

STAND. COM. REP. NO.

3118

Honolulu, Hawaii

MAR 23 2018

RE: H.B. No. 1911
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred H.B. No. 1911, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO HEALTH,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Protect the health, safety, civil rights, and rights of choice for vulnerable adults;
- (2) Establish appropriate measures to ensure a safe environment and consumer protection for vulnerable adults who are receiving home health care or home care in care facilities or residences;
- (3) Grant the Department of Health proper investigative authority to enter care facilities, residences, or agencies providing home health care to vulnerable adults;
- (4) Prohibit care facilities previously licensed by the Department of Health from operating without proper license;



- (5) Appropriate funds to the Department of Health to implement and maintain a forum on its website to facilitate placement of individuals in state-licensed care facilities; and
- (6) Require the Department of Health to convene a working group to discuss and provide feedback on the implementation and maintenance of a forum where state-licensed care facilities may post vacancy information, and submit a report to the Legislature of the findings and recommendations of the working group.

Your Committee received testimony in support of this measure from the Office of the Long Term Care Ombudsman; Case Management Professionals, Inc.; Big Island Adult Residential Care Home; Big Island Adult Foster Home Organization; Big Island Adult Foster Home Operators; United Caregivers of Hawaii; Community Home Care Association of Hawaii; Abilities Unlimited; Hawaii Maternal and Infant Health Collaborative; and thirty-six individuals. Your Committee received testimony in opposition to this measure from the Department of Human Services, AARP Hawaii, Maile Case Management, and three individuals. Your Committee received comments on this measure from the Healthcare Association of Hawaii, The Queen's Health Systems, Catholic Charities Hawaii, Comprehensive Innovations for Senior Services, Hale Makua Health Services, and one individual.

Your Committee finds that this measure is intended to protect vulnerable adults by authorizing the Department of Health to inspect, certify, and license home care facilities and to investigate unlicensed home care facilities, by establishing penalties for violations of licensing requirements, appropriating funds for the Department of Health to implement and maintain an online forum to facilitate placement and referrals of individuals to state-licensed care facilities, and requiring the Department of Health to convene a working group to provide feedback on implementation and maintenance of the online forum. However, your Committee has concerns that this measure lacks clarity and imposes undue restrictions on consumers and care providers, including the imposition of administrative proceedings.

Your Committee notes that a prior draft of this measure, H.B. No. 1911, H.D. 1, Regular Session of 2018, authorizes the



Department of Health to investigate care facilities reported to be operating without an appropriate certificate or license issued by the Department and establishes penalties for violations and for patient referral or transfer to uncertified or unlicensed care facilities. Your Committee finds that the language in H.B. No. 1911, H.D. 1, is preferable because it is clearer and imposes fewer restrictions on consumers and care providers.

Your Committee has also heard the concerns of the Department of Health that the Department is aptly suited to address this matter in detail, has drafted interim rules that can go into effect immediately, and is ready to begin the public hearing process to formally adopt rules pursuant to chapter 91, Hawaii Revised Statutes. Your Committee has also heard the concerns of industry members that fines alone, without the possibility of administrative proceedings, constitute sufficient compulsion to cooperate in the licensing scheme, and that punishing health care providers for referring or transferring patients in good faith to a care facility without actual proof or knowledge that the care facility is uncertified or unlicensed does not advance the purposes of the measure. Your Committee also notes that the Department of Health and industry stakeholders have reached consensus on proposed additional amendments to address these concerns.

Accordingly, your Committee has amended this measure by:

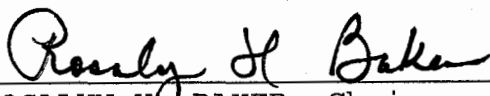
- (1) Deleting its contents and inserting the contents of H.B. No. 1911, H.D. 1, a measure that:
 - (A) Authorizes the Department of Health to investigate and enter care facilities reported to be operating without an appropriate certificate or license issued by the Department and take certain actions upon confirmed findings of uncertified or unlicensed care facilities; and
 - (B) Establishes penalties for violations and for knowingly referring or transferring patients to uncertified or unlicensed care facilities; and
- (2) Further amending the measure by:



- (A) Establishing certain conditions under which certified or licensed healthcare providers and care facilities will not be subject to a fine when a patient is referred or transferred to an uncertified or unlicensed care facility;
- (B) Requiring the Department of Health to adopt interim rules to effectuate the licensure of home care facilities and making those interim rules effective until the sooner of October 1, 2018, or final adoption of rules; and
- (C) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1911, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1911, H.D. 2, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,




ROSALYN H. BAKER, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1911 HD2	CPH, WAM	3/21/18		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
TOKUDA, Jill N. (VC)	/			
CHANG, Stanley	/			
ESPERO, Will	/			
IHARA, Jr., Les	/			
NISHIHARA, Clarence K.	/			
RUDERMAN, Russell E.	/			
TOTAL	7			
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes