
A BILL FOR AN ACT

RELATING TO HEALTH.

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

- 1 PART I
- 2 SECTION 1. The purpose of this Act is to:
- 3 (1) Protect the health, safety, civil rights, and rights
4 of choice for vulnerable adults;
- 5 (2) Establish appropriate measures to ensure a safe
6 environment and consumer protection for vulnerable
7 adults who are receiving home health care or home care
8 in care facilities or residences;
- 9 (3) Grant the department of health proper investigative
10 authority to enter care facilities, residences, or
11 agencies providing home health care to vulnerable
12 adults;
- 13 (4) Prohibit care facilities previously licensed by the
14 department of health from operating without proper
15 license; and
- 16 (5) Provide an appropriation to the department of health
17 to increase the number of staff members to expedite



1 the licensing process, establish a former complaint
2 protocol, and inspect care facilities that are a
3 potential health risk to the community.

4 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
5 amended by adding five new sections to be appropriately
6 designated and to read as follows:

7 "§321- Home care agencies; licensing. (a) All home
8 care facilities home agencies to elderly or disabled persons
9 through contract or agreement shall be licensed or certified,
10 and under the purview of the department of health to ensure the
11 health, safety, and welfare of the individuals placed therein.
12 The home care agencies shall be subject to inspection at any
13 time by the department. Inspections may be scheduled in advance
14 or be unannounced.

15 (b) No person shall arrange for the provision of home care
16 services by a registered home care aide to a client in this
17 State before obtaining a license pursuant to this chapter. Such
18 arrangement shall be deemed "unlicensed home care services."

19 (c) Upon determination that a person is in violation of
20 this section, the department shall send a written notice of
21 noncompliance to the person and assess a civil penalty of \$900



1 for each violation. Each day of continued violation under this
2 section shall constitute a distinct and separate offence for
3 which the violator may be punished.

4 (d) Inspections authorized by subsection (a) shall not
5 apply to residences that contract with agencies.

6 §321- Home care aid; registry. The department of health
7 shall establish a home aid registry.

8 §321- Relicensing of previously licensed facility. No
9 later than _____, all previously licensed facilities by the
10 department of health that have discontinued their licensed
11 status within the last five years shall be granted a
12 provisional, temporary six month license that shall be valid
13 until the department conducts a full review to determine if the
14 facility is still providing health care services that require
15 licensing to two or more unrelated individuals.

16 §321- Complaints. In order to carry out the provisions
17 of this chapter, the department may establish procedures for the
18 receipt, investigation, and resolution of complaints against
19 home care agencies.

20 §321- Right of entry. The department, upon the receipt
21 of a complaint or when engaged in an investigation, shall be



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

10 SECTION 3. Section 321-1.8, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~[+]§321-1.8[+]~~ **Inspections; public notice.** (a)
13 Beginning with inspections occurring on January 1, 2015, the
14 department of health shall post on its website electronic copies
15 of reports for all inspections it performs of the following
16 state-licensed care facilities:
17 (1) Adult day health centers;
18 (2) Adult day care centers;
19 (3) Community-based care home;
20 ~~[+3+]~~ (4) Community care foster family homes;



1 [~~4~~] (5) Developmental disabilities domiciliary homes as
2 defined in section 321-15.9;

3 [~~5~~] (6) Developmentally disabled adult foster homes;

4 [~~6~~] (7) Long-term care facilities as defined in section
5 349-21(f); and

6 [~~7~~] (8) Special treatment facilities as defined in
7 section 334-1.

8 (b) Each inspection report shall be posted on the
9 department of health's website within five working days of the
10 conclusion of each inspection and shall include the following
11 information:

12 (1) The date of the inspection;

13 (2) A description of violations of relevant state laws or
14 rules, if applicable;

15 (3) Plans of correction and the status of corrective
16 actions in response to any violations, if applicable;

17 (4) A list and description of all corrective actions taken
18 by the facility, if applicable, to be submitted by the
19 facility and added to the report at a later time, as
20 determined by the department; and



1 (5) Other information regarding the quality and conditions
2 of the facility the department of health deems
3 appropriate.

4 (c) Each inspection report posted on the department of
5 health's website that reports a violation committed by a state-
6 licensed care facility as described in subsection (a) shall be
7 removed from the website after three years from the date the
8 report was posted.

9 (d) Beginning _____, in addition to the inspection
10 information required by subsection (a), the department of health
11 may maintain a forum on its website where all state-licensed
12 care facilities specified in subsection (a) may post vacancy
13 information to facilitate the placement of individuals therein."

14 SECTION 4. Section 321-15.1, Hawaii Revised Statutes, is
15 amended by adding six new definitions to be appropriately
16 inserted and to read as follows:

17 "Community-based care home" means any residence, including
18 but not limited to, house, townhouse, auxiliary dwelling unit,
19 and other residential settings, where two or more unrelated
20 vulnerable adults reside together and receive home health care



1 by contracting with a third-party person who is not a family
2 member.

3 "Health care" means that a vulnerable adult receives two or
4 more of the following services: skilled nursing, physical
5 therapy, occupational therapy, speech therapy, medical social
6 services such as services offered by a social worker, or home
7 health aids in personal care and such services are provided
8 continuously or intermittently by an unrelated person under
9 contract.

10 "Home care" means care provided to a vulnerable adult to
11 assist in activities of daily living, personal care, or
12 companion care by an unrelated person under contract. "Home
13 care" does not include health care.

14 "Home care agency" means a public or proprietary agency, a
15 private, nonprofit organization, or a subdivision of an agency
16 or organization, engaged in providing home care services, but
17 not home health care services, to clients in the clients'
18 residencies.

19 "Home care aid" is an employee or a contracted worker of a
20 home care agency, who provides home care.



1 "Vulnerable adult" has the same meaning as defined in
2 section 346-222."

3 SECTION 5. Section 321-15.6, Hawaii Revised Statutes, is
4 amended by amending its title and subsection (a) to read as
5 follows:

6 "§321-15.6 Adult residential care homes; community-based
7 care homes; adult day care centers; licensing. (a) [~~All adult~~
8 ~~residential care homes shall be licensed~~] Any care facilities or
9 agencies that provide home health care to vulnerable adults
10 shall be licensed or certified to ensure the health, safety, and
11 welfare of the individuals placed therein. The department of
12 health shall conduct unannounced visits, other than the
13 inspection for relicensing, to every [~~licensed adult~~]:

14 (1) Adult residential care home [~~and expanded~~];

15 (2) Expanded adult residential care home;

16 (3) Community-based care home; and

17 (4) Adult day care center,

18 licensed or certified and under the purview of the department on
19 an annual basis and at such intervals as determined by the
20 department to ensure the health, safety, and welfare of each
21 resident. Unannounced visits may be conducted during or outside



1 regular business hours. All inspections relating to follow-up
2 visits, visits to confirm correction of deficiencies, or visits
3 to investigate complaints or suspicion of abuse or neglect shall
4 be conducted unannounced during or outside regular business
5 hours. Annual inspections for relicensing may be conducted
6 during regular business hours or at intervals determined by the
7 department. Annual inspections for relicensing shall be
8 conducted with notice, unless otherwise determined by the
9 department."

10 SECTION 6. Section 321-15.62, Hawaii Revised Statutes, is
11 amended by amending its title and subsection (a) to read as
12 follows:

13 "§321-15.62 Expanded adult residential care homes;
14 community-based care homes; adult day care centers; licensing.

15 (a) All expanded adult residential care homes, community-based
16 care homes, and adult day care centers that provide home health
17 care to elderly or disabled persons who are unrelated to the
18 caregiver family shall be licensed or certified and under the
19 purview of the department of health to ensure the health,
20 safety, and welfare of the individuals placed therein."



1 SECTION 7. Section 321-15.7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§321-15.7 Penalty. Any person who intentionally operates
4 an adult residential care home, community-based foster family
5 home, adult foster home, adult day care center, home care
6 agency, or hospice home without a license shall be guilty of a
7 misdemeanor."

8 SECTION 8. Section 321-14.8, Hawaii Revised Statutes, is
9 repealed.

10 [~~"§321-14.8 Home care agencies, licensing. [Section~~
11 ~~repealed on June 30, 2014. L Sp 2009, c 21, §8.] (a)~~
12 ~~Beginning July 1, 2010, each home care agency shall be licensed~~
13 ~~by the department of health to ensure the health, safety, and~~
14 ~~welfare of clients.~~

15 ~~(b) The department of health shall adopt rules in~~
16 ~~accordance with chapter 91 to:~~

17 ~~(1) Protect the health, safety, and civil rights of~~
18 ~~clients of home care agencies; and~~

19 ~~(2) Provide for the licensure of home care agencies.~~



1 ~~(c) A service provider agency under contract for services~~
2 ~~with the city and county of Honolulu elderly affairs division~~
3 ~~shall be exempt from the licensing requirement of this section.~~

4 ~~(d) For purposes of this section:~~

5 ~~"Home care agency" means a public or proprietary agency, a~~
6 ~~private, nonprofit organization, or a subdivision of an agency~~
7 ~~or organization, engaged in providing home care services to~~
8 ~~clients in the client's residence. The term "home care agency"~~
9 ~~does not apply to an individual, including an individual who is~~
10 ~~incorporated as a business, or is an unpaid or stipended~~
11 ~~volunteer.~~

12 ~~"Home care services" include but are not limited to:~~

- 13 ~~(1) Personal care, including assistance with dressing,~~
14 ~~feeding, and personal hygiene to facilitate self care;~~
15 ~~(2) Homemaker assistance, including housekeeping,~~
16 ~~shopping, and meal planning and preparation; and~~
17 ~~(3) Respite care and assistance and support provided to~~
18 ~~the family."]~~

19 SECTION 9. Act 184, Session Laws of Hawaii 2016, is
20 amended by repealing sections 3 and 4.



1 ~~["SECTION 3. Section 321-15.6, Hawaii Revised Statutes, is~~
2 ~~amended by amending subsection (a) to read as follows:~~

3 ~~"(a) All adult residential care homes shall be licensed to~~
4 ~~ensure the health, safety, and welfare of the individuals placed~~
5 ~~therein. The department shall conduct [unannounced visits,~~
6 ~~other than the inspection for relicensing, to every licensed~~
7 ~~adult residential care home and expanded adult residential care~~
8 ~~home on an annual basis and at such intervals as determined by~~
9 ~~the department to ensure the health, safety, and welfare of each~~
10 ~~resident. Unannounced visits may be conducted during or outside~~
11 ~~regular business hours. All inspections relating to follow up~~
12 ~~visits, visits to confirm correction of deficiencies, or visits~~
13 ~~to investigate complaints or suspicion of abuse or neglect shall~~
14 ~~be conducted unannounced during or outside regular business~~
15 ~~hours. Annual inspections for relicensing may be conducted~~
16 ~~during regular business hours or at intervals determined by the~~
17 ~~department. Annual inspections for relicensing shall be~~
18 ~~conducted with notice, unless otherwise determined by the~~
19 ~~department.] visits and inspections pursuant to section 321."~~

20 ~~SECTION 4. Section 321-15.62, Hawaii Revised Statutes, is~~
21 ~~amended by amending subsection (a) to read as follows:~~



1 ~~"(a) All expanded adult residential care homes shall be~~
 2 ~~licensed to ensure the health, safety, and welfare of the~~
 3 ~~individuals placed therein. The department shall conduct visits~~
 4 ~~and inspections pursuant to section 321."]~~

PART II

6 SECTION 10. (a) No later than , the department of
 7 health shall convene a working group to discuss and provide
 8 feedback on the implementation and maintenance of a forum on its
 9 website where state-licensed care facilities may post vacancy
 10 information to facilitate the placement and referrals of
 11 individuals within state-licensed care facilities, as specified
 12 in section 321-1.8(d), Hawaii Revised Statutes.

13 (b) The department of health shall submit a report to the
 14 legislature no later than twenty days before the convening of
 15 the regular session of 2019 of its findings and recommendations
 16 relative to the implementation and maintenance of a forum on its
 17 website, as specified in subsection (a). The report shall also
 18 include feedback on the posting of vacancy information on the
 19 website.

20 SECTION 11. There is appropriated out of the general
 21 revenues of the State of Hawaii the sum of \$ or so much



1 thereof as may be necessary for fiscal year 2018-2019 for the
2 implementation and maintenance of a forum on the department of
3 health's website as permitted by this part.

4 The sum appropriated shall be expended by the department of
5 health for the purposes of this part.

6 PART III

7 SECTION 12. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 13. This Act shall take effect on July 1, 3000.



Report Title:

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

Description:

Requires home care agencies to be licensed or certified. Authorizes the Department of Health to inspect home care agencies. Requires the Department of Health to establish a home care aid registry. Authorizes the Department of Health to establish procedures for the receipt, investigation, and resolution of complaints against home care agencies. Authorizes the Department of Health to enter a care facility when investigating a facility or home. Allows the Department of Health to establish a forum where state-licensed care facilities may post job vacancies. Imposes criminal penalty for the intentional operation of a community-based foster family home, adult foster family home, adult day care center, or home care agency without a license. Requires the Department of Health to establish a working group to discuss and provide feedback for the implementation of the job vacancy forum. (HB1911 HD2)

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