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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 five 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



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

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

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

20 **§321-C Right of entry.** The department of health, when  
21 engaged in an investigation pursuant to section 321-A, may visit



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

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

13 (1) \$ \_\_\_\_\_ for each day of uncertified or unlicensed  
 14 operation for the first violation;

15 (2) \$ \_\_\_\_\_ for each day of uncertified or unlicensed  
 16 operation for the second violation; and

17 (3) \$ \_\_\_\_\_ for each day of uncertified or unlicensed  
 18 operation for the third and each succeeding violation.

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



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

- 8 (1) \$ \_\_\_\_\_ for the first violation;  
9 (2) \$ \_\_\_\_\_ for the second violation; and  
10 (3) \$ \_\_\_\_\_ for the third and each succeeding  
11 violation.

12 (b) Notwithstanding subsection (a) to the contrary, if a  
13 patient or anyone authorized to make decisions on behalf of the  
14 patient requests to be transferred to an uncertified or  
15 unlicensed care facility, if the care facility becomes  
16 uncertified or unlicensed after a referral or transfer, or if  
17 the healthcare provider or healthcare facility refers or  
18 transfers a patient in good faith to a care facility without  
19 actual proof or knowledge that the care facility is uncertified  
20 or unlicensed, the healthcare provider or healthcare facility  
21 shall not be fined under this section."



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

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

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

12 SECTION 3. In codifying the new sections added by section  
13 1 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 4. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 5. 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:**

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. Effective 7/1/3000. (SD1)

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

