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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

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

4           "§321-A Investigations. Upon receiving a report that a  
5 person, corporation, or any other entity may be operating a care  
6 facility without a certificate or license as required by law and  
7 issued by the department of health, or that a home or any type  
8 of living arrangement may be operating as a care facility  
9 without a certificate or license as required by law and issued  
10 by the department, the department may conduct an investigation  
11 for the limited purposes of determining whether the person or  
12 entity is operating without a required certificate or license in  
13 accordance with the following provisions:

14           (1) The department may request access to the location  
15           indicated in the report; or

16           (2) The department may file a complaint with the district  
17           court in the circuit of the location indicated in the  
18           report, and the district court, upon a finding of



1           probable cause, may issue a search warrant directed to  
2           the department and the appropriate county police  
3           department, if necessary, to investigate the location  
4           pursuant to this section between the hours of sunrise  
5           and sunset.

6           §321-B Action upon investigation. Upon investigation, the  
7           department may take action on confirmed findings that the  
8           subject of a report is operating a care facility without the  
9           required certificate or license and may do any or all of the  
10          following:

- 11           (1) Resolve the matter in an informal fashion as is  
12           appropriate under the circumstances;
- 13           (2) Exercise the department's right of entry under section  
14           321-C;
- 15           (3) File a petition with the district court for  
16           enforcement, protective, or remedial action; or
- 17           (4) Pursue any protective or remedial actions authorized  
18           by law.

19           §321-C Right of entry. The department, when engaged in an  
20           investigation pursuant to section 321-A, may visit and  
21           communicate with any person operating the facility, home, or



1 other type of living arrangement that is the subject of a  
2 report. Any person intentionally or knowingly obstructing or  
3 interfering with the department's right of entry, the  
4 department's investigation of a report of operating without a  
5 certificate or license, or the department's communication with a  
6 vulnerable person reported to be receiving care from an  
7 uncertified or unlicensed operator shall be guilty of a  
8 misdemeanor.

9 **§321-D Penalty.** Any person who intentionally operates a  
10 care facility without a certificate or license shall be guilty  
11 of a misdemeanor and shall be fined no more than:

- 12 (1) \$100 for each day of uncertified or unlicensed  
13 operation for the first violation;
- 14 (2) \$500 for each day of uncertified or unlicensed  
15 operation for the second violation; and
- 16 (3) \$1,000 for each day of uncertified or unlicensed  
17 operation for the third and each succeeding violation.

18 **§321-E Referral or transfers to uncertified or unlicensed**  
19 **care facility; penalty.** (a) It shall be unlawful for a  
20 certified or licensed healthcare provider or certified or  
21 licensed care facility to knowingly refer or transfer patients



1 to an uncertified or unlicensed care facility. The department  
2 may impose a fine on any certified or licensed healthcare  
3 provider or certified or licensed care facility that knowingly  
4 refers or transfers patients to a care home, agency, or facility  
5 operating without a certificate or license as required by law;  
6 provided that the fine shall be no more than:

- 7       (1) \$500 for the first violation;
- 8       (2) \$1,000 for the second violation; and
- 9       (3) \$2,000 for the third and each succeeding violation.

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

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



1        §321-F Exclusion. For purposes of this chapter, a  
2 landlord, as defined in section 521-8, shall not be deemed to be  
3 providing home care services or to be operating a care facility  
4 requiring a license under this chapter solely due to a landlord  
5 permitting a tenant to receive care services from persons  
6 licensed to provide care services, if licensing is otherwise  
7 required by law, and the landlord does not require a tenant to  
8 use or pay for care services as a condition of the rental  
9 agreement. For the purposes of this section, an operator means  
10 an individual or entity that operates or manages a healthcare  
11 facility or similar facility that provides care services in that  
12 facility."

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

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



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

4 SECTION 3. 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 4. In codifying the new sections added by section  
8 1 of this Act, the revisor of statutes shall substitute  
9 appropriate section numbers for the letters used in designating  
10 the new sections in this Act.

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

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



**Report Title:**

Care Facilities; Uncertified; Unlicensed; Enforcement;  
Community-based Care Home; Adult Care Center; Criminal Penalty

**Description:**

Authorizes the Department of Health to investigate care facilities reported to be operating without an appropriate certificate or license issued by the Department. Establishes penalties for violations and for knowingly referring or transferring patients to uncertified or unlicensed care facilities, with certain exceptions. Excludes landlords from licensure, under certain conditions. (HB1911 CD1)

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

