

# SB2384

Measure Title: RELATING TO LICENSING INSPECTIONS.

Report Title: Licensing; State-licensed Care Facilities; Marijuana Dispensaries; Unannounced Inspections

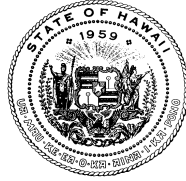
Description: Requires the department of health to conduct unannounced visits and relicensing inspections for state-licensed care facilities and medical marijuana dispensaries.

Companion:

Package: None

Current Referral: CPH

Introducer(s): BAKER, INOUE, KEITH-AGARAN, KIDANI, NISHIHARA, TOKUDA, Gabbard



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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Honolulu, HI 96801-3378  
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**Testimony in SUPPORT of SB2384  
RELATING TO LICENSING INSPECTIONS**

SENATOR ROSALYN H. BAKER, CHAIR  
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH  
Hearing Date: Wednesday, February 17, 2016 Room Number: 229

1 **Fiscal Implications:** None.

2 **Department Testimony:** Thank you for the opportunity to testify in SUPPORT of this bill with  
3 technical amendments.

4 This bill will require the relicensing or recertification inspections of care facilities to be  
5 unannounced. The current statutes either require the relicensing inspections of Adult Residential  
6 Care Homes (ARCHs), Expanded ARCHs (E-ARCH), and medical marijuana dispensaries to be  
7 announced, or in the case of recertification of Community Care Foster Family Homes (CCFFH),  
8 the statute is silent.

9 The Department prefers that relicensing or recertification surveys be unannounced in  
10 order to maximize the readiness of the care homes or dispensaries for an inspection by the  
11 Department. This will be consistent with all other relicensing inspections of health care facilities  
12 under the regulatory responsibility of the Office of Health Care Assurance (OHCA), and is seen  
13 as an improved safeguard for the public.

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

15 **Offered Amendments:** Technical amendments to the title and text of the statute to indicate  
16 licensed or certified care facilities where it identifies residential care facilities, but keep the

- 1 language on the licensing of medical marijuana dispensaries since the dispensaries are licensed
- 2 (not certified) by the state. Also, revise “Developmentally disabled adult foster homes” to
- 3 “Adult foster homes” pursuant to Section 321-11.2, HRS.



**STATE OF HAWAII**  
STATE COUNCIL  
ON DEVELOPMENTAL DISABILITIES  
919 ALA MOANA BOULEVARD, ROOM 113  
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TELEPHONE: (808) 586-8100 FAX: (808) 586-7543  
February 17, 2016

The Honorable Senator Rosalyn H. Baker, Chair  
Senate Committee on Commerce, Consumer Protection,  
and Health  
Twenty-Eighth Legislature  
State Capitol  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Senator Baker and Members of the Committee:

SUBJECT: SB 2384 – Relating to Licensing Inspections

The State Council on Developmental Disabilities (DD) **SUPPORTS THE INTENT OF SB 2384**. The bill requires the Department of Health (DOH) to conduct unannounced visits and relicensing inspections for State-licensed care facilities and medical marijuana dispensaries.

However, we respectfully **propose an amendment to delete “Developmentally disabled adult foster homes” from the list of State-licensed care facilities in SECTION 2, Page 2, line 11**. The purpose of this section is for DOH to conduct unannounced visits and inspections, including inspections for relicensing State-licensed care facilities, on an annual basis and at such intervals as determined by the department to ensure the health, safety, and welfare of each resident.

Adult Foster Homes for individuals with DD are certified and monitored under the Hawaii Administrative Rules, Title 11 Department of Health, Chapter 148 Certification of Adult Foster Homes. This chapter is based substantially upon Chapter 890, “Certification of Foster Family Boarding Home for Children,” Public Welfare Division, Department of Social Services and Housing. [Eff. 9/16/54; am 3/20/87]. Basically, the Adult Foster Homes were intended to be exactly as a Child’s Foster Home which the individual lives with a family, in the family’s home, in a family environment. Adult Foster Homes are not facilities, and they were not intended to be a business. Therefore, they should not be categorized with such businesses as they **ARE NOT a State-licensed care facility**.

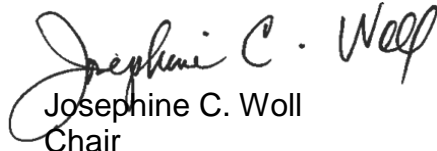
The Honorable Rosalyn H. Baker  
Page 2  
February 17, 2016

Thank you for the opportunity to submit testimony supporting the intent of SB 2384 and for your consideration of the above proposed amendment.

Sincerely,



Waynette K.Y. Cabral, MSW  
Executive Administrator



Josephine C. Woll  
Chair

To: Senator Rosalyn Baker, Chair, Commerce, Consumer Protection and Health  
Committee  
Vice-Chair Senator Michelle Kidani

Date: February 17, 2016, 9:00 AM, House Conference, Rm 229  
Re: SB 2384 – Relating to Care Facilities

Aloha Chair Baker, Vice-Chair Kidani and Committee Members:

My name is *MARINA MAHUEL* am a Care Home Operator in *Sea View, Waipohia*  
My written testimony is in strong OPPOSITION to the bill.

HRS 321-15.6 has been in existence, I am respectfully asking the Committee to retain the language of the statute "**Annual inspections for relicensing shall be conducted with notice, unless otherwise determined by the department.**"

Community-based care facilities are governed by different regulations regarding unannounced visits and annual inspection for relicensing. The Department of Health has the jurisdiction of the Adult Residential Care Homes under the guidance of HRS 321-15.6. On the other hand, the Department of Human Services has the jurisdiction of the foster family homes using the guidelines under Hawaii Administrative Rules Title 17, Chapter 1454.

The current practice of the Department of Health through the Office of Health Care Assurance is to send notice to the care home operator regarding an upcoming annual relicensing inspection. The notice says "a certain day of the month but it does not announce the exact date." The reason OHCA has promulgated this system to allow the care home operator to be present during the inspection. There are many reasons that the care home operator is out the house like bringing residents to their medical appointments, picking up medications, buying provisions and supplies for the residents, outings for residents, and once in a while a trip to the emergency room. In addition, care home operators have also personal appointments and errands. OHCA requires that the primary caregiver, the care home operator, and the residents must be present during the annual relicensing inspection.

The statute already has the provision for unannounced visits. Anybody from the OHCA can conduct unannounced visits at any intervals at its discretion to confirm correction of deficiencies and to investigate complaints for suspicion of neglect and abuse.

The issue of unannounced visit resurfaced last year because a resident passed away in a community-based care facility due to a decubitus ulcer. I do understand the public sentiment regarding the death. In the 90s, there was another death due to the same cause. There was an emotional debate regarding the issue of "unannounced visit". But such death could be prevented if people are accountable and responsible for what they do. It only takes some administrative actions and measures to prevent such horrible death. In the care giving industry, nobody wants such death to happen. Unannounced

visit could be a deterrent but not a solution if people involved in the care of the resident are not doing their responsibilities. What about oversight? Could we have done a better oversight after the case in the 90s? In other words, enacting bills for unannounced visit for relicensing survey is not the answer. We need to enforce, ACCOUNTABILITY, RESPONSIBILITY and strong OVERSIGHT,

In general, caregivers in all the community-based care facilities are providing excellent care to our aging and frail Kupuna, as indicated by only 2 incidents for the last 25 years. In 2012, Center for Medicare and Medicaid Services (CMS) reported 109 surgical deaths in Hawaii due to preventable complications. There are also many vehicular deaths occurring in our highways. Is there any law passed for conduct unannounced visits to surgical sites or to the DMV's?

Mahalo for your attention.

Sincerely,

*Melina Mard - 671-8817*  
Care Home Operator

To: Senator Rosalyn Baker, Chair, Commerce, Consumer Protection and Health  
Committee  
Vice-Chair Senator Michelle Kidani

Date: February 17, 2016, 9:00 AM, House Conference, Rm 229  
Re: SB 2384 – Relating to Care Facilities

Aloha Chair Baker, Vice-Chair Kidani and Committee Members:

My name is Ramon Sumibcay. I am a Care Home Operator and Vice President of the organization ARCA, Alliance of Residential Care Administrators. My written and in person testimony is in strong OPPOSITION to the bill.

HRS 321-15.6 has been in existence, I am respectfully asking the Committee to retain the language of the statute **“Annual inspections for relicensing shall be conducted with notice, unless otherwise determined by the department.”**

Community-based care facilities are governed by different regulations regarding unannounced visits and annual inspection for relicensing. The Department of Health has the jurisdiction of the Adult Residential Care Homes under the guidance of HRS 321-15.6. On the other hand, the Department of Human Services has the jurisdiction of the foster family homes using the guidelines under Hawaii Administrative Rules Title 17, Chapter 1454.

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Mahalo for your attention.

Ramon Sumibcay, MHA, BSN, RN  
MAJ (ret), US Army