relicensing or recertification shall be conducted without
8 notice.

9 (c) The department shall prioritize investigations of
10 complaints based on the degree of severity of the allegations
11 and shall give highest priority to allegations of actual harm or
12 potential harm.

13 [~~e~~] (d) The department shall adopt rules pursuant to
14 chapter 91 to effectuate the purposes of this section."

15 SECTION 3. Section 321-487, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) It shall be unlawful for [~~a certified or licensed~~
18 ~~healthcare provider or certified or licensed care facility~~] any
19 person, corporation, or any other entity that provides health
20 care or human services to knowingly refer or transfer patients
21 to an uncertified or unlicensed care facility. The department



1 may impose a fine on any [~~certified or licensed healthcare~~
2 ~~provider or certified or licensed care facility~~] person,
3 corporation, or any other entity that provides health care or
4 human services that knowingly refers or transfers patients to a
5 care home, agency, or facility operating without a certificate
6 or license as required by law; provided that the fine shall be
7 [~~no~~] not more than:

- 8 (1) \$500 for the first violation;
- 9 (2) \$1,000 for the second violation; and
- 10 (3) \$2,000 for the third and each succeeding violation."

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

13 [~~"§321-488~~] ~~Exclusion. For purposes of this chapter, a~~
14 ~~landlord, as defined in section 521-8, shall not be deemed to be~~
15 ~~providing home care services or to be operating a care facility~~
16 ~~requiring a license under this chapter solely due to a landlord~~
17 ~~permitting a tenant to receive care services from persons~~
18 ~~licensed to provide care services, if licensing is otherwise~~
19 ~~required by law, and the landlord does not require a tenant to~~
20 ~~use or pay for care services as a condition of the rental~~
21 ~~agreement. For the purposes of this section, an operator means~~



1 ~~an individual or entity that operates or manages a healthcare~~
2 ~~facility or similar facility that provides care services in that~~
3 ~~facility."]~~

4 SECTION 5. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 6. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect on June 30, 2050.

10



Report Title:

Care Facilities; Unlicensed Care Facilities; Uncertified Care Facilities; Complaint Allegations; Landlord Exclusion; Special Treatment Centers; Inspections; DOH

Description:

Repeals existing law that requires the Department of Health to conduct unannounced visits and inspections, including inspections for relicensing or recertification, of state-licensed special treatment facilities. Requires the Department of Health to prioritize investigations of complaints against state-licensed or state-certified care facilities based on the degree of severity of the allegations. Clarifies that any person, corporation, or any other entity that provides health care or human services is prohibited from knowingly referring or transferring patients to an uncertified or unlicensed care facility. Repeals existing law providing that a landlord shall not be deemed to be providing home care services or operating a care facility that requires a license under specified conditions. Effective 6/30/2050. (SD1)

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

