

ACT 148

H.B. NO. 1911

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

“§321-A Investigations. Upon receiving a report that a person, corporation, or any other entity may be operating a care facility without a certificate or license as required by law and issued by the department of health, or that a home or any type of living arrangement may be operating as a care facility without a certificate or license as required by law and issued by the department, the department may conduct an investigation for the limited purposes of determining whether the person or entity is operating without a required certificate or license in accordance with the following provisions:

- (1) The department may request access to the location indicated in the report; or
- (2) The department may file a complaint with the district court in the circuit of the location indicated in the report, and the district court, upon a finding of probable cause, may issue a search warrant directed to the department and the appropriate county police department, if necessary, to investigate the location pursuant to this section between the hours of sunrise and sunset.

§321-B Action upon investigation. Upon investigation, the department may take action on confirmed findings that the subject of a report is operating a care facility without the required certificate or license and may do any or all of the following:

- (1) Resolve the matter in an informal fashion as is appropriate under the circumstances;
- (2) Exercise the department’s right of entry under section 321-C;
- (3) File a petition with the district court for enforcement, protective, or remedial action; or
- (4) Pursue any protective or remedial actions authorized by law.

§321-C Right of entry. The department, when engaged in an investigation pursuant to section 321-A, may visit and communicate with any person operating the facility, home, or other type of living arrangement that is the subject of a report. Any person intentionally or knowingly obstructing or interfering with the department's right of entry, the department's investigation of a report of operating without a certificate or license, or the department's communication with a vulnerable person reported to be receiving care from an uncertified or unlicensed operator shall be guilty of a misdemeanor.

§321-D Penalty. Any person who intentionally operates a care facility without a certificate or license shall be guilty of a misdemeanor and shall be fined no more than:

- (1) \$100 for each day of uncertified or unlicensed operation for the first violation;
- (2) \$500 for each day of uncertified or unlicensed operation for the second violation; and
- (3) \$1,000 for each day of uncertified or unlicensed operation for the third and each succeeding violation.

§321-E Referral or transfers to uncertified or unlicensed care facility; penalty. (a) It shall be unlawful for a certified or licensed healthcare provider or certified or licensed care facility to knowingly refer or transfer patients to an uncertified or unlicensed care facility. The department may impose a fine on any certified or licensed healthcare provider or certified or licensed care facility that knowingly refers or transfers patients to a care home, agency, or facility operating without a certificate or license as required by law; provided that the fine shall be no more than:

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

(b) Notwithstanding subsection (a) to the contrary, the healthcare provider or healthcare facility shall not be fined under this section if:

- (1) A patient or anyone authorized to make decisions on behalf of the patient requests to be transferred to an uncertified or unlicensed care facility;
- (2) The care facility becomes uncertified or unlicensed after a referral or transfer; or
- (3) The healthcare provider or healthcare facility refers or transfers a patient in good faith to a care facility, without actual proof or knowledge that the care facility is uncertified or unlicensed.

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

SECTION 2. Section 321-14.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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“(b) The department of health shall adopt [rules in accordance with chapter 91] interim rules, which shall be exempt from chapters 91 and 201M, to effectuate the licensure of home care agencies; provided that the interim rules shall remain in effect until the sooner of October 1, 2018, or the adoption of rules pursuant to chapters 91 and 201M to:

- (1) Protect the health, safety, and civil rights of clients of home care agencies; and
- (2) Provide for the licensure of home care agencies.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2018.

(Approved July 6, 2018.)

Note

1. Edited pursuant to HRS §23G-16.5.