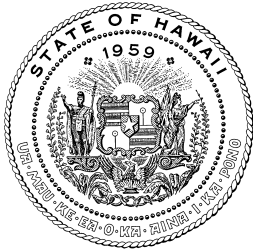


Small Business Regulatory Review Board Meeting

April 15, 2021

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: 808 586-2419

AGENDA

Thursday, April 15, 2021 ★ 10:00 a.m.

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Taryn Rodighiero
Kaua'i

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

As authorized under the Governor's February 12, 2021, Eighteenth Proclamation Related to the COVID-19 Emergency, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

<https://zoom.us/j/3082191379>

Copies of the Board Packet will be available on-line for review at: <https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2021>.

An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov. Please include the word "Testimony" and the subject matter following the address line. All written testimony should be received no later than 4:30 p.m., Wednesday, April 14, 2021.

The Board may go into Executive Session under Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

I. Call to Order

II. Approval of March 18, 2021 Meeting Minutes

III. New Business – Before Public Hearing

- A. Discussion and Action on the Proposed Repeal of Hawaii Administrative Rules (HAR) Title 17 Chapter 891.1 and Adoption of Chapter 891.2, **Registration of Family Child Care Homes**, promulgated by Department of Human Services (DHS) – **Discussion Leader – Harris Nakamoto**

- B. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 892.1 and Adoption of Chapter 892.2, **Licensing of Group Day Care Centers and Group Child Care Homes**, promulgated by DHS – **Discussion Leader – Harris Nakamoto**
- C. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 895 and Adoption of Chapter 895.1, **Licensing of Infant and Toddler Child Care Centers**, promulgated by DHS – **Discussion Leader – Harris Nakamoto**
- D. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 896 and Adoption of Chapter 896.1, **Licensing of Before and After School Child Care Facilities**, promulgated by DHS – **Discussion Leader – Harris Nakamoto**

IV. Legislative Matters

- A. Discussion and Update on the following:
 - a. Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of Harris Nakamoto to the Small Business Regulatory Review Board for a term to expire June 30, 2023
 - b. Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of James (Kimo) Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2024

V. Administrative Matters

- A. Update on the Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers under Section 201M-5, Hawaii Administrative Rules

VI. Next Meeting: Thursday, May 20, 2021 at 10:00 a.m.

VII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process, please call (808) 586-2419 or email dbedt.sbrrb.info@hawaii.gov at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of March 18, 2021 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - **DRAFT**

March 18, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:03 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walch
- William Lydgate
- James (Kimo) Lee
- Mark Ritchie

ABSENT MEMBERS:

- Jonathan Shick
- Taryn Rodighiero

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn

II. **APPROVAL OF February 18, 2021 MINUTES**

Mr. Nakamoto made a motion to accept the February 18, 2021 meeting minutes, as amended. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS** – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 19 Chapter 108 High Occupancy Vehicle Lanes, promulgated Department of Transportation (DOT)

Discussion leader, Mr. Lee, stated that the proposed rule changes do not appear to affect small business. He introduced Ms. Laura Manuel, Highway Safety Specialist at DOT's Highways Division, who indicated that the public hearing occurred on February 9, 2021. No one attended the hearing and one written testimony was received that had no bearing on amending the rules.

Chair Cundiff added that the rule changes include electric vehicles and it was mentioned at this Board's meeting prior to public hearing that there could possibly have been impact to small businesses that had electric vehicles in their fleet.

Mr. Lee motioned to move the proposed amendments to the Governor for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 10 Chapter 4.1, Management of Water Systems, promulgated by Department of Hawaiian HomeLands (DHHL)

Discussion leader, Mr. Lee, explained that the proposed new rule standardizes the practices of DHHL's water systems, which is a positive initiative. Ms. Hokulei Lindsey, DHHL Administrative Rules Officer explained that this brand-new chapter deals with the management of DHHL's own public water system as well as a hybrid non-portable water system.

The public hearings were held virtually in November 2020. One person attended the hearing and three others submitted testimonies, two from individuals and one from an organization; none of which were identified as owners of small businesses. She noted that all businesses on the Molokai water system listing would have received notice of the public hearing, and that 144 views were made on DHHL's website for the proposed rules. She added that the rules were standardized to "business days," in accordance with the Deputy Attorney General's recommendation.

Mr. Lee motioned to move the proposed new chapter to the Governor for adoption. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed New HAR Title 19 Chapter 150, Autonomous Vehicle Regulations, promulgated by Department of Transportation (DOT)

Discussion leader, Mr. Lee, stated that the proposed rules are intended for manufacturers of autonomous vehicles and other entities who seek to test autonomous vehicles in Hawaii. Mr. George Abcede, Highways Administrator at DOT Highways Division, explained that his division has been charged with autonomous vehicle testing where previously vehicle manufacturers were doing such testing. Currently, there are no entities in the state of Hawaii that meet the business definition that may be impacted by the rules.

Ms. DreanaLee (Dre) Kalili from the Department of Transportation Services at the City & County of Honolulu added that these are the first set of rules which reflect the "testing" process, which will likely determine how many entities can apply for a permit. Beyond the testing phase, the next phase will allow DOH to will come back to this Board with additional rules for all other policies required for the successful deployment of the autonomous vehicles.

Chair Cundiff clarified that the rules are specific to manufacturers in order to provide them with the opportunity to test vehicles in Hawaii. Therefore, since there are no manufacturers currently in Hawaii, there is no impact to small business at this stage of the rule-making process. However, once the manufacturing process begins, there will likely be some impact as the businesses will take advantage of autonomous vehicle usage in Hawaii; Ms. Kalili concurred.

Mr. Lee motioned to move the proposed new rules to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

V. LEGISLATIVE MATTERS

A. Discussion, Update and/or Action on the following:

a. House Bill 1148 HD1 “Relating to Land and Natural Resources”

This measure authorizes the board of land and natural resources to adopt, amend, and repeal administrative fee schedules without regard to Chapter 91, HRS, and establishes a process for the board to adopt, amend and repeal administrative fee schedules, including public notice and meeting requirements.

Chair Cundiff reminded the members that this measure was reviewed at the last board meeting where communication was subsequently sent to stakeholders. The measure died in the Finance Committee and thus will not be moving forward.

b. Update on Upcoming Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of Harris Nakamoto to the Small Business Regulatory Review Board for a term to expire June 30, 2024

Chair Cundiff noted that, as of this morning, this measure has yet been scheduled for a hearing.

c. Update on Upcoming Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of James (Kimo) Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2024

Chair Cundiff noted that, as of this morning, this measure has yet been scheduled for a hearing.

Mr. Ritchie added that there has been no scheduling of hearings for the Governor’s Messages for boards and commissions.

VI. ADMINISTRATIVE MATTERS

A. Update on the Board’s Upcoming Advocacy Activities and Programs in Accordance with the Board’s Powers under Section 201M-5, HRS

a. Discussion and Action on the Board’s Fiscal Year-to-Date 2021 (Actual) Budget and Projected Fiscal Year 2021 Budget

Chair Cundiff noted that the agenda packets include this Board’s actual year-to-date budget and forecasted year-to-date budget. The budget process is still going through the State Legislature and until it becomes final, we will not know where this Board stands. Once it is known, a meeting will be scheduled with DBEDT Director Mike McCartney.

Mr. Lydgate commented that prior to the pandemic, there appeared to be an advantage for this Board to have “live” meetings. He questioned whether virtual meetings through Zoom would continue due to potential budgetary constraints. Since the board meetings have become virtual, there does not appear to be much testimonies submitted during the meetings. He added that “in-person” meetings have multiple benefits for the Board and the public. Chair Cundiff responded that there is current legislation attempting to incorporate virtual meetings into the law.

Kudos to Mr. Lydgate for the recent published article in *Pacific Business News* about Lydgate Farms.

VII. NEXT MEETING - Thursday, April 15, 2021 at 10:00 a.m.

VIII. ADJOURNMENT – Vice Chair Albitz made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 10:37 a.m.

III. New Business — Before Public Hearing

A. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 891.1 and Adoption of Chapter 891.2, Registration of Family Child Care Homes, promulgated by DHS

DAVID Y. IGE
GOVERNOR



RECEIVED
By SBRRB at 10:48 am, Apr 05, 2021

PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
Office of the Director
P. O. Box 339
Honolulu, Hawai'i 96809-0339


BESSD 20.C0601

June 1, 2020

MEMORANDUM:

TO: THE HONORABLE CLARE E. CONNORS, ATTORNEY GENERAL
DEPARTMENT OF THE ATTORNEY GENERAL

THROUGH: JAMES WALTHER, SUPERVISING DEPUTY ATTORNEY GENERAL
HEALTH AND HUMAN SERVICES DIVISION

FROM: PANKAJ BHANOT
DIRECTOR 

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED REPEAL OF CHAPTER 17-891.1 AND
ADOPTION OF CHAPTER 17-891.2 HAWAII ADMINISTRATIVE RULES, RELATING
TO REGISTERED FAMILY CHILD CARE HOMES

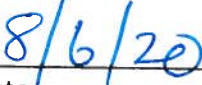
In accordance with Administrative Directive No. 18-02, we have completed revisions and are submitting for your review and approval as to form the proposed repeal of Chapter 17-891.1 and adoption to Chapter 17-891.2 relating to the Registration of Family Child Care Homes. A copy of the Notice of Public Hearing is also enclosed for your approval as to form, and a copy of the impact statement is included for your information.

Your expedited response to this request would be greatly appreciated, as we must also secure the Governor's preliminary approval prior to publishing the Notice of Public Hearing. If you have any questions, please contact Dana Balansag, Child Care Program Administrator, at 586-7187.

Enclosures

APPROVED AS TO FORM:


Deputy Attorney General


Date

AN EQUAL OPPORTUNITY AGENCY

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

Date: _____

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

E-mail: _____ Phone: _____

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ Yes ☐ No

If "Yes," provide details: _____

I. Rule Description:

☐ New ☐ Repeal ☐ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☐ Yes ☐ No

(If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☐ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☐ No

(If "Yes" no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

 - b. Amount of the proposed fee or fine and the percentage increase.

 - c. Reason for the new or increased fee or fine.

 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
-
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3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.
7. How the agency involved small business in the development of the proposed rules.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1

1. DHS registered family child care homes that care for up to six children.

Registered family child care home providers who work with children in care, including staff or substitutes, will be required to complete minimum health and safety training requirements, pre-service and on-going training.

Initial/pre-service health and safety training and 16 hours of on-going health and safety training annually. DHS registered family child care home providers will have to find available training opportunities, which could include free trainings offered by the department's training contractor or other community-based or online trainings available.

2. Chapter 17-891.2 Registration of Family Child Care Homes is substantially based on an existing chapter 17-891.1 Registration of Family Child Care Homes that is being repealed. The proposed requirements for DHS registered family child care homes may have the following additional direct costs:

- Any family child care home providers that may have employees assisting in the care of children may need to pay employees for their time to complete 16 hours of health and safety training on an annual basis. Minimum wage: \$10.10/hour x 16 (hours training) = \$161.60 per person. There are 324 registered family child care homes statewide, however, it is not known the number of homes that utilize additional employees in the care operations. Most family child care homes are run by the registrant directly. If the family child care home has an identified substitute who would be used in cases of emergencies, the substitute would need to complete 10 hours of training. Minimum wage: \$10.10/hour x 10 (hours training) = \$101. However, family child care homes may opt not to have a substitute and instead agree to close operations for any time period where the registrant is not available to provide care to children.
- \$20 - \$40 for an ABC multi-purpose type fire extinguisher in the child care area.

The proposed chapter 17-891.2 does not impose new or increased fees or fines.

3. None
4. Registered family child care home providers may take on-line classes, workshops, conferences, in-service trainings and college credits that meet DHS criteria. Free

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
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ATTACHMENT 1

trainings offered by the department's training contractor or other community-based or online trainings are available.

5. The proposed rules are based on requirements set forth by the Child Care and Development Block Grant (CCDBG) Act of 2014 which require caregivers to complete health and safety training. As such, the proposed rules are required to enforce the CCDBG requirements.
6. Registered family child care home providers may take on-line classes, workshops, conferences, in-service trainings and college credits to meet DHS criteria. Free trainings offered by the department's training contractor or other community-based or online trainings are available.
7. DHS held discussion sessions with early childhood stakeholders beginning in 2015 to discuss health and safety training hours. Discussions on other proposed rules were held quarterly during DHS Child Care Advisory Committee meetings and during statewide informational sessions that were held between 1/2019 – 3/2019 for FCC providers.
 - a. The recommendation that substitutes should not be required to complete on-going training hours annually was partially incorporated into the proposed rule. The number of on-going training hours for substitutes to complete on an annual basis was reduced from 16 hours to 10 hours. The requirement for a substitute to complete on-going health and safety training is to comply with the CCDBG Act of 2014 which requires caregivers to complete on-going health and safety training annually. Since the substitute is a replacement of the primary caregiver and is left alone with children in care, completion of on-going health and safety training hours increases the health and safety of children and the quality of child care.
8. No

DEPARTMENT OF HUMAN SERVICES

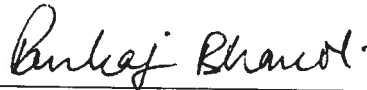
Repeal of Chapter 17-891.1
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-891.1, Hawaii Administrative Rules, entitled "Registration of Family Child Care Homes" is repealed.

2. The repeal of chapter 17-891.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on June 1, 2020 and filed with the Office of the Lieutenant Governor.



PANKAJ BHANOT

Director

Department of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-891.2
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-891.2 Hawaii Administrative Rules, entitled "Registration of Family Child Care Homes" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 891.2

REGISTRATION OF FAMILY CHILD CARE HOMES

Subchapter 1 Registration Procedure

- §17-891.2-1 Definitions
- §17-891.2-2 Application
- §17-891.2-3 Inspection and issuance of certificate of registration
- §17-891.2-4 Fines
- §17-891.2-5 Denial, suspension, revocation of certificate of registration, and hearings
- §§17-891.2-6 to 17-891.2-9 (Reserved)

Subchapter 2 Administration Requirements

- §17-891.2-10 Number and age of children in care
- §17-891.2-11 Statement of operation policies
- §17-891.2-12 Liability insurance
- §17-891.2-13 Information on owner or operator
- §17-891.2-14 Change in services and staff members
- §17-891.2-15 Information and records on each child
- §17-891.2-16 Disclosure of information on the child
- §17-891.2-17 Information and records on facility
- §17-891.2-18 Transportation provisions
- §§17-891.2-19 to 17-891.2-24 (Reserved)

Subchapter 3 Program Requirements

- §17-891.2-25 Program provisions
- §17-891.2-26 Communication with parents
- §17-891.2-27 Program materials and equipment
- §17-891.2-28 Transition to a new facility or school setting
- §§17-891.2-29 to 17-891.2-34 (Reserved)

Subchapter 4 Staffing Requirements

- §17-891.2-35 Staff training, experience, and personal qualifications
- §17-891.2-36 Staff-child ratio
- §§17-891.2-37 to 17-891.2-39 (Reserved)

Subchapter 5 Health Standards for Children

- §17-891.2-40 Health consultation provisions
- §17-891.2-41 Evidence of child's health
- §17-891.2-42 Emergency care provisions
- §17-891.2-43 First aid and child cardio-pulmonary resuscitation (CPR)
- §17-891.2-44 Admission of ill children

- §17-891.2-45 Admission of children with special needs
- §17-891.2-46 Daily nutritional needs
- §17-891.2-47 Drinking water provisions
- §17-891.2-48 Integration of mental health Concepts
- §§17-891.2-49 to 17-891.2-54 (Reserved)

Subchapter 6 Health Standards for Provider and Others in the Home

- §17-891.2-55 Providers' health standards
- §17-891.2-56 Personal health habits of provider
- §§17-891.2-57 to 17-891.2-60 (Reserved)

Subchapter 7 Sanitation Standards

- §17-891.2-61 Handling of diapers and training pants
- §17-891.2-62 Handwashing
- §§17-891.2-63 to 17-891.2-65 (Reserved)

Subchapter 8 Environmental Health Standards

- §17-891.2-66 Disaster plan for emergencies
- §17-891.2-67 Accidental injury precautions
- §17-891.2-68 Environmental hazards
- §17-891.2-69 Water supply
- §17-891.2-70 Toilet and lavatory facilities
- §17-891.2-71 Food preparation and food protection
- §17-891.2-72 Cleaning of premises
- §17-891.2-73 Swimming activities and wading pools
- §§17-891.2-74 to 17-891.2-79 (Reserved)

Subchapter 9 Physical Facility Standards

- §17-891.2-80 Building codes and space requirements
- §§17-891.2-81 to 17-891.2-84 (Reserved)

§17-891.2-1

Subchapter 10 Program Modifications

- §17-891.2-85 Program modifications for night care
- §17-891.2-86 Program modifications for demonstration projects
- §§17-891.2-87 to 17-891.2-89 (Reserved)

Subchapter 11 Safe Sleep

- §17-891.2-90 Program requirements
- §17-891.2-91 Sleep environment

Historical Note: This chapter is based substantially upon Chapter 17-891.1, Hawaii Administrative Rules.
[Eff 6/18/87; am and comp 12/19/02; R]

SUBCHAPTER 1

REGISTRATION PROCEDURE

§17-891.2-1 Definitions. For the purpose of this chapter:

"After school care" means child care provided after the end of the regular school day during the academic year for children who are kindergarten age and above who are enrolled in public or private elementary schools.

"Applicant" means the person who applied for registration of their family child care home and includes this person's spouse.

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Before school care" means child care provided before the start of the regular school day during the academic year for eligible children kindergarten and

above who are enrolled in public or private elementary schools.

"Caregiver" means any individual who is responsible for the physical well-being, health, safety, supervision, and guidance of children in child care.

"Certificate of Registration" means a certificate of approval issued by the state department of human services authorizing the operation of a family child care facility.

"Child" means any person who has not reached the age of eighteen years.

"Child care" means those situations where a person or organization has agreed to assume the responsibility for the child's supervision, development, safety, and protection, apart from the parent or guardian, for any part of a twenty-four hour day.

"Child care center" or "group child care center" means a place other than a private home, maintained by any individual, organization, or agency for the purpose of providing child care. The term child care center shall include child care nurseries, nursery school groups, preschools, child play groups, parent cooperatives, drop-in child care centers, group child care homes, after or before school, holiday, and summer care for elementary school age children, or other similar units operating under any name.

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Child development associate" or "CDA" means the credential issued by the Council for Professional Recognition.

"Child with special needs" means a child with a condition such as a physical, emotional, behavioral, or learning disability or impairment that causes the child to require additional or specialized services or accommodations.

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Council for Professional Recognition" means the organization that administers the CDA credential.

"County building code" means the building code used by the applicable counties.

"Demonstration project" means any place providing child care which is operating with special approval of the department for exemptions to specific registration rules.

"Drop in care" means child care where children are permitted to arrive and leave at irregular, non-scheduled times during the facility's operating hours.

"Drop in child care center" means a facility which accepts children for drop in care.

"Emergency" means an unforeseen combination of circumstances which calls for immediate action.

"Facility" means the premises of the address that is on the application or certificate of registration for child care, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and outdoor areas.

"Family child care home" or "family child care" or "FCC" means any private residence at which care is provided at any given time to six or fewer children, as defined in section 346-151, HRS.

"First aid kit" means materials and equipment in one location in a suitable container for meeting medical emergencies. A first aid kit shall be of the type approved by the American Red Cross, American Medical Society, or the department of health.

"Form 14" means a printed form made available by the state department of health or the state department of education to record a child's immunizations and health record.

"Group child care home" or "GCH" means child care provided by an individual in a facility that may be an extended or modified family child care home which provides care to no more than twelve children during

any part of a twenty-four hour day. GCHs are licensed under the rules for group child care centers.

"Guardian" means a person other than a child's parents who has legal authority over and responsibility for a child.

"Ill" or "illness" is a subjective term which shall be defined by each provider with regard to admitting or not admitting sick children to child care.

"Infant" means children who are newborn up to age one (through the twelfth month).

"Lavatory" means a vessel or basin for washing which is in conformity with plumbing codes in force in the state.

"Liability insurance coverage" means a general casualty insurance policy issued to insure against legal liability for injury resulting from negligence to a child during the time the child is under the provider's care.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a child care facility.

"Local sanitary codes" means the special rules set up by a county, the state department of health, or a comparable federal agency, which govern aspects of health and safety.

"Minor deficiencies" means deficiencies which do not involve risk to life, health, or safety of the children enrolled at the child care center.

"Night care" means child care provided to children who stay at night or overnight at a group child care center, group child care home, or family child care home. Care shall not be provided for twenty-four consecutive hours.

"Panic hardware" means a standard device on doors which permit quick and safe exits upon emergencies (e.g. push bars and plates).

"Person" means any individual with unsupervised access to children in care, caregiver, adult household member, applicant, provider, substitute, volunteer, new hire, rehire, temporary hire, or staff member in a child care facility or exempt child care facility.

"Policy" means a principal plan for the management of a child care facility.

"Provider" means any individual 18 years or older, caregiver, child care facility, agency, or organization, exempt care providers, and adult employees, who provide child care to children in the absence of the child's caretaker.

"Provisional license" "provisional certificate of registration," or "temporary permit" means a temporary certificate of registration issued at the discretion of the department up to a period of six months to any child care facility which is unable to conform to all the rules at the time the certificate of registration is issued.

"Qualified nutrition consultant" means a dietician or nutritionist who meets the advanced educational requirements for membership in the American Dietetic Association and is eligible for registration; or one who has a master's degree in public health nutrition or nutritional sciences.

"Recalled" means any type of remedial action taken by a business for a corrective action plan agreed upon by the United States consumer product safety commission to address unsafe or potentially unsafe products to protect consumers, including the return of a product to the manufacturer or retailer for a cash refund or a replacement product, the repair of a product, and/or public notice of the hazard.

"Regular license" means a certificate of approval issued by the state department of human services to the registered family child care facility which conforms to all the rules at the time the certificate is issued.

"Regularly" means the typical or normal pattern of the child care center or family home, or a practice or schedule that is routine and uniform and is not subject to unexplained or irrational variations.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in child care.

"Single service utensils" means the supplies or equipment used once to serve food (e.g. paper plates, cups, disposable forks).

"Staff member" means administrative, child care, office, maintenance, employees, adult household members, and other support personnel who are employed by the child care facility, including volunteers and substitutes.

"State child care advisory committee" means a group of people appointed by the department of human services to advise the department on matters regarding child care, including child care rules.

"Substitute" means a person who serves as a replacement when another caregiver is absent.

"Supervision" means the act of being within sight or hearing distance of the children to insure the safety and protection of the children.

"Temporary permit" means the same as provisional license.

"USDA child care food program" means the food standards established by the United States Department of Agriculture.

"Volunteer" means a person working or offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the caregivers. [Eff (Auth: HRS §346-172) (Imp: HRS §§346-151, 346-172)]

§17-891.2-2 Application. (a) A completed family child care home application shall include the following:

- (1) A signed departmental application form;
- (2) Evidence of satisfactory physical examination and TB clearance for all household members;
- (3) Two letters of reference, as specified in section 17-891.2-35(c);
- (4) Results of the background checks as described in section 17-801-4, and as indicated in sections (A) and (B) below.
 - (A) Applicants, their staff members, and

prospective staff members shall provide background clearance records and consent to conduct background checks as indicated in section 17-801-4.

(B) The department shall conduct the background checks in accordance with chapter 17-801;

(5) Verification that the condominium or townhome association allows the applicant to operate a family child care home.

(b) The date of application shall be the date a completed application as described in subsection (a) is received by the department.

(c) Notification of the disposition of the completed application shall be issued no later than ninety days from the date of the completed application as defined in subsection (a) is received.

(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed approved and a license shall be issued.

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application must be submitted unless the licensing unit has granted additional time to satisfy all requirements in subsection (a). [Eff] (Auth: HRS §346-172) (Imp: HRS §§346-154, 346-172; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-891.2-3 Inspection and issuance of certificate of registration. (a) In exercising its authority to register family child care homes or renew, suspend, or revoke the certificate of registration, the department shall analyze the qualifications of providers of child care, review the home's written policies and program provisions, and inspect the home. Authorized representatives of the department and parents or guardians of children in care may visit a family child care home at any time

during the hours of child care operation for purposes of observing, monitoring and inspecting the facilities, activities, staffing, and during investigations of complaints against the facility, and other aspects of the child care home. The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies' authorized fields.

(b) The applicant or registrant shall cooperate with the department by providing access to its facilities, records, and staff. Failure to comply with reasonable requests may constitute grounds for denial, suspension, or revocation of the certificate of registration.

(c) After the initial registration, the registrant shall ensure that staff members comply with section 17-891.2-2(a)(4) within five working days of hire by the family child care home or residence in the family child care home.

- (1) New staff members shall meet the conditions in section 17-801-5 prior to starting employment or volunteering in the family child care home.
- (2) An applicant, staff member, or rehired staff member, who has left the state or no longer doing child care for a period of one hundred eighty consecutive days or more, shall comply with sections 17-801-5(a), 17-801-5(b) and 17-801-5(c).
- (3) New household members of family child care homes shall meet the conditions in section 17-801-5.

(d) Annual background checks shall be conducted. The applicants and staff members shall provide consent to the department to conduct a background check in accordance with chapter 17-801 no later than the anniversary date of the last consent to conduct a background check.

(e) The department shall request the applicant or registrant to terminate the employment or residence of a staff member determined to be not suitable to provide child care for children in accordance with chapter 17-801.

(f) The applicant or registrant shall comply with the conditions set forth in section 17-801-6(b)(2).

(g) The department shall request the applicant or registrant to exclude from the premises, the person who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801.

(h) The applicant or registrant shall comply with the conditions set forth in section 17-801-6(c)(2).

(i) Rules prescribed in this chapter are minimum standards. The department shall issue a certificate of registration under the following conditions:

- (1) A regular certificate of registration shall be issued if the result of the department's evaluation indicates compliance with the applicable rules as established by the department; or
- (2) A provisional certificate of registration shall be issued if the result of the department's evaluation indicates that all of the applicable rules cannot be met immediately but shall be met within six months or less, and the deviations do not threaten the health or safety of the children.

(j) The length of the registration period shall be as follows:

- (1) For new applicants and those providers who have been registered for less than four years, the registration period is one year, and for all other providers the registration period may be two years, unless subsequently suspended or revoked.
- (2) During a registration period, a provider may be issued more than one certificate of registration which may include a provisional certificate of registration followed by a regular certificate of registration. When this occurs, the total length of a registration period shall be according to paragraph (1).

- (3) A provisional certificate of registration may be issued for six months; and
- (4) A certificate of registration shall be renewed for a new registration period only upon application and upon the department's approval. An application shall be submitted to the department at least ninety days prior to the expiration of the registration period.

(k) Each regular certificate of registration and provisional certificate of registration shall clearly state the kind of program the registrant is permitted to operate, the address of the registrant, and the number and types of children who can be cared for at the facility.

(l) A certificate of registration shall be valid for:

- (1) One year for new applicants and for those who have been registered for less than four years; and
- (2) Two years for those who have been registered for four years or more,

unless sooner revoked. [Eff _____] (Auth: HRS §346-172) (Imp: HRS §§346-154, 346-156, 346-171, 346-172, 346-173, 346-175; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-891.2-4 Fines. (a) The operation of a child care facility without a license is a violation and shall be punishable by a fine not to exceed the maximum amount allowable under the law.

(b) The following offenses may be punishable by a fine, not to exceed the maximum amount allowable under the law, and may also be subject to the denial, suspension or revocation of a license:

- (1) Caring for more children than allowed by the facility's license;
- (2) Violation of the staff-child ratio;
- (3) Failure to comply with timely request for background check as required in chapter 17-801;

§17-891.2-4

- (4) Allowing conditions to exist at the facility which constitute a risk of harm or an imminent danger to the health, welfare, or safety of the children; or injuries to children resulting from the conditions;
- (5) Failure to report suspected child abuse or neglect that has occurred or will occur;
- (6) Any behavior that may create an unsafe or unhealthy environment or may pose a risk of harm to children. [Eff]
(Auth: HRS §346-156) (Imp: HRS §§346-154, 346-156, 346-162, 350-1; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-5 Denial, suspension, revocation of certificate of registration, and hearings. (a) The conditions for denial, suspension, or revocation of a certificate of registration and the action to be taken by the department are as follows:

- (1) The department shall deny, suspend, or revoke a regular or provisional certificate of registration if:
 - (A) An applicant or registrant does not comply with the applicable statutes and rules of the department respecting child care facilities; or
 - (B) The child care facility or any employee of the facility knowingly makes a false statement to any person concerning the child care facility's liability insurance coverage.
- (2) The department shall suspend the registration if the violation of the minimum requirement is the first violation of the provider and does not warrant revocation.
- (3) The department shall revoke the registration if the provider has violated any minimum requirement to such an extent or of a nature that the provider is unfit to be trusted with the care of children, or if the provider's registration has been suspended

- at least once previously.
- (4) An applicant or registrant whose certificate of registration is denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the certificate of registration or application;
 - (5) The notice shall contain a statement of the reasons for the proposed action and shall inform the applicant or registrant of the right to appeal the decision to the director of the department in accordance with Hawaii Revised Statute, chapter 91, not later than ten working days after the mailing of the notice of the proposed action.
 - (6) Upon receiving a timely written appeal, the director of the department shall give written notice of and an opportunity for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the application or certificate of registration shall be denied, suspended, or revoked; and
 - (6) If no timely written appeal is made, processing of the application shall end or the certificate of registration shall be suspended or revoked as of the termination of the ten day period.
- (b) The certificate of registration shall be immediately suspended when:
- (1) Conditions exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;
 - (2) The department received a report of allegations which identify risks to the health, safety, or well-being of the children in care. These risks include: the existence of a health hazard on the

- premises, or unsafe facility conditions that cannot be immediately abated;
- (3) The provider refuses to terminate a staff member as specified in chapter 17-801; or
 - (4) The provider refuses to exclude from the premises, the person who is the subject of an on-going or pending investigation in accordance with chapter 17-801.
- (c) Upon immediate suspension pursuant to (b), the department shall take the following actions:
- (1) Provide the registrant written notice of the order by personal service, by certified, or registered mail addressed to the location shown on the certificate of registration;
 - (2) Provide a statement of the reasons for the suspension in the notice and inform the registrant of the right to petition the department to reconsider the order not later than ten working days after mailing of the notice;
 - (2) Declare that all operations shall cease as of the date of receipt of the notice, and provide an opportunity for a prompt hearing before a hearing officer with respect to the order of suspension of the certificate of registration. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of suspension shall be affirmed or reversed; and
 - (4) Notify the parent or legal guardian of each child who is provided care in the family child care home of the suspension or revocation.
- (d) At any hearing provided for by this section, the applicant or registrant may be represented by counsel and has the right to call, examine, and cross-examine witnesses. Evidence may be received even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties

to the proceedings by certified or registered mail to the last known addresses as may be shown in the application, on the certificate of registration, or otherwise.

(e) Filing of a request for an administrative appeal does not permit the applicant or registrant to continue to care for children under this chapter.

(f) If an applicant or registrant has their regular or provisional certificate of registration revoked, they shall be unable to apply for another certificate of registration for:

- (1) A ninety-day period from the date that the certificate of registration was revoked if the revocation was their first offense; and
- (2) One year from the date that the certificate of registration was revoked if the revocation was their second offense. [Eff
] (Auth: HRS §346-172) (Imp:
HRS §§346-154, 346-175; 42 U.S.C. §§2002,
2005, 9833)

§§17-891.2-6 to 17-891.2-9 (Reserved)

SUBCHAPTER 2

ADMINISTRATION REQUIREMENTS

§17-891.2-10 Number and age of children in care.

A family child care home shall provide care for no more than six children at the same time. The following provider's children are not included in this total:

- (1) Children six years of age or older; and
- (2) Children under six years of age who are not in the care of the provider. [Eff
] (Auth: HRS §§346-172, 346-14) (Imp:
HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-11 Statement of operation policies.

(a) A child care facility shall have written operation policies. Family child care home policies shall include:

- (1) Ages of children accepted;
- (2) Maximum number of children permitted by certificate of registration;
- (3) Specific hours of day, night, holiday, and vacation operation;
- (4) Whether or not meals are served;
- (5) Fees and the plan for payment, including fees for different types of child care services and refund policy;
- (6) Plan for emergency medical care;
- (7) Insurance coverage - each provider shall inform parents or guardians in writing of its policy relating to liability insurance;
- (8) Transportation arrangements;
- (9) Parental permission for trips and related activities outside the facility;
- (10) Admission of ill children, or children with special needs;
- (11) Administering medication;
- (12) Grievances which shall include the department's information for parents to file a complaint;
- (13) Mandated reporting of suspected child abuse or neglect in accordance with chapter 350, HRS;
- (14) Regular communication between caregivers and parents or guardians to relay information about the child;
- (15) Suspension and expulsion of children which includes the following:
 - (A) The conditions under which a child may be suspended or expelled, if applicable;
 - (B) Sufficient timeframe before suspension or expulsion occurs to enable parents to make alternative child care

arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in (14)(C) below;

- (C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children;

Parents and guardians are provided written notification of any concerns that could lead to the child's expulsion; and

- (D) When expulsion occurs, the provider shall maintain a record of the conditions, parental notification, and action taken; and

- (16) Other policies that may be required by the department.

(b) Written operation policies shall be reviewed with each caregiver in the facility.

(c) The policies shall be reviewed by the provider with each parent or guardian at the time of enrollment of a child and when changes are made. [Eff

] (Auth: HRS §346-172) (Imp: HRS §§346-157, 346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-12 Liability insurance. (a) A child care facility shall:

- (1) Obtain and maintain liability insurance coverage as defined in section 346-157, HRS;
- (2) Provide to the department evidence of liability insurance coverage; and
- (3) Notify the department and parents or guardians in writing within seven working days of any change, cancellation, or termination of liability insurance coverage, that the coverage has been changed, canceled, or terminated while the parent's or guardian's child is cared for at the facility. [Eff] (Auth: HRS §346-157) (Imp: HRS §346-157)

§17-891.2-13

§17-891.2-13 Information on owner or operator.

(a) The name, address, and telephone number of the facility shall be provided to the department.

(b) The name of any sponsoring agency shall be provided to the department. [Eff]

(Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-14 Change in services and staff

members. (a) A facility shall notify parents or guardians and the department of any changes in the child care services it provides. Notification of any changes in service shall be made no later than thirty days before the date of the change, and the changes shall be included in the facility's operating policies.

(b) The provider shall inform the department in writing of changes in staff members who provide direct care to children within five working days after the change. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-15 Information and records on each

child. (a) Admission procedures shall require that sufficient information and instruction from the parents or guardians be furnished to enable the provider to make decisions or act on behalf of the child.

(b) Prior to admission of a child to a facility, the provider shall obtain the following information from the child's parents or guardians:

- (1) The child's full legal name, birth date, current address, and preferred names;
- (2) The name and home address of the parents or guardians who are legally responsible for the child;

- (3) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the facility; and
 - (4) Health information concerning the child, including any allergies as required by sections 17-891.2-41 and 17-891.2-42.
- (c) The information shall be maintained in writing and shall be kept current. [Eff
] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-16 Disclosure of information on the child. Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility personnel unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises. [Eff
] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-17 Information and records on facility. (a) Written information and records on the facility shall be maintained and made available to the department. Current records and information shall include:

- (1) Roster of enrolled children;
 - (2) Daily attendance record by names of children;
 - (3) Written permission from the parent to allow the child to have contact with pets or other animals; and
 - (4) Log of emergency preparedness drills.
- (b) The provider shall report to the department, within one working day of occurrence, the death of a child, employee, or household member, and any illness or injury received at the child care facility that results in a child's hospitalization. [Eff
] (Auth: HRS §346-172) (Imp: HRS §346-172; 42

§17-891.2-18

U.S.C. §§2002, 2005, 9833)

§17-891.2-18 Transportation provisions. When transportation is provided, children shall be protected by adequate supervision and safety precautions as follows:

- (1) The vehicle and driver providing transportation shall satisfy all relevant motor carrier safety rules and traffic laws of the state;
 - (2) No more than six children under the age of six years shall be transported when only one adult is in the vehicle;
 - (3) Children shall be instructed in safe transportation conduct as appropriate for age and stage of development;
 - (4) Children shall be secured in the seat of the bus or in the back seat of a personal vehicle in approved car seats or restraints;
 - (5) Prior to transporting children, the provider shall obtain written permission from the parent or guardian that each child is allowed to be transported by the provider in a personal vehicle or by public bus;
 - (6) A child shall not be left unattended in a vehicle;
 - (7) The provider shall take a head count or attendance record check before and after transportation is provided; and
 - (8) During any field trip or excursion, the provider shall have available with them a first aid kit, emergency contact phone numbers, and medical treatment release forms signed by the child's parent or guardian.
- [Eff _____] (Auth: HRS §346-172)
(Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-19 to 17-891.2-24 (Reserved)

SUBCHAPTER 3

PROGRAM REQUIREMENTS

§17-891.2-25 Program provisions. There shall be a provider or a responsible adult, designated by the provider, supervising the children at all times. The provider or responsible adult shall always be within sight or hearing distance to provide for the needs of the children and to respond to an emergency. The program shall also provide an environment and experiences which are aimed at promoting the individual child's physical, intellectual, emotional, and social well-being and growth. This shall be done in the following ways:

- (1) Activities that promote physical development shall include:
 - (A) Daily opportunities for running, climbing, and other vigorous and varied physical activities; and
 - (B) Opportunities for children to learn about the health, development, and care of the children's bodies, including exercise, nutrition, and hygiene;
- (2) Programs to promote intellectual development shall:
 - (A) Provide that a variety of learning materials are introduced and are available to the children; and
 - (B) Include first-hand experiences for children to learn about the world; and
- (3) Programs to promote emotional development shall provide that:
 - (A) There are opportunities for individual self-expression;
 - (B) Each child is recognized as an

- individual;
- (C) The child is afforded constructive guidance and the setting of clear-cut limits which foster the child's own ability to be self-disciplined;
- (D) Each child's personal privacy is respected;
- (E) Providers shall not use:
 - (i) Physical punishment, abuse, or harm including but not limited to spanking, pinching, slapping, or shaking, or
 - (ii) Methods of influencing behavior which are frightening, humiliating, injurious, neglectful, or damaging to the child's health or self-esteem; and
- (F) Providers shall respect each child's cultural, ethnic, and family background, as well as the child's primary language or dialect;
- (4) Programs to promote social development shall provide that:
 - (A) Children are guided in learning to get along with each other;
 - (B) Providers interact with children in ways which promote mutual respect between adults and children; and
 - (C) Providers behave in ways which help the children develop attitudes of respect for all other persons as individuals and develop an appreciation of ethnic and cultural diversity;
- (5) The activities and experiences provided by the program shall be appropriate to the developmental level of the children;
- (6) The program shall encourage the development of the children's special interests and abilities;
- (7) The program shall provide a balance of active and quiet activities; and
- (8) The program shall provide for the self-direction of the children by:

- (A) Affording children opportunities to choose activities according to personal desires and interests and to move from one activity to another;
- (B) Encouraging children to do things independently; and
- (C) Providing children opportunities to be involved in decision making about group and individual activities. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-26 Communication with parents. (a)

Providers shall obtain from the parent or guardian a description of the child's daily routine and behavior patterns prior to enrollment.

(b) Caregivers shall relay concerns about the health, development, or behavior of the child to the parents or guardians promptly and directly.

[Eff] (Auth: HRS §346-172)
(Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-27 Program materials and equipment.

(a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be appropriate to the ages of the children in care.

(b) The quantity of materials and equipment shall be sufficient to:

- (1) Avoid excessive competition between the children and to avoid long waits for use of the materials and equipment; and
- (2) Provide for a variety of experiences and appeal to the individual interests of the children.

(c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.

(d) Materials shall be safe and kept in good repair, not be recalled, and shall be accessible to children. The materials shall be stored in an orderly way and shall be arranged to allow children to select, remove, and replace the materials either independently or with assistance.

(e) Soft media, or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.

(f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.

(g) Provision for individual storage of children's clothing and personal belongings shall be available.

(h) Storage space for play materials and equipment used by the children shall be made available.

(i) Sleeping materials and equipment for children less than one year of age shall meet the safe sleep requirements in subchapter 11. For children ages one year and older, the following sleeping equipment shall be available:

- (1) Individual bed, crib, cot, mat, or rug for each child who rests; and
- (2) A clean sheet or cover to be used on the bed, crib, cot, mat, or rug for each child.
[Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-28 Transition to a new facility or school setting. (a) The provider shall assist the child in making the transition from the child care setting to a new child care, a kindergarten, or a school setting.

(b) The provider shall cooperate with parents, guardians, or kindergarten school staff when information is requested which may assist a child to adjust to a new environment, as allowed by section 17-891.2-16 [Eff] (Auth: HRS §346-172)

(Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833

§§17-891.2-29 to 17-891.2-34 (Reserved)

SUBCHAPTER 4

STAFFING REQUIREMENTS

§17-891.2-35 Staff training, experience, and personal qualifications. (a) Each caregiver shall be qualified through training, experience, and personal qualities for the age group with which the person works.

(b) All providers other than volunteers assisting providers shall be at least eighteen years old.

(c) Written references from two of the following categories of persons shall be submitted to the department with an application:

- (1) A neighbor or personal friend;
- (2) A person in a professional capacity such as a teacher, doctor, minister, or social worker;
- (3) The parent of any child who has previously been in the provider's care, if applicable.

(d) Each caregiver, substitute, and volunteer within forty-five days of hire, shall complete initial training that is approved by the department in health and safety standards which addresses the following areas:

- (1) Prevention and control of infectious diseases (including immunizations);
- (2) Prevention of sudden infant death syndrome and use of safe sleeping practices;
- (3) Administration of medication, consistent with standards for parental consent;
- (4) Prevention and response to emergencies due

- to food and allergic reactions;
- (5) Building and physical premises safety;
- (6) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
- (7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event;
- (8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
- (9) Appropriate precautions in transporting children;
- (10) Pediatric first aid and cardiopulmonary resuscitation; and
- (11) Recognition and reporting of child abuse and neglect.

(e) When a caregiver, substitute or volunteer has not provided child care for one hundred eighty consecutive days or more, the initial training in subsection (d) shall be repeated.

(f) After the initial training in health and safety standards is completed with one hundred percent accuracy and the results are received and recorded by the department, each caregiver shall complete on-going training appropriate to the age of children the caregiver serves within twelve months from the date the initial training was received and recorded by the department, and then annually thereafter.

- (1) Each caregiver shall complete at least sixteen hours of department-approved training annually in at least two of the topic areas in subsection (g).
- (2) Substitutes shall complete at least ten hours of department-approved training in at least two of the topic areas in subsection (g).
- (3) Volunteers who serve ten hours or more a week shall complete at least eight hours of department-approved training annually in at least two of the topics areas in subsection (g).
- (4) When an individual does not meet the requirements in subsection (f) or does not

provide evidence of working to complete ongoing training, the individual shall no longer be eligible to meet the staff-child ratio in accordance with section 17-891.2-36(d).

(g) Each caregiver shall provide written evidence to the department to show completion of on-going training. The on-going training course, workshop, or class shall be different from the training topic areas completed in the prior twelve month period, and shall be in the following topic areas:

- (1) Physical care of the young child;
- (2) Care of the sick child;
- (3) Child nutrition;
- (4) Child growth and development;
- (5) Children with special needs;
- (6) Learning activities and play;
- (7) Family engagement;
- (8) Managing challenging behaviors;
- (9) Community resources;
- (10) Prevention of child maltreatment and abuse;
- (11) First aid and child cardiopulmonary resuscitation;
- (12) Health and safety;
- (13) Child care business, or program management; or
- (14) Physical environment; and
- (15) Safe sleep if permitted to care for children less than 1 year of age.

(h) Applicants and staff members shall be of reputable and responsible character and shall not have the following:

- (1) A criminal history record, employment history, sex offender registry history, child abuse/neglect history, or adult abuse history that may pose a risk to children in care as specified in section 17-801-5; or
 - (2) Any other situations that poses a risk to the health, safety, or well-being of children in care. [Eff _____]
- (Auth: HRS §346-172, 346-154) (Imp: HRS §346-154; 42 U.S.C. §§2002, 2005, 5751,

(b) No more than two children under eighteen months of age shall be permitted in the family child care home at the same time. Should there be additional adult help in the home, there may be up to four children under eighteen months of age, and parents shall be provided with the names of the additional adults who help.

- (1) Space is unusually limited;
- (2) Provider has personal, physical, or psychological limitations;
- (3) There is an unusually wide range of ages of the children;
- (4) There are children with special needs requiring unusual amounts of special care; or
- (5) Provider is dually licensed as a foster home.

- (1) A substitute shall meet the requirements in section 17-891.2-35.
- (2) When substitute care is provided, except during an emergency, parents or guardians shall be notified at least ten days prior to the use of a substitute. [Eff _____]
(Auth: HRS §346-172) (Imp: HRS §§346-

151, 346-154, 346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-37 to 891.2-39 (Reserved)

SUBCHAPTER 5

HEALTH STANDARDS FOR CHILDREN

§17-891.2-40 Health consultation provisions.

The facility shall make provision for health consultation to assist in developing health policies and keeping the policies current. The provider shall contact a local health resource for consultation in setting up and maintaining health standards.

[Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-41 Evidence of child's health. (a)

The child care facility shall require and obtain from the parent or guardian of each child entering child care, a health record of the child which complies with the provisions of chapter 11-157, which relate to the immunization, physical examination, and chapter 11-164.2 for tuberculosis clearance which shall include the following:

- (1) Child's record of immunizations, or a written statement from a licensed physician certifying that the physical condition of the infant or toddler is such that immunizations would endanger the infant or toddler's life or health, or a written statement from a parent or guardian requesting exemption from the required immunizations on the grounds that such immunizations conflict with the parent or guardian's bonafide religious tenets and

practices, in accordance with chapter 11-157.

- (2) Evidence of tuberculosis clearance in accordance with chapter 11-164.2;
- (3) Evidence of the child's physical examination; and
- (4) The signature of a physician or health agency, signed within one year prior to admission.

(b) For children experiencing homelessness or in foster care, the child care facility shall allow a grace period of three months from the child's first day in care to obtain the evidence described in subsection (a) in accordance with chapter 11-157, provided that the parents or guardians submit to the facility in writing the health needs for the child, including any allergies, at the time the child is placed in care.

(c) School aged children in before or after school care only, who satisfy health requirements for enrollment in school, are not required to furnish the material specified in subsection (a) above.

[Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-42 Emergency care provisions. Every child care facility shall have the following provisions for emergency care of any child requiring treatment at a hospital or clinic away from the child care setting and for care of a child who becomes ill after arrival as follows:

- (1) The provider shall obtain the name of a physician or nearest hospital or clinic where care can be provided to the child;
- (2) The provider shall obtain written permission from the parents or guardians to allow the child to receive emergency care;
- (3) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for

- the child's care. The selection of the adult shall not compromise the supervision of the other children in the program;
- (4) An operating telephone that is available and is easily accessible to the provider to be used in case of an emergency;
 - (5) A first aid kit, emergency contact phone numbers, and medical treatment release forms on field trips; and
 - (6) A plan for accessing a telephone when not in the usual location where care is being provided. [Eff _____] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-43 First aid and child cardio-pulmonary resuscitation (CPR). (a) The first aid requirement shall be as follows:

- (1) There shall be at least one adult provider who is trained in observation of symptoms of illness and with a current certificate in first aid at all times during the operational day when children are in care.
 - (2) A current certificate means a certificate that has not expired.
 - (3) The current first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.
 - (4) A first aid kit shall be available in the child care setting at all times.
- (b) The child CPR requirement shall be as follows:
- (6) There shall be at least one adult provider who is trained in child CPR and with a current certificate at all times during the operational day when children are in care.
 - (6) A current certificate means a certificate

- that has not expired.
- (6) The child CPR course must be provided by the American Red Cross, American Heart Association, or any organization whose child CPR certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.
 - (6) When the provider accepts infant children, the CPR course shall include training in infant CPR. [Eff _____] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §2002, 2005, 9833)

§17-891.2-44 Admission of ill children. (a)

When health policies of the child care facility allow ill children to be admitted or to remain in the child care facility, health consultation shall be available regarding special care and medication.

(b) When medication prescribed by a physician is administered at the facility:

- (1) Written permission from the child's parent or guardian to administer medication is on file;
- (2) The medication shall be kept in the original container bearing the prescription label which shows a current date, the physician's directions for use, and the child's name; and
- (3) Medication shall be kept out of the reach of the children and shall be returned to parents or guardians when no longer in use.

(c) When over the counter medication is recommended by the child or family's doctor, medication shall be administered at the child care facility as directed by the doctor or parent or guardian in writing.

(d) Both the provider and the parents or guardians shall be familiar with special policies of the facility relevant to ill children. Special policies regarding illnesses are to be explained to

the parent or guardian at the time of enrollment of the child.

(e) Physical arrangements that are clean and safe for children who become ill after arrival at the facility shall be available for the care of the child until the parents or guardians can be notified to provide alternative arrangements. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-45 Admission of children with special needs. (a) When children with special needs are admitted into a family child care home, the facility shall provide for the special needs of each child.

(b) The child with special needs shall be admitted only after consultation with the child's source of health care, the parent or guardian, and the provider occurs. The consultation shall include written recommendations from the health source to cover the child's special needs or to define the child's participation in the program.

(c) If the child's health care source considers it advisable, the provider shall receive training related to the nature of the child's condition and the child's potential for growth and development.

(d) Where the nature of the child's special needs or the number of children with special needs in the program necessitates added care, additional adults and equipment shall be available to cover these requirements.

(e) When additional adults assist with care for children with special needs as set out in subsection (d), the adults shall be subject to the same requirements for health and personal habits as the provider. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-46 Daily nutritional needs. (a) To

the extent possible, information provided by parents or guardians concerning the child's eating habits, food preferences, or special needs shall be considered in child care feeding schedules and menus. Children shall be encouraged but shall not be required to eat the food offered at the home.

(b) The home shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resource approved by the state department of health.

(c) In a home providing meal service, the minimum meal components and food amounts required by the United States Department of Agriculture (USDA) child care food program shall be met. The home shall offer and provide the following combination of meals and snacks for children in care:

- (1) Two to four hours - - - one snack;
- (2) Four to eight hours - - - one snack
or breakfast
and lunch or
supper;
- (3) Eight hours or more - - - one snack
or breakfast
and lunch or
supper and
one additional
snack

(unless the eight hours or more extend into the evening hours when the child may be asleep);

- (4) When two snacks are required as in (3) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent; and
- (5) Local ethnic foods may be added or substituted for quantity (for allowable food reimbursement, provider shall consult with the USDA).

(d) In a home where parents or guardians are allowed to provide food (i.e. sack lunches or snacks) the home, in addition to food the child brings, shall meet the minimum amounts required by the USDA child care food program by offering and providing children

§17-891.2-47

§17-891.2-47 Drinking water provisions. Water suitable for drinking shall be available and accessible to all children. [Eff]
(Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-48 Integration of mental health concepts. Mental health aspects of child development shall be integrated as follows:

- (1) The child and at least one parent, guardian, foster parent, or social worker shall be interviewed prior to a child's admission to a family child care home. The personal interview shall be conducted to secure pertinent information on the child's over-all behavior and to acquaint the parent or guardian with the child care home's policies;
- (2) The provider shall regularly communicate with the parents or guardians about the child's development; and
- (3) The providers shall be aware of community resources, such as children's mental health teams in the state department of health, to help recognize and foster age appropriate behavioral development in children and shall share this information with the parents or guardians. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-49 to 17-891.2-54 (Reserved)

SUBCHAPTER 6

HEALTH STANDARDS FOR PROVIDER AND OTHERS IN THE HOME

§17-891.2-55 Providers' health standards.

Evidence that providers are free from health problems which would have a harmful effect on the children or which would interfere with effective functioning shall be maintained at the child care home as follows:

- (1) The results of employment physical examinations for the provider, and when indicated on a physical exam that the individual has a mental health disorder or limitation, a psychological exam, given within one year prior to beginning family child care which indicates the provider and each staff member who works ten or more hours a week is in adequate physical, and if needed, mental health to care for children;
 - (2) Any other person living in the home shall have a written report of a physical examination on file which was obtained within one year prior to the provider beginning child care or prior to the person's occupancy in the home. For school aged children, this requirement is fulfilled by meeting the rules for school attendance;
 - (3) Written evidence that each adult in the home is free from communicable tuberculosis in accordance with the requirements for child care facility personnel, under chapter 11-164.2. The tuberculosis clearance must be completed within one year before beginning child care shall be on file at the facility. The tests shall be repeated in compliance with chapter 11-164; and
 - (4) Volunteers or other caregivers, paid or not, who provide direct child care shall be subject to the same requirements for health and personal habits as the provider.
- [Eff] (Auth: HRS §346-172)
(Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-56

§17-891.2-56 Personal health habits of provider.

The personal health habits of all providers shall not interfere with the protection of the health of the children as follows:

- (1) The use of medications other than over-the-counter medication is permitted only when authorized by a physician;
- (2) Medication that impairs or limits the caregiver's ability to provide care shall not be consumed prior to or during the hours of child care;
- (3) All medication is stored out of the reach of children;
- (4) The provider shall inform parents or guardians if any member of the household smokes;
- (5) No smoking, including electronic smoking devices, is allowed on the premises during child care hours of operation, and personal nicotine products shall be stored out of reach of children; and
- (6) Alcoholic beverages shall be stored out of the reach of children and shall not be consumed during hours of the facility's child care operation. [Eff]
(Auth: HRS §346-172) (Imp: HRS §346-172;
42 U.S.C. §§2002, 2005,9833)

§§17-891.2-57 to 17-891.2-60 (Reserved)

SUBCHAPTER 7

SANITATION STANDARDS

§17-891.2-61 Handling of diapers and training

pants. The provider shall handle disposable and cloth diapers and cloth training underpants in the following manner:

- (1) Use a clean non-porous surface for changing diapers;
- (2) Use a space set aside for diapering that is separate from eating and food preparation areas;
- (3) Soiled disposable diapers shall be discarded in a covered container. The covered container shall be kept away from eating, food storage, and food preparation areas and out of the children's reach.
- (4) Soiled cloth diapers and cloth training underpants, without emptying or rinsing the contents, shall be placed in a plastic bag and kept away from eating, food storage, and food preparation areas and out of the children's reach. The soiled cloth diapers or cloth training underpants shall be given to the child's parent or guardian.
[Eff] (Auth: HRS §346-172)
(Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-62 Handwashing. (a) The provider and children shall wash hands using water and soap before and after the following activities:

- (1) Before and after eating or drinking;
 - (2) Before and after preparing food or beverages;
 - (3) Before and after diapering;
 - (4) After using the toilet or helping a child in toileting;
 - (5) After handling bodily fluids or items containing bodily fluids;
 - (6) After handling pets or animals;
 - (7) After outdoor play; and
- (b) Paper towels or separate cloth towels shall be used for each child for drying hands after handwashing. [Eff] (Auth: HRS §346-

§17-891.2-62

172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-63 to 17-891.2-65 (Reserved)

SUBCHAPTER 8

ENVIRONMENTAL HEALTH STANDARDS

§17-891.2-66 Disaster plan for emergencies. (a) Each child care facility shall have a written disaster plan to cover emergencies such as fire, flood, or natural disaster or other emergencies, and the plan shall be posted in a prominent place in the facility.

(b) The plan shall be practiced at regular intervals and include written procedures for:

- (1) Evacuation;
- (2) Relocation of the child care facility if facility becomes uninhabitable, or if the facility is ordered to evacuate;
- (3) Sheltering in place at the child care facility;
- (4) Lock-down of the child care facility;
- (5) Communication and reunification with families during and after an emergency;
- (6) Continuity of operations during and after an emergency;
- (7) Accommodation of children, including infants and toddlers during an emergency;
- (8) Providing for the needs of children with disabilities and children with special needs during an emergency; and
- (9) Providing for the needs of children with chronic medical conditions during an emergency.

(c) Each child care facility shall provide emergency preparedness training to staff members.

(d) The facility shall complete practice drills for the various emergency situations at regular intervals, or whenever a new procedure has been added. A log of the practice drills shall be maintained and made readily available for inspection by the department.

(e) Monthly fire drills shall be conducted and a written fire drill log shall be maintained and made readily available for inspection by the department.

(f) Emergency evacuation exits are kept clear of obstructions.

(g) Each child care facility shall install an underwriters laboratory listed fire warning device or system in each stairway or hall in the facility.

(h) There shall be an unexpired ABC multi-purpose type fire extinguisher in the child care area.

(i) Parents or guardians shall be informed of the disaster plans at the time of enrollment.

(j) The provider shall notify the department within one working day when an emergency resulted in the evacuation, relocation, shelter in place, and lock-down of the facility. [Eff]

(Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-67 Accidental injury precautions. The provider shall ensure that the child care program and premises minimize the risk of accidental injury in the following manner:

- (1) Ensuring that child care activities and premises do not expose children to situations which may be hazardous to the particular age or capacity of the child;
- (2) Helping increase the children's awareness of safety practices and accident hazards, as appropriate to their age and level of development and helping the children to learn how to avoid such hazards;
- (3) Ensuring that materials and equipment have not been recalled by the consumer product safety commission; and

- (4) Following procedures for infection control, to use in all situations to prevent the transmission of blood-borne germs that may be spread through blood and body fluids that might contain blood. [Eff]
(Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-68 Environmental hazards. The premises, both indoor and outdoor, in which a child care program is carried out shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the children as follows:

- (1) The provider shall control rodents and insects;
- (2) All entrances and exits shall be secured;
- (3) The outdoor space shall be fenced or shall have natural barriers or other protective conditions to deter children from getting into unsafe areas;
- (4) There shall be no open drainage ditches, wells, or holes into which children may fall;
- (5) Drainage shall be adequate to prevent stagnant pools of water from accumulating;
- (6) Garbage and trash shall be stored in covered containers out of reach of the children and shall be removed frequently enough to avoid creating a health hazard or nuisances;
- (7) Sharp objects, household kitchen items, and tools shall be kept in a safe location and out of children's reach or shall be supervised when used safely;
- (8) Poisons, drugs, harmful chemicals, and other dangerous articles such as cleaning fluid, matches, and firearms, shall be kept in a safe location, out of reach of children;
- (9) Hazardous substances, including cleaning solutions, alcohol, and medication are inaccessible to children and in a closed

- container which are clearly labeled.
Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times;
- (10) All rooms used for child care shall be lighted and ventilated;
 - (11) Open fireplaces shall not be used. Floor heaters and all heating elements including hot water pipes shall be insulated or installed in a manner which makes the pipes inaccessible to children;
 - (12) Children shall be supervised when using hot water taps;
 - (13) Stove top controls shall not be accessible to children;
 - (14) Floor space shall be arranged to provide areas for active play, quiet rest, and individual activities;
 - (15) Indoor and outdoor structures, equipment and toys shall be sturdily constructed and furnishings that have hazardous sharp edges, rust, and splinters shall not be accessible to children;
 - (16) Lead based paint shall not be used on surfaces accessible to children;
 - (17) Provision shall be made to eliminate the hazard of electrical outlets;
 - (18) Electrical cords shall not cross pathways, and long cords are wrapped and secured;
 - (19) Poisonous plants shall be kept out of the reach of children;
 - (20) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times;
 - (21) If a lodging house, boarding house, or other business conflicts with child care hours and responsibilities, the lodging house, the boarding house, or other business shall not be operated on the premises of the child care home.
 - (22) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured

and locked in a separate place; provided that a law enforcement officer, who is trained and certified to carry a firearm and ammunition, shall not be subject to this subsection for a law enforcement agency-issued firearm when the officer is acting in an official or authorized capacity.

[Eff] (Auth: HRS §346-172)
(Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-69 Water supply. (a) The water supply shall be from a source approved by the health authority and shall be under pressure. The plumbing shall be installed and maintained in a manner approved by local plumbing codes.

(b) If running water is not available, the water shall originate from a source approved by the health authority, shall be transported to the child care setting in clean, sanitized, covered containers, and shall be protected from contamination.

[Eff] (Auth: HRS §346-172) (Imp:
HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-70 Toilet and lavatory facilities. Toilet and lavatory facilities shall be of a type determined by the availability of water under pressure. Approved facilities, water or non-water carriage, shall be provided for disposal of sewage and other liquid wastes. The following shall apply:

- (1) Where a public sewer is available, all plumbing fixtures and building sewers shall be connected thereto;
- (2) Where a public sewer is not available, a private sewage disposal system of an approved type shall be installed and connected to all plumbing fixtures and building sewers;
- (3) Where water carried sewage disposal means

- are not available or feasible, sewage and other liquid wastes shall be disposed in a manner approved by the health authority;
- (4) Where water carried sewage disposal is available, water flush toilets shall be provided. Indoor toilets shall be located in rooms separate from those used for cooking, sleeping, or eating;
 - (5) Where water carried sewage disposal is not available, privies shall be used in accordance with local sanitary requirements and shall be designed with step stools or with risers and holes sized to the age group;
 - (6) If toilet training chairs are provided for use by children, the toilet training chairs shall be emptied promptly and sanitized after use;
 - (7) Lavatories shall be available and small children shall be assisted in washing to prevent accidental scalding;
 - (8) Safe, sturdy step stools shall be provided to allow the use of standard sized toilets and lavatories; and
 - (9) Children shall not share towels, toothbrushes, combs, and other necessary toilet articles. [Eff]
(Auth: HRS §346-172) (Imp: HRS §346-172;42 U.S.C. §§2002, 2005, 9833)

§17-891.2-71 Food preparation and protection.

Food preparation and protection shall be carried out in a kitchen with proper equipment and cleanup facilities required for the number of children in care as follows:

- (1) All food shall be protected from contamination during storage, preparation, and service;
- (2) All dishwashing shall be performed in a sanitary manner;
- (3) An adequate number of eating and drinking

- utensils shall be available for each child;
- (4) When single service utensils are used, the utensils shall be stored and handled in a sanitary manner and discarded after a single use;
 - (5) Cooking utensils used in food preparation and service shall be cleaned and stored in a sanitary manner; and
 - (6) Food protection policies shall comply with accepted practices of local sanitary codes in chapter 11-50, and shall be adapted to fit the needs of the program except as indicated in these rules.

[Eff _____] (Auth: HRS §346-172)
(Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-72 Cleaning of premises. (a) All necessary cleaning equipment shall be available on the premises and provisions shall be made for regular cleaning of the premises to protect the health of the children and provider.

(b) Cleaning materials shall be clearly labeled and stored in a secured area that is away from food preparation areas and is inaccessible to the children.

(c) There shall be a plan for regular cleaning of toys, table tops, furniture, and other similar equipment used by the children.

(d) Areas designated for eating and food preparation are cleaned before and after meals and snacks. [Eff _____] (Auth: HRS §346-172)
(Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-73 Swimming Activities and wading pools. (a) When swimming or wading pools are part of the child care facility, equipment, or program, the swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are a

part of the child care program, the following safety practices shall be observed:

- (1) A certified lifeguard, who may be the provider, shall be on duty at all times when swimming activities or swimming pools or beaches are in use;
- (2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of subsection (b)(1). However, children shall be personally attended by a responsible adult at all times and the wading pools shall be emptied immediately after each use; and
- (3) Legible safety rules for the use of all types of pools, excepting for wading pools, shall be posted in a conspicuous location and read and reviewed at regular intervals by the provider responsible for the care of the children. [Eff _____]
(Auth: HRS §346-172) (Imp: HRS §346-172;
42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-74 to 17-891.2-79 (Reserved)

SUBCHAPTER 9

PHYSICAL FACILITY STANDARDS

§17-891.2-80 Building codes and space requirements. Child care facilities shall conform to the zoning, building, electrical, and plumbing codes of the county in which the facility is located, to state rules as may be applicable to the facility, and the following:

- (1) The department shall be notified of changes or renovations in the home;
- (2) Space requirements shall be as follows:
 - (A) For daytime care, there shall be a

the following requirements:

- (1) In consultation with parents, special attention shall be given to provide for a transition into night care;
- (2) Toys for quiet activities shall be available;
- (3) Comfortable beds or cots, complete with bedding, and night clothes shall be available or supplied by the parents;
- (4) The provider shall be available to assist children during eating and pre-bedtime hours and during the morning period when dressing. During sleeping hours, the provider shall always be within hearing distance to provide for the needs of children and to respond to an emergency;
- (5) A child shall not sleep in a building detached from the main facility; and
- (6) Night care facilities shall include at least one shower, bathtub, or bathing facility for young children. [Eff]
(Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-86 Program modifications for demonstration projects. (a) A child care facility may establish a demonstration project for a specific purpose, or set of purposes, upon receiving written approval from the department.

(b) The child care facility shall submit a written proposal to the department indicating the following:

- (1) Purpose of the project;
- (2) Description of the project;
- (3) Length of the project;
- (4) Specific child care rules that shall be exempted by the project; and
- (5) Justification for the proposed exemptions.

(c) The persons responsible for the project or the designated representatives shall appear in person to discuss the proposal with the department or the

department's designated representatives if requested by the department.

(d) A demonstration project which has been approved in writing by the department shall comply with all requirements imposed by the department at the time of its approval as follows:

- (1) The name or description of the project shall include the words "registered demonstration project";
- (2) Providers shall be able to show that at all times the demonstration project is in compliance with the child care rules, except as specifically exempted or modified in the department's written approval; and
- (3) Within the last quarter of the time specified for the demonstration project, a written report shall be submitted to the department which includes:
 - (A) Developments, findings, recommendations, and suggestions for further study; and
 - (B) Any proposed recommendations related to the demonstration project for changing or modifying child care rules with justification therefore.

(e) Proposed demonstration programs disapproved or discontinued by the department shall not be permitted any further use of the words "registered demonstration project" in the identifying title, logo, or material. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-87 to 17-891.2-89 (Reserved)

SUBCHAPTER 11

SAFE SLEEP

§17-891.2-90 Program requirements. (a) A child care facility shall have a written operation policy regarding safe sleep.

(b) All staff members of the child care facility caring for children less than one year of age shall review the child care facility's written operation policy regarding safe sleep and complete training in safe sleep practices that is approved by the department, upon hire and on an annual basis, and the child care facility shall maintain a record of policy reviews and trainings completed.

(c) The child care facility shall ensure the following for sleeping children less than one year of age:

- (1) Children shall be placed on their backs to sleep or in accordance with the written instructions on file at the child care facility from a health care practitioner for alternate sleep positioning;
- (2) Sleeping children are physically monitored and periodically checked; and
- (3) A child who falls asleep in a location or equipment other than a crib or playpen shall be moved to a crib or playpen for the remainder of the nap. [Eff
] (Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-91 Sleep environment. (a) A child care facility shall use cribs and playpens that have not been recalled by the consumer product safety commission; provided that a recalled item may be used if repaired in accordance with the manufacturer's standards, and the child care facility maintains a record of the repair.

(b) Soft bedding, bumper pads, and other objects shall not be placed in the crib or playpen.

(c) A clean, tightly fitted crib sheet shall be used to cover the crib or playpen for children less

§17-891.2-91

than one year of age.

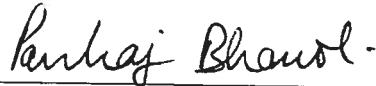
(d) Sleeping areas shall be well-ventilated.

(e) Bed-sharing is not allowed.

(f) The child care facility shall not use recalled items for children, such as cribs, playpens, and other equipment unless the item has been repaired in accordance with the manufacturer's standards and the child care facility maintains a record of the repair." [Eff] (Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)

2. The adoption of chapter 17-891.2, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on June 1, 2020 and filed with the Office of the Lieutenant Governor.



PANKAJ BHANOT

Director of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

III. New Business – Before Public Hearing

B. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 892.1 and Adoption of Chapter 892.2, Licensing of Group Day Care Centers and Group Child Care Homes, promulgated by DHS

DAVID Y. IGE
GOVERNOR



RECEIVED
By SBRRB at 11:16 am, Apr 05, 2021

PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
Office of the Director
P. O. Box 339
Honolulu, Hawai'i 96809-0339

BESSD 20.C0603

June 1, 2020

MEMORANDUM:

TO: THE HONORABLE CLARE E. CONNORS, ATTORNEY GENERAL
DEPARTMENT OF THE ATTORNEY GENERAL

THROUGH: JAMES WALTHER, SUPERVISING DEPUTY ATTORNEY GENERAL
HEALTH AND HUMAN SERVICES DIVISION

FROM: PANKAJ BHANOT
DIRECTOR *PB*

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED REPEAL OF CHAPTER 17-892.1 AND
ADOPTION OF CHAPTER 17-892.2 HAWAII ADMINISTRATIVE RULES, RELATING
TO LICENSED GROUP DAY CARE CENTERS AND GROUP CHILD CARE HOMES

In accordance with Administrative Directive No. 18-02, we have completed revisions and are submitting for your review and approval as to form the proposed repeal of Chapter 17-892.1 and adoption to Chapter 17-892.2 relating to the Licensing of Group Day Care Centers and Group Child Care Homes. A copy of the Notice of Public Hearing is also enclosed for your approval as to form, and a copy of the impact statement is included for your information.

Your expedited response to this request would be greatly appreciated, as we must also secure the Governor's preliminary approval prior to publishing the Notice of Public Hearing. If you have any questions, please contact Dana Balansag, Child Care Program Administrator, at 586-7187.

Enclosures

APPROVED AS TO FORM:

James W. Walther
Deputy Attorney General

8/6/30
Date

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

Date: 6/1/2020

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17-892.2

Chapter Name: Licensing of Group Day Care Centers and Group Child Care Homes

Contact Person/Title: Dana Balansag

E-mail: dbalansag@dhs.hawaii.gov Phone: 586-7187

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ Yes ☒ No

If "Yes," provide details: _____

I. Rule Description:

☒ New ☒ Repeal ☐ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☒ Yes ☐ No

(If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☒ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☒ No

(If "Yes" no need to submit this form.)

*

*

*

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

Refer to Attachment 1

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

Refer to Attachment 1

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.
- b. Amount of the proposed fee or fine and the percentage increase.
- c. Reason for the new or increased fee or fine.
- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

Refer to Attachment 1

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

Refer to Attachment 1

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

Refer to Attachment 1

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

Refer to Attachment 1

7. How the agency involved small business in the development of the proposed rules.

Refer to Attachment 1

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

Refer to Attachment 1

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1

1. DHS licensed group day care centers and group child care homes (aka preschools) that care for children ages 2 years old and up.

Preschools will be required to have individuals who work with children in care, including staff or substitutes, complete minimum health and safety training requirements, pre-service and on-going training.

Initial/pre-service health and safety training and 16 hours of on-going health and safety training annually. DHS licensed preschools will have to find available training opportunities, which could include free trainings offered by the department's training contractor or other community-based or online trainings available.

Preschools will be required to comply with maximum group size limits of children that can be together in one group. DHS licensed preschools will have to ensure that there are enough qualified staff to meet the group size requirements.

2. Chapter 17-892.2 Licensing of Group Day Care Centers and Group Child Care Homes is substantially based on existing chapter 17-892.1 that is being repealed. The proposed requirements for DHS licensed group day care centers and group child care homes may have the additional direct costs:

- 1) Any preschools may need to pay their employees for their time to complete 16 hours of health and safety training on an annual basis. Minimum wage: $\$10.10/\text{hour} \times 16 \text{ (hours training)} = \161.60 per employee. If the preschools have substitutes, the substitutes would need to complete 10 hours of training. Minimum wage: $\$10.10/\text{hours} \times 10 \text{ hours (hours training)} = \101 . There are 590 licensed group day care centers and 324 group child care homes.
- 2) Additional costs for the reporting of staff's training certificates to DHS' tracking contractor and record keeping of staff's training certificates may be incurred by preschools.
- 3) \$20 - \$40 for an ABC multi-purpose type fire extinguisher in the child care area.

DHS is implementing under proposed chapter 17-798.3 a 7% increase in subsidy payment rates for licensed infant and toddler child care centers to help off-set some of the additional costs for facilities that will care for children whose families receive child care subsidies. The current subsidy payment rate for licensed preschools is \$740 and the proposed subsidy payment rate is \$795.

The proposed chapter 17-892.2 does not impose new or increased fees or fines.

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1

3. None
4. Preschool staff members may take on-line classes, workshops, conferences, in-service trainings and college credits that meet DHS criteria. Free trainings offered by the department's training contractor or other community-based or online trainings are available.
5. The proposed rules are based on requirements set forth by the Child Care and Development Block Grant (CCDBG) Act of 2014 which require caregivers to complete health and safety training and have maximum group size limits.
6. Preschool staff members may take on-line classes, workshops, conferences, in-service trainings and college credits to meet DHS criteria. Free trainings offered by the department's training contractor or other community-based or online trainings are available.

For maximum group size limits, there are times when more children will be allowed to be grouped together (i.e. performances, meal and snack time, and assemblies).

7. DHS held discussion sessions with early childhood stakeholders beginning in 2015 to discuss health and safety training hours. Discussions on other proposed rules were held during quarterly DHS Child Care Advisory Committee meetings and during statewide informational sessions that were held between 1/2019 – 3/2019.
 - a. Preschools agreed that the 16 hours of on-going health and safety training over a 12 month period was a reasonable amount. The recommendation to not require annual health and safety training for substitutes and volunteers was partially incorporated. The number of on-going health and safety training hours for substitutes and volunteers were reduced from 16 hours to 10 hours and 8 hours, respectively. The requirement for a substitute and volunteer to complete on-going health and safety training is to comply with the CCDBG Act of 2014 which requires caregivers to complete on-going health and safety training annually. Completion of on-going health and safety training hours increases the health and safety of children and the quality of child care.

For maximum group size limits, the recommendation to allow for more children to be grouped together during specific events or times was incorporated into the proposed rule.

8. There are none.

DEPARTMENT OF HUMAN SERVICES

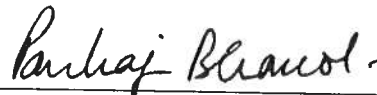
Repeal of Chapter 17-892.1
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-892.1, Hawaii Administrative Rules, entitled "Licensing of Group Child Care Centers and Group Child Care Homes" is repealed.

2. The repeal of chapter 17-892.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on June 1, 2020 and filed with the Office of the Lieutenant Governor.



PANKAJ BHANOT

Director

Department of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-892.2
Hawaii Administrative Rules

June 1, 2020

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 892.2

LICENSING OF GROUP CHILD CARE CENTERS AND GROUP CHILD
CARE HOMES

Subchapter 1 Licensing Procedure

- §17-892.2-1 Definitions
- §17-892.2-2 Application
- §17-892.2-3 Inspection and issuance of license
- §17-892.2-4 Fines
- §17-892.2-5 Denial, suspension, revocation of
license, and hearings
- §§17-892.2-6 to 17-892.2-9 (Reserved)

Subchapter 2 Administration Requirements

- §17-892.2-10 Age of children in care
- §17-892.2-11 Statement of operation policies
- §17-892.2-12 Liability insurance
- §17-892.2-13 Information on owner or operator
- §17-892.2-14 Change in services and staff members
- §17-892.2-15 Information and records on each child
- §17-892.2-16 Disclosure of information on the child
- §17-892.2-17 Information and records on facility
- §17-892.2-18 Transportation provisions
- §§17-892.2-19 to 17-892.2-24 (Reserved)

Subchapter 3 Program Requirements

- §17-892.2-25 Program provisions
- §17-892.2-26 Communication with parents
- §17-892.2-27 Program materials and equipment
- §17-892.2-28 Transition to a new facility or school setting
- §§17-892.2-29 to 17-892.2-34 (Reserved)

Subchapter 4 Staffing Requirements

- §17-892.2-35 Staff training, experience, and personal qualifications
- §17-892.2-36 Staff-child ratio
- §§17-892.2-37 to 17-892.2-39 (Reserved)

Subchapter 5 Health Standards for Children

- §17-892.2-40 Health consultation provisions
- §17-892.2-41 Evidence of child's health
- §17-892.2-42 Emergency care provisions
- §17-892.2-43 First aid and child cardio-pulmonary resuscitation (CPR)

§17-892.2-44 Admission of ill children
§17-892.2-44.01 Administration of medication
§17-892.2-45 Non-admission of ill children
§17-892.2-46 Admission of children with special
needs
§17-892.2-47 Daily nutritional needs
§17-892.2-48 Drinking water provisions
§17-892.2-49 Integration of mental health
concepts
§§17-892.2-50 to 17-892.2-54 (Reserved)

Subchapter 6 Health Standards for Staff

§17-892.2-55 Providers' health standards
§17-892.2-56 Personal health habits of staff
§§17-892.2-57 to 17-892.2-60 (Reserved)

Subchapter 7 Environmental Health Standards

§17-892.2-61 Disaster plan for emergencies
§17-892.2-62 Accidental injury precautions
§17-892.2-63 Environmental hazards
§17-892.2-64 Water supply
§17-892.2-65 Toilet and lavatory facilities
§17-892.2-66 Food preparation
§17-892.2-67 Food protection
§17-892.2-68 Cleaning of premises
§17-892.2-69 Public beaches, swimming activities,
and wading pools
§§17-892.2-70 to 17-892.2-74 (Reserved)

Subchapter 8 Sanitation Standards

§17-892.2-75 Handling of diapers and training
pants
§17-892.2-76 Handwashing
§§17-892.2-77 to 17-892.2-79 (Reserved)

§17-892.2-1

Subchapter 9 Physical Facility Standards

§17-892.2-80 Building codes and space requirements
§§17-892.2-81 to 17-892.2-84 (Reserved)

Subchapter 10 Program Modifications

§17-892.2-85 Program modifications for drop-in care
§17-892.2-86 Program modifications for night care
§17-892.2-87 Program modifications for demonstration projects

Historical Note: The chapter is based substantially upon 17-892.1, Hawaii Administrative Rules. [Eff 4/11/92, am and comp 12/19/02; R]

SUBCHAPTER 1

LICENSING PROCEDURE

§17-892.2-1 Definitions. For the purpose of this chapter:

"Acting director" means a person who assumes the responsibilities of director of the child care facility in the absence of the director.

"After school care" means child care provided after the end of the regular school day during the academic year for children who are kindergarten age and above who are enrolled in public or private elementary schools.

"Approved child development or early childhood training courses" means child development or early childhood courses taken from accredited institutions of higher learning and other agencies or organizations authorized by the department which are automatically accepted. Other courses, workshops, or seminars shall be subject to approval by the department.

"Assistant teacher" means any person who works with the guidance of the teacher and director to carry out the program of the center.

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Before school care" means child care provided before the start of the regular school day during the academic year for children kindergarten age and above who are enrolled in public or private elementary schools.

"Caregiver" means any individual who is responsible for the physical well-being, health, safety, supervision, and guidance of children in child care.

"Child" means any person who has not reached the age of eighteen years.

"Child care" means those situations where a person or organization has agreed to assume the responsibility for the child's supervision, development, safety, and protection apart from the parent or guardian for any part of a twenty-four hour day. Child care may be provided out of the child's home in out-of-home relative care, in the child's home by relatives or non-relatives, in a family child care home, in a group child care home, or in a group child care center.

"Child care aide" or "aide" or "child care assistant" means any person who helps the teacher or assistant teacher with all aspects of the planned program.

"Child care center" or "group child care center" means a place other than a private home, maintained by any individual, organization, or agency for the purpose of providing child care. The term child care center shall include child care nurseries, nursery

school groups, preschools, child play groups, parent cooperatives, drop-in child care centers, group child care homes, after or before school, holiday, and summer care for elementary school age children, or other similar units operating under any name.

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Child development associate" or "CDA" means the credential issued by the Council for Professional Recognition.

"Child with special needs" means a child with a condition such as a physical, emotional, behavioral, or learning disability or impairment that causes the child to require additional or specialized services or accommodations.

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Council for Professional Recognition" means the organization that administers the CDA credential.

"County building code" means the building code used by the applicable counties.

"Demonstration project" means any place providing child care which is operating with special approval of the department for exemptions to specific licensing rules.

"Director" or "principal" or "head teacher" or "operator" means the person at the facility having responsibility for the administration of a child care center and its program.

"Drop-in care" means child care where children are permitted to arrive and leave at irregular, non-scheduled times during the facility's operating hours.

"Drop-in child care center" means a facility which accepts children for drop-in care.

"Emergency" means an unforeseen combination of circumstances which calls for immediate action.

"Facility" means the premises of the address that is on the application or license certificate for child

care, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and outdoor areas.

"Family child care home" "family child care" or "FCC" means any private residence at which care is provided at any given time to six or fewer children, as defined in section 346-151, HRS.

"First aid kit" means materials and equipment in one location in a suitable container for meeting medical emergencies. A first aid kit shall be of the type approved by the American Red Cross, American Medical Society, or the department of health.

"Form 14" means a printed form made available by the state department of health or the state department of education to record a child's immunizations and health record.

"Group child care home" or "GCH" means child care provided by an individual in a facility that may be an extended or modified family child care home which provides care to no more than twelve children during any part of a twenty-four hour day. GCHs are licensed under the rules for group child care centers.

"Group size" means the number of children assigned to a specific staff who occupy an individual classroom or defined physical space within a larger area.

"Guardian" means a person other than a child's parents who has legal authority over and responsibility for a child.

"Health care practitioner" means a physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.), a physician assistant (PA), or an advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States, or a nurse practitioner (NP) licensed by the state of Hawaii.

"Ill" or "illness" is a subjective term which shall be defined by each provider with regard to admitting or not admitting sick children to child care.

"Infant" means a child who is newborn up to age one (through the twelfth month).

"Intersession care" means child care provided during the breaks within the academic school year for children who are enrolled in public or private elementary school.

"Lavatory" means a vessel or basin for washing which is in conformity with plumbing codes in force in the state.

"Liability insurance coverage" means a general casualty insurance policy issued to insure against legal liability for injury resulting from negligence to a child during the time the child is under the provider's care.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a child care facility.

"Local sanitary codes" means the specific rules set up by a county, the state department of health, or a comparable federal agency, which govern aspects of health and safety.

"Minor deficiencies" means deficiencies which do not involve risk to life, health, or safety of the children enrolled at the child care center.

"Night care" means child care provided to children who stay at night or overnight at a group child care center, group child care home, or family child care home. Care shall not be provided for twenty-four consecutive hours.

"Panic hardware" means a standard device on doors which permits quick and safe exits upon emergencies (e.g. push bars and plates).

"Person" means any individual with unsupervised access to children in care, caregiver, adult household member, applicant, provider, substitute, volunteer, new hire, rehire, temporary hire, or staff member in a child care facility or exempt child care facility.

"Policy" means a principal plan for the management of a child care facility.

"Provider" means any individual eighteen years or older, caregiver, child care facility, agency or organization, exempt care providers, and adult

employees, who provide child care to children in the absence of the child's caretaker.

"Provisional license" or "temporary permit" means a temporary license issued at the discretion of the department up to a period of six months to any child care facility which is unable to conform to all the rules at the time the license is issued.

"Qualified nutrition consultant" means a dietitian or nutritionist who meets the advanced educational requirements for membership in the American Dietetic Association and is eligible for registration; or one who has a master's degree in public health nutrition or nutritional sciences.

"Recalled" means any type of remedial action taken by a business for a corrective action plan agreed upon by the United States consumer product safety commission to address unsafe or potentially unsafe products to protect consumers, including the return of a product to the manufacturer or retailer for a cash refund or a replacement product, the repair of a product, or public notice of the hazard.

"Regionally accredited college or university" means any college or university that is recognized by the following regional accrediting organizations:

- (1) Middle State Associations of Colleges & Schools-Commission on Higher Education;
- (2) Northwest Commission on Colleges & Universities;
- (3) North Central Association of Colleges and Schools-the Higher Learning Commissions
- (4) New England Association of Schools and Colleges-New England Commission of Higher Education;
- (5) Southern Association of Colleges and Schools Commission on Colleges; or
Western Association of Schools and Colleges-Accrediting Commission for Community and Junior Colleges or Western Association of Schools and Colleges-Senior College and University Commission.

"Regular license" means a certificate of approval issued by the state department of human services to any child care facility which conforms to all the rules at the time the license is issued.

"Regularly" means the typical or normal pattern of the child care center or family home, or a practice or schedule that is routine and uniform and is not subject to unexplained or irrational variations.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in child care.

"Single service utensils" means the supplies or equipment used once to serve food (e.g. paper plates, cups, disposable forks).

"Staff member" means administrative, child care, office, maintenance, employees, adult household members, and other support personnel who are employed by the child care facility, including volunteers and substitutes.

"State child care advisory committee" means a group of people appointed by the department of human services to advise the department on matters regarding child care, including child care rules.

"Substitute" means a person who serves as a replacement staff person for no more than ten consecutive working days in the same position when the regular staff person is absent on an emergency or unplanned basis.

"Summer care" means care that is provided after the end of the academic year and occurs during the summer months.

"Supervision" means to be within sight and hearing distance of the children to insure the safety and protection of the children.

"Teacher," "teacher-director," "head teacher," or "lead teacher" means a person responsible for planning and implementing all or part of the program activities, preparing program materials, supervising, and training other staff.

"Temporary hire" means a person who serves as a replacement when another caregiver is absent on a planned basis.

"Temporary permit" means the same as provisional license.

"USDA child care food program" means the food standards established by the United States Department of Agriculture.

"Volunteer" means a person working or offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the facility. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-151, 346-162)

§17-892.2-2 Application. (a) A completed application to operate a group child care center or group child care home must include the following:

- (1) A signed department application form;
- (2) A written statement of operation policies;
- (3) Verification that the facility meets the applicable county codes;
- (4) Results of the background checks as described in section 17-801-4, and as indicated in (A) and (B) below:
 - (A) Applicants, staff members, and prospective staff members shall provide background clearance records and consent to conduct background checks as indicated in section 17-801-4.
 - (B) The department shall conduct the background checks in accordance with chapter 17-801.

(b) The date of application shall be the date a completed application as described in subsection (a) is received by the department.

(c) Notification of the disposition of the completed application shall be issued no later than ninety days from the date the completed application as defined in subsection (a) is received.

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(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed approved and a license shall be issued.

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application must be submitted unless the licensing unit has granted additional time to satisfy all requirements in subsection (a). [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-154, 346-162; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-892.2-3 Inspection and issuance of license.

(a) In exercising its authority to license child care centers or renew, suspend, or revoke a license, the department shall analyze the qualifications of providers of child care, review the facility's written policies and program provisions, and inspect the child care facility. Authorized representatives of the department and parents or guardians of children in care may visit a child care facility at any time during the hours of operation for purposes of monitoring and inspecting the facilities, activities, staffing, and other aspects of the child care center. The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies' authorized fields.

(b) The applicant or licensee shall cooperate with the department by providing access to its facilities, records, and staff. Failure to comply with reasonable requests may constitute grounds for denial, suspension, or revocation of license.

(c) After the initial licensure, the licensee shall ensure that new staff members comply with section 17-892.2-2(a)(4) within five working days of hire by the child care facility or residence in the group home.

- (1) New staff members shall meet the conditions in sections 17-801-5(a) and 17-801-5(b) prior to starting employment or volunteering at the child care facility.
- (2) An applicant, staff member, or rehired staff member, who has left the state or no longer doing child care for a period of one hundred eighty consecutive days or more, shall comply with sections 17-801-5(a), 17-801-5(b), and 17-801-5(c).
- (3) New household members of group child care homes shall meet the conditions in section 17-801-5.
- (d) Annual background checks shall be conducted. The applicants and staff members shall provide consent to the department to conduct a background check in accordance with chapter 17-801 no later than the anniversary date of the last consent to conduct a background check.
- (e) The department shall request the applicant or licensee to terminate the employment or residence of a staff member determined to be not suitable to provide child care for children in accordance with chapter 17-801.
- (f) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(b)(2).
- (g) The department shall request the applicant or licensee to exclude from the premises, the person who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801.
- (h) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(c)(2).
- (i) Rules prescribed herein are minimum standards. The department shall issue a license certificate under the following conditions:
 - (1) A regular license certificate shall be issued if the result of the department's evaluation indicates compliance with the applicable rules as established by the department; or

- (2) A provisional license certificate shall be issued if the result of the department's evaluation indicates that all of the applicable rules cannot be met immediately but shall be met within six months or less, and the deviations do not threaten the health or safety of the children.

(j) The length of the licensing period shall be as follows:

- (1) For new applicants and those providers licensed for less than four years, the licensing period is one year, and for all other providers the licensing period may be two years, unless subsequently suspended or revoked.
- (2) During a licensing period, a provider may be issued more than one license certificate which may include a provisional license certificate followed by a regular license certificate. When this occurs, the total length of a licensing period shall be according to paragraph (1).
- (3) A provisional license may be issued for up to six months; and
- (4) A license shall be renewed for a new licensing period only upon application and upon the department's approval. An application shall be submitted to the department at least ninety days prior to the expiration of the licensing period.

(k) Each regular license and provisional license shall clearly state the kind of program the licensee is permitted to operate, the address of the licensee, and the number and types of children who can be cared for at the facility.

- (1) A license certificate shall be valid for:
 - (1) One year for new applicants and for those who have been licensed for less than four years; and
 - (2) Two years for those who have been licensed for four years or more,

unless sooner revoked. [Eff] (Auth:

HRS §346-162) (Imp: HRS §§346-154, 346-156, 346-163, 346-161, 346-165, 346-166; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-892.2-4 Fines. (a) The operation of a child care facility without a license is a violation and shall be punishable by a fine not to exceed the maximum amount allowable under the law.

(b) The following offenses may be punishable by a fine, not to exceed the maximum amount allowable under the law, and may also be subject to the denial, suspension, or revocation of a license:

- (1) Caring for more children than allowed by the facility's license;
- (2) Violation of the staff-child ratios;
- (3) Improperly certifying staff credentials;
- (4) Failure to comply with timely request for background check as required in chapter 801;
- (5) Allowing conditions to exist at the facility which constitute a risk of harm or an imminent danger to the health, welfare, or safety of the children; or injuries to children resulting from the conditions;
- (6) Failure to report suspected child abuse or neglect that has occurred or will occur;
- (7) Any behavior that may create an unsafe or unhealthy environment or may pose a risk of harm to children. [Eff] (Auth: HRS §346-156) (Imp: HRS §§346-154, 346-156, 346-162, 350-1; 42 U.S.C. §§2002, 2005, 9833)

§17-892.2-5 Denial, suspension, revocation of license, and hearings. (a) The conditions for denial, suspension, or revocation of a license and the action taken by the department shall be as follows:

- (1) The department shall deny, suspend, or revoke a regular license or a provisional license if:

- (A) An applicant or licensee does not comply with the applicable statutes and rules of the department respecting child care facilities; or
 - (B) The child care facility or any employee of the facility knowingly makes a false statement to any person concerning the child care facility's liability insurance coverage.
- (2) An applicant or licensee whose license is denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the license application;
 - (3) The notice shall contain a statement of the reasons for the proposed action and shall inform the applicant or licensee of the right to appeal the decision to the director of the department in writing, within ten working days after the mailing of the notice of the proposed action;
 - (4) Upon receiving a timely written appeal the director of the department shall give notice of and an opportunity for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the application or license shall be denied, suspended, or revoked; and
 - (5) If no timely written appeal is made, processing of the application shall end or the license shall be suspended or revoked as of the termination of the ten day period.
- (b) The license certificate shall be immediately suspended when:
 - (1) Conditions exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;

- (2) The department received a report of allegations which identify risks to the health, safety, or well-being of the children in care. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;
 - (3) The provider refuses to terminate a staff member as specified in chapter 17-801; or
 - (4) The provider refuses to exclude from the premises, the person who is the subject of an on-going or pending investigation in accordance with chapter 17-801.
- (c) Upon immediate suspension pursuant to (b), the department shall take the following actions:
- (1) Provide the licensee written notice of the order by personal service, by certified, or registered mail addressed to the location shown on the license;
 - (2) Provide a statement of the reasons for the suspension in the notice and inform the licensee of the right to petition the department to reconsider the order within ten working days after mailing of the notice; and
 - (3) Declare that all operations shall cease as of the date of receipt of the notice, give the licensee reasonable notice upon receiving a written petition, and provide an opportunity for a prompt hearing before a hearing officer with respect to the order of suspension of the license. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of suspension shall be affirmed or reversed.
- (d) At any hearing provided for by this section, the applicant or licensee may be represented by counsel and shall have the right to call, examine, and cross-examine witnesses. Evidence may be received even though inadmissible under rules of evidence

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applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and conclusions of law, and shall be mailed to the parties to the proceedings by certified or registered mail to the last known addresses as may be shown in the application, on the license, or otherwise.

(e) Filing of a request for an administrative appeal does not permit the applicant or licensee to continue to care for children under this chapter.

(f) If an applicant or licensee has their regular license or provisional license revoked, they shall be unable to apply for another license for:

- (1) A ninety-day period from the date that the license was revoked if the revocation was their first offense; and
- (2) One year from the date that the license was revoked if the revocation was their second offense. [Eff _____] (Auth: HRS §346-162) (Imp: HRS §346-164; 42 U.S.C. §§2002, 2005)

§§17-892.2-6 to 17-892.2-9 (Reserved)

SUBCHAPTER 2

ADMINISTRATION REQUIREMENTS

§17-892.2-10 Age of children in care. A group child care center or group child care home may provide care to children aged two years (twenty-four months) and older. [Eff _____] (Auth: HRS §346-162) (Imp: HRS §§346-162, 346-14; 42 U.S.C. §§2002, 2005)

§17-892.2-11 Statement of operation policies.

(a) A child care facility shall have written operation policies. Written policies shall be available to the department, caregiver staff, and parents or guardians of children for whom care is, or may be, available, and shall cover the following areas:

- (1) Ages of children accepted;
- (2) Maximum number of children permitted by license;
- (3) Specific hours of day, night, holiday, and vacation operation;
- (4) Type of child care services to be offered;
- (5) Whether or not meals are served;
- (6) Admission requirements and enrollment procedures;
- (7) Provisions which may be made for special needs of individual children;
- (8) Fees and the plan for payment, including fees for different types of service and refund policy;
- (9) Plan for emergency medical care;
- (10) Insurance coverage - each facility shall inform parents or relatives in writing of its policy relating to liability insurance;
- (11) Personal belongings brought to the facility;
- (12) Transportation arrangements;
- (13) Parental permission for trips and related activities outside the facility;
- (14) Admission of ill children;
- (15) Administering medication;
- (16) Provision and management of diapers and other toddler supplies, if applicable;
- (17) Sanitation practices;
- (18) Grievances which shall include the department's information for parents to file a complaint;
- (19) Fundraising campaigns - children and staff shall not be exploited in activities which would be detrimental to the children or the program;

- (20) Mandated reporting of suspected child abuse or neglect in accordance with chapter 350, HRS;
- (21) Regular communication between caregivers and parents or guardians to relay information about the child;
- (22) Suspension and expulsion of children which includes the following:
 - (A) The conditions under which a child may be suspended or expelled, if applicable;
 - (B) Sufficient timeframe before suspension or expulsion occurs to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in paragraph (22)(C) below;
 - (C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children;
 - (D) Parents and guardians are provided written notification of any concerns that could lead to the child's expulsion; and
 - (E) When expulsion occurs, the provider shall maintain a record of the conditions, parental notification, and action taken; and
- (23) Other policies that may be required by the department.
 - (b) Written operation policies shall be reviewed with each caregiver in the facility.
 - (c) Written policies shall be made available for review by parents or guardians at the time of enrollment of a child. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-891.2-12 Liability insurance. A child care facility shall:

- (1) Obtain and maintain liability insurance coverage as defined in section 346-157, HRS;
- (2) Provide to the department evidence of liability insurance coverage; and
- (3) Notify the department and parents or guardians in writing within seven working days of any change, cancellation, or termination of liability insurance coverage, that the coverage has been changed, canceled, or terminated while the parent's or guardian's child is cared for at the facility. [Eff] (Auth: HRS §346-157) (Imp: HRS §346-157)

§17-892.2-13 Information on owner or operator.

(a) The name, address, and telephone number of the facility shall be supplied to the department.

(b) The name, business address, and business telephone number of the persons bearing the responsibility for the child care facility shall be supplied to the department.

(c) The name, business address, and business telephone number of the persons having specific authority and responsibility for overall administration and the services offered shall be supplied to the department.

(d) The name of the owner or sponsoring agency (privately owned, church or agency owned, etc.) of the facility shall be supplied to the department.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-14 Change in services and staff. (a)

A facility shall notify parents or guardians and the department of any changes in the child care services it provides as follows:

- (1) Written notification of changes in the services offered by the facility shall be provided to the department and to parents or guardians of children enrolled in the facility; and
- (2) Notification of any changes in service shall be made no later than thirty days before the date of the change and all changes shall be included in the facility's operating policies.

(b) A facility shall provide to the department written notification of changes in staff members who provide direct care to children within five working days after the change. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-15 Information and records on each child. (a) Admission procedures shall require that sufficient information and instruction from the parents or guardians be furnished to enable the caregiver to make decisions or act on behalf of the child.

(b) Prior to admission of a child to a facility, the provider shall obtain in writing from the child's parents or guardians the following information:

- (1) The child's full legal name, birth date, current address, and preferred names;
- (2) The name and address of the parents or guardians who are legally responsible for child;
- (3) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the child care center;
- (4) The name, address, and telephone number of persons who shall assume responsibility for the child if for some reason the parents or guardians cannot be reached immediately in an emergency;

- (5) The names, addresses, and telephone numbers of persons authorized to take the child from the facility; and
 - (6) Health information concerning the child, including any allergies, as required by sections 17-892.2-41 and 17-892.2-42.
- (c) The information shall be available on facility forms and shall be kept current. [Eff
] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005)

§17-892.2-16 Disclosure of information on the child. (a) Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility staff and the department unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises.

(b) The facility shall have release of information forms available for parents or guardians to sign.

(c) The facility shall provide the parents or guardians with written notification of the facility's policy regarding disclosure of information.

[Eff
] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005)

§17-892.2-17 Information and records on facility. (a) The facility shall maintain, and make available to the department current records and information including:

- (1) Roster of enrolled children;
- (2) Daily attendance records by names of children;
- (3) Daily menu;
- (4) Daily schedule of activities; and
- (5) A list of staff members including each staff member's training, position or title, experience, and health records;

- (6) Written permission from the parent to allow the child to have contact with pets or other animals; and
- (7) Log of emergency preparedness drills practiced in accordance with section 17-892.2-61.

(b) The child care facility shall report to the department, within one working day of occurrence, the death of a child, employee, or household member, and any illness or injury received at the child care facility that results in a child's hospitalization.
[Eff _____] (Auth: HRS §346-162) Imp: HRS §346-166; 42 U.S.C. §§2002, 2005)

§17-892.2-18 Transportation provisions. When transportation is provided by a facility, children shall be protected by adequate supervision, safety precautions, and liability and medical insurance coverage as follows:

- (1) For transportation to and from the facility, the vehicle and driver shall satisfy all relevant motor carrier safety rules and traffic laws of the state;
- (2) During any field trip or excursion operated or planned by the facility, the staff-child ratios as provided in section 17-892.2-36 shall apply;
- (3) Children shall be instructed in safe transportation conduct as appropriate for age and stage of development;
- (4) Prior to transporting children, the child care facility shall obtain written permission from the parent or guardian that each child is allowed to be transported by school bus or other means of transportation such as a personal vehicle;
- (5) Children shall be secured in the seat of the bus or in the back seat of a personal vehicle in approved car seats or restraints;

SUBCHAPTER 3

§17-892.2-25 Program provisions. The program conducted in the facility shall provide for staff supervision at all times and an environment and experiences which are aimed at promoting the individual child's physical, intellectual, emotional, and social well-being and growth. This shall be done in the following ways:

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- activities;
- (B) Varied physical activities; and
- (C) Opportunities for children to learn about the health, development, and care of the children's bodies, including exercise, nutrition, and hygiene;
- (3) Programs to promote intellectual development shall:
 - (A) Provide that a variety of learning materials are introduced and are available to the children; and
 - (B) Include first-hand experiences for children to learn about the world;
- (4) Programs to promote emotional development shall provide that:
 - (A) There are opportunities for individual self-expression;
 - (B) Each child is recognized as an individual;
 - (C) The child is afforded constructive guidance and the setting of clear-cut limits which foster the child's ability to be self-disciplined;
 - (D) Each child's personal privacy is respected;
 - (E) Providers shall not use:
 - (i) Physical punishment, abuse, or harm including but not limited to spanking, pinching, slapping, or shaking; or
 - (ii) Methods of influencing behavior which are frightening, humiliating, damaging, neglectful, or injurious to the child's health or self-esteem; and
 - (F) Providers shall respect each child's cultural, ethnic, and family background, as well as the child's primary language or dialect;
- (5) Programs to promote social development shall provide that:

- (A) Children are guided in developing and working out ways of getting along with each other;
 - (B) Providers interact with the children in ways which emphasize and foster attitudes of mutual respect between adults and children; and
 - (C) Providers behave in ways which help the children develop attitudes of respect for all other persons as individuals and develop an appreciation of cultural and ethnic diversity;
- (6) The activities and experiences provided by the program are appropriate to the developmental level of the children;
 - (7) The program encourages the development of the children's special interests and abilities;
 - (8) The program provides a balance of active and quiet activities; and
 - (9) The program shall provide for the self-direction of the children by:
 - (A) Affording children opportunities to choose activities according to personal desires and interests and to move from one activity to another;
 - (B) Encouraging children to do things independently; and
 - (C) Providing children opportunities to be involved in decision making about group and individual activities. [Eff
] (Auth: HRS §346-162) (Imp:
HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-26 Communication with parents.

Caregivers shall relay concerns about the health, development, or behavior of the child to the parents or guardians promptly and directly. [Eff
] (Auth: HRS §346-162) (Imp: HRS §346-162; 42
U.S.C. §§2002, 2005)

§17-892.2-27 Program materials and equipment.

(a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be appropriate to the ages of the children in care.

(b) The quantity of materials and equipment shall be sufficient to:

- (1) Avoid excessive competition between the children and to avoid long waits for use of the materials and equipment; and
- (2) Provide for a variety of experiences and appeal to the individual interests of the children

(c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.

(d) Materials shall be safe and kept in good repair, not be recalled, and shall be accessible to children. The materials shall be stored in an orderly way and shall be arranged to allow children to select, remove, and replace the materials either independently or with assistance.

(e) Soft media or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.

(f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.

(g) Provision for individual storage of children's clothing and personal belongings shall be available.

(h) Storage space for play materials and equipment used by the children shall be available.

(i) The following sleeping equipment shall be available:

- (1) Individual bed, cot, mat, or rug for each child who rests; and
- (2) A clean sheet or cover to be used on the bed cot, mat, or rug for each child. [Eff

] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-28 Transition to a new facility or school setting. (a) The provider shall assist the child in making the transition from the child care setting to a new child care, a kindergarten, or school setting.

(b) The provider shall cooperate with parents, guardians, new providers, or kindergartens when information is requested which may assist a child to adjust to a new environment, as allowed by section 17-892.2-16. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-29 to 17-892.2-34 (Reserved)

SUBCHAPTER 4

STAFFING REQUIREMENTS

§17-892.2-35 Staff training, experience, and personal qualifications. (a) Each caregiver shall be qualified through training, experience, and personal qualities for the age group with which the person works.

(b) Staff growth and development shall be encouraged. The director shall make information about workshops, seminars, training sessions or courses available to all staff and volunteers.

(c) Each caregiver, substitute, and volunteer within forty-five days of hire, shall complete initial training that is approved by the department in health

and safety standards which addresses the following areas:

- (1) Prevention and control of infectious diseases (including immunizations);
- (2) Prevention of sudden infant death syndrome and use of safe sleeping practices;
- (3) Administration of medication, consistent with standards for parental consent;
- (4) Prevention and response to emergencies due to food and allergic reactions;
- (5) Building and physical premises safety;
- (6) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
- (7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event;
- (8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
- (9) Appropriate precautions in transporting children, if applicable;
- (10) Pediatric first aid and cardiopulmonary resuscitation; and
- (11) Recognition and reporting of child abuse and neglect.

(d) When a caregiver, substitute or volunteer has not provided child care for one hundred eighty consecutive days or more, the initial training in subsection (c) shall be repeated.

(e) After the initial training in health and safety standards is completed with one hundred percent accuracy and the results are received and recorded by the department, each caregiver shall complete on-going training appropriate to the age of children the caregiver serves within twelve months from the date the initial training was received and recorded by the department, and then annually thereafter.

- (1) Each caregiver staff member shall complete at least sixteen hours of department-approved training annually in at least two of the topic areas in subsection (f).

- (2) Substitutes shall complete at least ten hours of department-approved training annually in at least two of the topic areas in subsection (f).
- (3) Volunteers who serve ten hours or more a week shall complete at least eight hours of department-approved training annually in at least two of the topic areas in subsection (f).
- (4) When an individual does not meet the requirements in subsection (e) and does not provide evidence of working to complete on-going training, the individual shall no longer be eligible to meet the staff-child ratio in accordance with sections 17-892.2-36(d) and (e).

(f) Each caregiver shall provide written evidence to the department to show completion of on-going training. The on-going training course, workshop, or class shall be different from the training topic areas completed in the prior twelve month period, and shall be in the following topic areas:

- (1) Physical care of the young child;
 - (2) Care of the sick child;
 - (3) Child nutrition;
 - (4) Child growth and development;
 - (5) Children with special needs;
 - (6) Learning activities and play;
 - (7) Family engagement;
 - (8) Managing challenging behaviors;
 - (9) Community resources;
 - (10) Prevention of child maltreatment and abuse;
 - (11) First aid and child cardiopulmonary resuscitation;
 - (12) Health and safety;
 - (13) Child care business or program management;
or
 - (14) Physical environment.
- (g) Applicants and staff members shall be of

reputable and responsible character and shall not have the following:

- (1) A criminal history record, employment history, sex offender registry history, child abuse/neglect history, or adult abuse history that may pose a risk to children in care as specified in section 17-801-5; or
- (2) Any other situations that poses a risk to the health, safety or well-being of children in care.

(h) Directors, teachers, assistant teachers, and aides employed in a licensed facility on January 25, 1982, shall be deemed to have adequate minimum qualifications for the type of staff position occupied and to maintain this status when shifting employment to another licensed facility.

(i) The age requirements for staff shall be as follows:

- (1) All staff in positions other than child care aide, volunteer, clerical, or maintenance personnel shall be at least eighteen years old; and
- (2) A child care aide shall be at least sixteen years old to be counted in the staff-child ratio.

(j) The director of a facility licensed for seven or more children shall have the following qualifications:

- (1) A bachelor's degree or higher from a regionally accredited college or university or transferable to a regionally accredited college or university preferably with courses in early childhood education, child development, or related fields, and two years of experience working with children of which at least one year of experience with children of the appropriate age for the child care center being directed; or
- (2) Two years of college education (sixty semester credits) preferably with courses in early childhood education, child development, or related fields, and four

years of experience working with children of which at least one year of experience with children of the appropriate age for the child care center being directed; or

- (3) A child development associate credential, and four years of experience working with children of which at least one year of experience with children of the appropriate age for the child care center being directed.

(k) A teacher shall meet one of the following qualifications:

- (1) A degree in child development or early childhood education from a regionally accredited college or university or transferable to a regionally accredited college or university, and six months of experience working in an early childhood program; or
- (2) A child development associate credential, and one year of supervised teaching experience in an early childhood program; or
- (3) An organized two-year (sixty semester credit) college program with a certificate in early childhood education from a regionally accredited college or university or transferable to a regionally accredited college or university, and one year of supervised teaching experience in an early childhood program; or
- (4) A bachelor's degree in elementary education from a regionally accredited college or university or transferable to a regionally accredited college or university, six months working in an early childhood program, and six semester credits approved child development or early childhood courses, which may be included as part of a bachelor's degree and which shall be from a regionally accredited college or university or transferable to a regionally accredited college or university; or

- (5) A bachelor's degree in any field from a regionally accredited college or university or transferable to a regionally accredited college or university, six months working in an early childhood program, and twelve semester credits approved child development or early childhood courses, which may be included as part of a bachelor's degree and which shall be from a regionally accredited college or university or transferable to a regionally accredited college or university.
- (1) An assistant teacher shall meet one of the following qualifications:
 - (1) A child development associate credential or an associate's degree with a certificate in early childhood education from a regionally accredited college or university or transferable to a regionally accredited college or university, and six months of experience working in an early childhood program; or
 - (2) Two years (sixty semester credits) of postsecondary education, six months of working in an early childhood program, and nine semester credits approved child development or early childhood courses from a regionally accredited college or university or transferable to a regionally accredited college or university.
- (m) Waivers for teacher or assistant teacher positions may be granted by the department if there are no qualified applicants available for the position, provided:
 - (1) The position vacancy has been advertised in the classified ad section of the largest newspaper in the county;
 - (2) The prospective employee meets the requirement for the next lower position;
 - (3) There is a written plan presented to the department's division administrator on the steps to be taken to bring the employee up

to the proper qualifications for the position; and

- (4) Approval for a waiver has been received prior to the hiring of the non-qualified teacher or assistant teacher.

(n) A child care aide shall meet one of the following qualifications:

- (1) High school vocational child care training course; or
- (2) Orientation training course in the center.
- (o) Volunteers shall:

- (1) Participate in an orientation to the program; or
- (2) Be a participant in a high school program which includes child care training; and
- (3) Meet the requirements of regular staff members to be counted in the staff-child ratio.

(p) Temporary hires shall meet qualifications of positions for which hired.

(q) Substitutes for teachers and assistant teachers shall be at least eighteen years of age and shall have participated in an orientation program of the facility. The curriculum, lesson plans, and daily activities assigned to the substitute shall be closely supervised by the center's director.

(r) Substitutes for director shall meet qualifications for director.

(s) Substitutes for aides shall meet the qualifications of an aide.

(t) Substitutes may be granted an extension to serve in the same position for more than ten consecutive days upon consultation with and approval of the department. [Eff] (Auth: §346-162) (Imp: HRS §346-162; 42 U.S.C. §§ 2002, 2005, 5751, 9833)

§17-892.2-36 Staff-child ratio and group size.

(a) The staff-child ratio shall be met and maintained at all times by the facility.

(b) The staff-child ratio shall be in writing and shall be made available to the department. Distribution of staff may include a team comprised of teacher, assistant teacher, and child care aides. The staff members shall be on site and shall be assigned to a group of children to be included in the staff-child ratio. Custodians, cooks, and bus drivers shall not be counted in the staff-child ratio when performing regular duties.

(c) The director may teach and may be counted in the staff-child ratio as follows:

- (1) In a center with less than fifty children, the director may teach and may be counted in the staff-child ratio; and
- (2) In a center with fifty or more children the director may teach but shall not be included in the staff-child ratio.
 - (A) Exception may be made and the director may be included in the staff-child ratio in cases of emergency or in special situations. In any case this inclusion in the staff-child ratio may not exceed ten hours per week.
 - (B) Exception may be made and the director of a child care center, full day only, may be included in the staff-child ratio during the first and last hours of the regular operational day.

(d) The following staff-child ratio and maximum group size shall be implemented:

Ratio and Group Size Chart I

Age of Child	# of Children Per Staff Member	Maximum Group Size Permitted
0 - under 24 mo.	Not Permitted	Not Permitted
2 year olds	8	16
3 year olds	12	24
4 year olds	16	32
5 year and older	20	40

- (1) Unless specific instructional curriculum and related provisions specify mixing the ages and excepting nap time, the number of children assigned to a staff member shall be determined by the age of the youngest child in the group (unit).
- (2) In those facilities in which an instructional curriculum as well as classroom environment and teacher training specifically require mixing the ages, the number of children per staff member shall be determined by the average of the staff-child ratios according to the chart above. Such provision shall not apply to more than three hours of mixed instructional time during any operational day for the same child or group of children.
- (3) During nap time or night care when children of various ages are mixed together:
 - (A) The number of children per staff member shall be determined by the average of the staff-child ratios according to the chart above;
 - (B) Non-teaching staff members at the center may be included in the staff ratios.
- (4) Children ages two years eight months or older, who are enrolled in the center on or between September 1 and December 31 of any year and whose birthdays fall on or between these dates may be considered part of the next older age group when determining staff ratios.
- (e) The maximum group size of the number of children in one group shall not be exceeded. Exceptions shall be made for special events such as but not limited to assemblies, performances, meal and snack time, and outdoor play area. When exceptions are made, the following shall apply:
 - (1) The staff-child ratio shall be determined by the age of the youngest child and shall be maintained at all times in accordance with

the Ratio and group size Chart I.

- (2) The staff employment sequence shall be maintained at all times according to the Ratio Chart II.

(f) The following chart reflects minimum requirements for the grouping of children of a certain age in units so that one unit of two-year-olds will be eight children, one unit of three-year-olds will be twelve children, one unit of four-year-olds will be sixteen children, one unit of five-year-olds will be twenty children. One teacher shall be mandated for the first unit two units require the addition of an aide to meet the ratio.

Ratio Chart II
Minimum staff employment sequence

No. of Children	Teacher	Assistant Teacher	Aide	Total Staff
Children 2 yr olds				
1-8	1			1
9-16	1		1	2
17-24	1	1	1	3
25-32	1	1	2	4
33-40	2	1	2	5
41-48	2	2	2	6
49-56	2	2	3	7

No. of Children	Teacher	Assistant Teacher	Aide	Total Staff
Children 3 yr olds				
1-12	1			1
13-24	1		1	2
25-36	1	1	1	3
37-48	1	1	2	4
49-60	2	1	2	5
61-72	2	2	2	6
73-84	2	2	3	7

No. of Children	Teacher	Assistant Teacher	Aide	Total Staff
Children 4 yr olds				
1-16	1			1
17-32	1		1	2
33-48	1	1	1	3
49-64	1	1	2	4
65-80	2	1	2	5
81-96	2	2	2	6
97-112	2	2	3	7

No. of Children	Teacher	Assistant Teacher	Aide	Total Staff
Children 5 yr olds				
1-20	1			1
21-40	1		1	2
41-60	1	1	1	3
61-80	1	1	2	4
81-100	2	1	2	5
101-120	2	1	3	6

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(g) Exception: During the first and last hours of the regular operational day the staffing sequence may be adjusted so that the director, a teacher, or assistant teacher may be counted as fulfilling any position in this ratio chart. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-37 to 17-892.2-39 (Reserved)

SUBCHAPTER 5

HEALTH STANDARDS FOR CHILDREN

§17-892.2-40 Health consultation provisions.

All child care programs shall have one of the following provisions for health consultation to assist in developing health policies and in keeping them current:

- (1) The child care center shall have on file written evidence that an arrangement has been made with a physician in private practice to provide consultation, and that this arrangement is satisfactory with parents of the children;
- (2) The child care center has made a contractual arrangement with a private physician or non-profit health organization in the community to provide health care for children in the program;
- (3) There is already a procedure existing in the community for the provision of health consultation service and arrangements have been made for use of this service; or
- (4) The child care program or resource has a health advisory group that may serve in such

a capacity. [Eff] (Auth:
HRS §346-162) (Imp: HRS §346-162; 42 U.S.C.
§§2002, 2005)

§17-892.2-41 Evidence of child's health. (a)

The child care facility shall require and obtain from the parent or guardian of each child entering child care, a health record of the child which complies with the provisions of chapter 11-157, which relate to the school entry examination requirements, immunization, physical examination, and chapter 11-164.2 for tuberculosis clearance.

(b) The child care facility shall have in writing:

- (1) The name, address, and telephone number of a physician or health resource that shall be called in case of emergency; and
- (2) Permission of the parent or guardian to call the stated physician or health resource, or another source of care if the parent or guardian cannot be reached in the case of a health emergency.

(c) The records of each child enrolled in the program shall include pertinent information about health status, developmental progress, and any special needs and efforts necessary to meet these needs.

(d) For children experiencing homelessness or in foster care, the child care facility shall allow a grace period of three months from the child's first day in care to obtain the evidence described in subsection (a) in accordance with chapter 11-157, provided that the parents or guardians submit to the facility in writing the health needs for the child, including any allergies, at the time the child is placed in care. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-42 Emergency care provisions. (a)

Every child care facility shall have the following provisions for emergency care of any child requiring treatment at a hospital or clinic away from the child care setting and for care of a child who becomes ill after arrival, as follows:

- (1) The child care facility shall have one of the following written policies which indicate that:
 - (A) The responsible individual in the child care setting, director, child care provider, or health-trained caregiver, has obtained the name of the nearest hospital or clinic where such care may be provided and has obtained written permission from each parent or guardian to provide emergency care for the child;
 - (B) The child care facility's health consultant has made arrangements for emergency coverage, and written permission from each parent or guardian shall be on file in the child care setting.

(b) If health care is provided in the child care facility, the facility shall have on file a written permission from each parent or guardian covering all aspects of health care which is provided at the facility.

(c) An adult shall accompany the child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program.

(d) Physical arrangements that are clean and safe for children who become ill after arrival at the facility shall be available for the care of the child until parents or guardians can be notified to provide alternative arrangements.

(e) An operating telephone that is available and

is easily accessible to the staff members to be used in case of an emergency;

(f) A plan for accessing a telephone when the child care is provided somewhere other than when not in the usual location where care is regularly provided. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; U.S.C. §§2002, 2005)

§17-892.2-43 First aid and child cardio-pulmonary resuscitation (CPR). (a) The first aid requirement shall be as follows:

- (1) There shall be at least one adult caregiver with a current certificate in first aid when children are present at the facility or at an off site group activity, such as during field trips and excursions.
- (2) A current first aid certificate means a certificate that has not expired.
- (3) The current first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and approved by the department.
- (4) A first aid kit shall be available at the facility at all times.

(b) The child CPR requirement shall be as follows:

- (1) There shall be at least one adult caregiver with a current certificate in child CPR at the facility when children are present or at an off site group activity, such as during field trips and excursions.
- (2) The child CPR course must be provided by the American Red Cross, American Heart Association, or any organization whose child CPR certification standards are equivalent to the American Red Cross or American Heart

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- (b) Association standards and approved by the department.
- (c) A current certificate means a certificate that has not expired. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; U.S.C. §§2002, 2005)

§17-892.2-44 Admission of ill children. (a)

When health policies of the child care facility allow ill children to be admitted or to remain in the child care facility, medical consultation shall be available regarding special care and medication.

(b) Both the provider and the parents or guardians shall be familiar with special policies of the child care facility relevant to ill children. Special policies regarding illnesses shall be explained to the parent or guardian at the time of enrollment of the child.

(c) Provisions shall be made to allow the facility's health consultant and the child's regular source of health care to communicate in order to preserve continuity and consistency of care.

(d) The child care facility shall have, in writing, the name, address, and telephone number of a physician or health resource that shall be called in case of emergency. Written permission of the parent or guardian to call upon the stated physician or health resource, or another responsible source of care, if the parent or guardian cannot be reached, shall be required. [Eff] (Auth: HRS §346-162 (Imp: HRS §346-162; U.S.C. §§2002, 2005)

§17-892.2-44.01 Administration of medication.

(a) When medication prescribed by a physician is administered in the facility:

- (1) The medication shall be kept in the original container bearing the prescription label

which shows the date filled, the physician's directions for use, and the child's name;

- (2) Medication shall be kept out of reach of children and shall be returned to parents or guardians when no longer in use; and
- (3) There shall be an authorization signed by the parent or guardian for the administration of medication by the facility.

(b) When over-the-counter medication is administered in the facility, the child's parent or guardian or physician shall provide to the child care facility written permission and written instructions to administer medication. [Eff]

(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-45 Non-admission of ill children. If children with illness are not allowed admission into a group child care center or a group child care home, this policy shall be clearly stated in writing and made known to parent or guardian at the time of enrollment. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-20; U.S.C. §§2002, 2005)

§17-892.2-46 Admission of children with special needs. (a) When children with special needs are admitted into a group child care center or group child care home, the facility shall provide for the special needs of each child.

(b) The child with special needs shall be admitted only after consultation with the child's source of health care and the program's health consultant occurs. The consultation shall include written recommendations to cover the child's special needs or to define the child's participation in the program.

(c) If the child's health care source considers it advisable, the staff of the program shall receive training related to the nature of the child's condition and the child's potential for growth and development.

(d) Where the nature of the child's special needs or the number of children with special needs in the program necessitates added care, staff and equipment shall be available to cover these requirements. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-47 Daily nutritional needs. (a)

Meals and snacks of a quantity to supplement food served at home shall be available to meet the daily nutritional needs of the child. Foods related to the cultural and ethnic background of the children in the program and locality shall be part of meal planning.

(b) The child care facility shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resources approved by the state department of health.

(c) To the extent possible, information provided by parents or guardians concerning the child's eating habits, food preferences, or special needs shall be considered in child care feeding schedules and menus. Children shall be encouraged but shall not be required to eat the food offered by the facility.

(d) In a facility providing meal service, the minimum meal components and food amounts required by the United States Department of Agriculture (USDA) child care food program shall be met. The facility shall offer and provide the following combination of meals and snacks for children in care:

- (1) Two to four hours - - - - - one snack;
- (2) Four to eight hours - - - - - one snack or
breakfast and
lunch or
supper;

- (3) Eight hours or more - - - - - one snack or
breakfast and
lunch or
supper and one
additional
snack

(unless the eight hours or more extend into
the evening hours when the child may be
asleep);

- (4) When two snacks are required as in section
17-892.2-26(d)(3) above, at least one of
those snacks shall include the provision and
offering of milk or its calcium equivalent;
and

(5) Local ethnic foods may be added or
substituted for quantity (for allowable food
reimbursement, facilities shall consult with the
USDA).

(e) In a facility where parents or guardians are
allowed to provide food (i.e. sack lunches or snacks)
the facility, in addition to food the child brings,
shall provide the minimum amounts required by the USDA
child care food program by offering and providing
children in care:

- (1) Two to four hours - - - - - one snack;
(2) Four to eight hours - - - - - morning snack
or breakfast
or afternoon
snack;
(3) Eight hours or more - - - - - morning snack
or breakfast
and afternoon
snack

(unless the eight hours or more extend into
the evening hours when the child may be
asleep);

- (4) When two snacks are required as in section
17-892.2-26(e)(2) above, at least one of
those snacks shall include the provision and
offering of milk or its calcium equivalent;
and

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(5) Local ethnic foods may be added or substituted for quantity (for allowable food reimbursement, facilities shall consult with the USDA).

(f) Children shall not be offered foods to which they are allergic or, for religious reasons cannot consume. Provisions shall be made to secure such information from the parent or guardian and the parent or guardian of the child shall arrange for nutritious substitute foods.

(g) A list of food items that are provided by the caregiver shall be posted in a prominent place for review by parents.

(h) School aged children in after school care for two to four hours shall be offered a nutritious snack which may be provided by the child care facility or brought from home.

(i) Food shall not be used as a punishment or reward.

(j) The child care facility's food service shall be reviewed annually by a qualified nutrition consultant the center has chosen or provided by an appropriate community resource. [Eff]
(Auth: HRS §342-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-48 Drinking water provisions. There shall be drinking fountains or another device or system whereby drinking water shall be readily accessible to all children. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-49 Integration of mental health concepts. Mental health aspects of child development shall be integrated into the child care program as follows:

- (1) At least one parent, guardian, foster parent, or social worker shall be interviewed prior to a child's admission to the child care facility. The personal interview shall be conducted to secure pertinent information on the child's overall behavior and to acquaint the parent or guardian with the facility's policies. If the child is enrolled in a public or private school, the child shall also be interviewed when possible;
- (2) The child care facility shall provide its staff members with annual orientation to state or other mental health service programs for children, or otherwise familiarize its staff with consultative and clinical services and programs for the early identification of social, emotional, intellectual, and behavioral problems of children; and
- (3) The facility shall refer parents or guardians to sources of professional consultation in mental health upon the parents' or guardians request or upon the recommendation of the staff or the facility's health consultant.
[Eff] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-50 to 17-892.2-54 (Reserved)

SUBCHAPTER 6

HEALTH STANDARDS FOR STAFF

§17-892.2-55 Providers' health standards.

Evidence that each caregiver staff member is free from health problems which would have a harmful effect on the children or would interfere with effective functioning shall be maintained at the child care facility as follows:

- (1) The results of employment physical examinations, and when indicated on a physical exam that the individual has a mental health disorder or limitation, a psychological exam, given within one year prior to employment of each person works directly with children that indicates each person is in adequate physical, and if needed, mental health to care for children shall be on file at the facility;
- (2) Written evidence that each who works directly with children for any period of time is free from communicable tuberculosis in accordance with the requirements for child care facility personnel, under chapter 11-164.2. The tuberculosis clearance must be completed within one year before beginning child care and shall be on file at the facility. Each shall complete updated clearances in compliance with chapter 11-164;
- (3) Each caregiver with an identified health problem shall provide the facility with a written statement from a physician that the caregiver is able to care for young children;
- (4) The facility shall have provisions for substitution of staff who are too ill to function effectively or who present a serious health hazard to others in the facility;
- (5) Group child care home caregivers providing care in a residence shall have on file with the department written evidence that each member of the household, even though the member may not be a caregiver, is free from

communicable tuberculosis. Upon request of the department, additional reports with reference to the health of the other members of the household shall be made available to the department; and

- (6) When volunteers provide direct care of ten hours or more per week, the volunteers shall be subject to the same requirements for health and personal habits as the provider.
[Eff _____] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-56 Personal health habits of staff.

The personal health habits of all providers shall not interfere with the protection of the health of the children as follows:

- (1) The facility shall have:
 - (A) Health policies developed specifically for the child care setting which setout aspects of personal health care and control for the spread of communicable diseases;
 - (B) Written guidelines covering appropriate aspects of personal health care that have been developed through a community health agency which are made known to the caregiver; or
 - (C) In-service training for the child care staff designed and presented by a health-trained individual which includes personal health care;
- (2) No smoking, including electronic smoking devices, is allowed on the premises during child care hours of operation, and personal nicotine products shall be stored out of reach of children;
- (3) Alcoholic beverages shall not be consumed prior to and during the hours of operation at the child care facility; if alcoholic beverages are stored at the facility, they

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shall be locked up and inaccessible to children; and

- (4) Medication that impairs or limits the staff's ability to provide care shall not be consumed prior to or during the hours of child care. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-57 to 17-892.2-60 (Reserved)

SUBCHAPTER 7

ENVIRONMENTAL HEALTH STANDARDS

§17-892.2-61 Disaster plan for emergencies. (a) Each child care facility shall have a written disaster plan to cover emergencies such as fire, flood, or natural disaster or other emergencies, and the plan shall include written procedures for:

- (1) Evacuation;
- (2) Relocation of the child care facility if the facility becomes uninhabitable, or if the facility is ordered to evacuate;
- (3) Sheltering in place at the child care facility;
- (4) Lock-down of the child care facility;
- (5) Communication and reunification with families during and after an emergency;
- (6) Continuity of operations during and after an emergency;
- (7) Accommodation of children, including toddlers during an emergency;
- (8) Providing for the needs of children with disabilities and children with special needs during an emergency;

- (9) Providing for the needs of children with chronic medical conditions during an emergency.
- (b) The plan relating to fire emergencies shall be approved by the fire inspector, and the facility's health consultant shall review the plan as related to subsections (a)(8)(9).
- (c) The facility shall complete practice drills for the various emergency situations at regular intervals, or whenever a new procedure has been added.
- (d) Each child care facility shall provide emergency preparedness training to staff members.
- (e) The facility shall make the plan available for review by or provide a copy of the plan to each family whose child is enrolled at the child care facility.
- (f) The diagram of emergency exits shall be posted in a prominent place in the facility.
- (g) Each child care facility shall install an underwriters laboratory listed fire warning device or system in each facility. Written evidence that the device or system has been inspected and approved by a fire inspector, when applicable for group child care homes, shall be current and on file at the facility.
- (h) There shall be an unexpired ABC multi-purpose type fire extinguisher in the child care area.
- (i) The provider shall notify the department within one working day when an emergency resulted in the evacuation, relocation, shelter in place, and lock-down of the facility. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-62 Accidental injury precautions. The facility shall ensure that the child care program and premises minimize the risk of accidental injury in the following manner:

- (1) Child care activities and premises shall take precautions not to expose children to

- situations which may be hazardous to the particular age or capacity of the child;
- (2) The program shall help children to increase awareness of safety practices and accident hazards and to teach the children how to avoid such hazards;
 - (3) Accident prevention practices and policies shall be available in writing. The practices and policies shall be reviewed annually and the staff shall become familiar with the policies and practices.
 - (4) The facility shall have written procedures for infection control, to use in all situations to prevent the transmission of blood-borne pathogens that may be spread through blood and body fluids.
- [Eff _____] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-63 Environmental hazards. The indoor and outdoor premises of a child care facility shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the children as follows:

- (1) The child care facility shall be protected against rodents and insects;
- (2) All entrances and exits shall be secured;
- (3) The outdoor space shall be fenced or shall have natural barriers to deter children from getting into unsafe areas;
- (4) There shall be no open drainage ditches, wells, or holes into which children may fall;
- (5) Drainage shall be adequate to prevent stagnant pools of water from accumulating;
- (6) Garbage and trash shall be stored in covered containers out of reach of the children and shall be removed frequently enough to avoid creating a health hazard or nuisance;

- (7) Sharp objects, household kitchen items, and tools shall be kept in a safe location and out of children's reach or shall be supervised when used safely;
- (8) Cleaning materials shall be clearly labeled and stored in a secured area which is inaccessible to the children. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times;
- (9) Open fireplaces shall not be used. Floor heaters and all heating elements including hot water pipes shall be insulated or installed in a manner which makes the pipes inaccessible to children;
- (10) Children shall be supervised when using hot water taps;
- (11) Stove top controls shall not be accessible by children;
- (12) Floor space shall be arranged to provide areas for active play, quiet rest, and individual activities;
- (13) Emergency exits shall be clear of obstructions;
- (14) Indoor and outdoor structures, equipment, and toys shall be sturdily constructed and furnishings that have hazardous sharp edges, rust, and splinters shall not be accessible to children;
- (15) Electrical outlets accessible to children shall be covered with child-resistant outlet covers;
- (16) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured;
- (17) Lead based paint shall not be used or have levels greater than is recommended by the Environmental Protection Agency (EPA) on surfaces accessible to children;
- (18) Poisonous plants shall be out of reach of children on the premises;
- (19) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times;

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- (20) If a lodging house, boarding house, or any other business conflicts with the regular operation of the child care facility, the lodging house, the boarding house, or other business shall not be conducted at the facility; and
- (21) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured and locked in a separate place. [Eff
] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-64 Water supply. (a) The water supply shall be from a source approved by the health authority and shall be under pressure. The plumbing shall be installed and maintained in a manner approved by local plumbing codes.

(b) If running water is not available, the water shall originate from a source approved by the health authority, shall be transported to the child care setting in clean, sanitized, covered containers, and shall be protected from contamination. [Eff

] (Auth: HRS §346-162) (Imp: HRS §342-162; 42 U.S.C. §§2002, 2005)

§17-892.2-65 Toilet and lavatory facilities. Toilet and lavatory facilities shall be of a type determined by the availability of water under pressure. Approved facilities, water or non-water carriage, shall be provided for disposal of sewage and other liquid wastes. The following conditions shall apply:

- (1) Where a public sewer is available, all plumbing fixtures and building sewers shall be connected thereto;

- (2) Where a public sewer is not available, a private sewage disposal system of an approved type shall be installed and connected to all plumbing fixtures and building sewers;
- (3) Where water sewage disposal means are not available or feasible, sewage and other liquid wastes shall be disposed in a manner approved by the health authority;
- (4) Where water carried sewage disposal is available, water flush toilets shall be provided. Indoor toilets shall be located in rooms separate from those used for cooking, sleeping, or eating;
- (5) Where water carried sewage disposal is not available, privies shall be used in accordance with local sanitary requirements and shall be designed with step stools or with holes sized to the age group;
- (6) If toilet training chairs are provided for use by children, the toilet training chairs shall be emptied promptly and sanitized after use;
- (7) Lavatories shall be provided in quantities commensurate with toilet facilities. Hot water temperatures shall not exceed one hundred degrees fahrenheit, thirty eight degrees celsius, at outlets accessible to children; and
- (8) Toilet facilities shall be child sized, or safe, sturdy step stools shall be provided to allow standard sized toilets and lavatories to be used. [Eff
] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-66 Food preparation. Food preparation shall be carried out in a kitchen with proper equipment and cleanup facilities required for the number of children in care as follows:

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- (1) All dishwashing shall be performed in a sanitary manner. A domestic dishwasher shall be acceptable, but if it is not available, the dishes shall be washed and rinsed in a sanitizing solution;
- (2) In a child care facility caring for less than thirteen children, a family kitchen in good repair, separate from other rooms, shall be available;
- (3) In a child care facility caring for thirteen or more children, where food is prepared on the premises, adequate sized equipment for the size of the program shall be available. An approved dishwasher or a three-compartment sink shall be used. Both the dishwasher and the three-compartment sink shall require approval by the state department of health;
- (4) When food is prepared off the premises and is transported to the child care facility from a licensed preparation source, the foods shall be kept in a safe and sanitary condition;
- (5) When single service utensils are used, the utensils shall be stored and handled in a sanitary manner and discarded after a single use; and
- (6) Cooking utensils used in food preparation and service shall be cleaned and stored in a sanitary manner. [Eff]
(Auth: HRS §346-162) (Imp: HRS 346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-67 Food protection. Food protection shall be carried out as follows:

- (1) Policies and practices shall be developed and carried out in a manner that insures that all food is protected from contamination during storage, preparation, and service; and

- (2) Food protection policies shall comply with accepted practices of local sanitary codes in chapter 11-50, and shall be adapted to fit the needs of the program except as indicated in these rules. [Eff
] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-68 Cleaning of premises. (a) All necessary cleaning equipment shall be available on the premises and a plan for regular cleaning shall be established to protect the health of the children and staff members.

(b) Toys, table tops, furniture, and other similar equipment used by children shall be washed when the toys or equipment become gummy, sticky, or dirty. Plain soap and water shall be an adequate cleansing agent.

(c) Cleaning materials shall be clearly labeled and stored in a secured area that is away from food preparation areas and is inaccessible to children.
[Eff] (Auth: HRS §346-162) (Imp:
HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-69 Public beaches, swimming activities, and wading pools. (a) When swimming or wading pools are part of the child care facility, equipment, or program, the swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are a part of the child care program, the following safety practices shall be observed:

- (1) A certified lifeguard, who may be the provider, shall be on duty at all times when swimming activities or swimming pools are in use;

- (2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of subsection (b)(1). However, children shall be personally attended by a responsible adult at all times;
- (3) Wading pools exempt under subsection (b)(2) shall be emptied immediately after each use; and
- (4) Legible safety rules for the use of all types of pools shall be posted in a conspicuous location and read and reviewed at regular intervals by the provider responsible for the care of children. [Eff
] (Auth: HRS §346-162) (Imp:
HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-70 to 17-892.2-74 (Reserved)

SUBCHAPTER 8

SANITATION STANDARDS

§17-891.2-75 Handling of diapers and training pants. The provider shall handle disposable and cloth diapers and cloth training underpants in the following manner:

- (1) Use a clean non-porous surface for changing diapers;
- (2) Use a space set aside for diapering that is separate from eating and food preparation areas;
- (3) Soiled disposable diapers shall be discarded in a covered container. The covered container shall be kept away from eating, food storage, and food preparation areas and out of the children's reach.

- (4) Soiled cloth diapers and cloth training underpants shall be placed in a plastic bag without emptying or rinsing the contents, and kept away from eating, food storage, and food preparation areas and out of the children's reach. The soiled cloth diapers or cloth training underpants shall be given to the child's parent or guardian. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-891.2-76 Handwashing. (a) The provider and children shall wash hands using water and soap before and after the following activities:

- (1) Before and after eating or drinking;
- (2) Before handling clean utensils or equipment;
- (3) Before and after preparing food or beverages;
- (4) Before and after diapering;
- (5) After using the toilet or helping a child in toileting;
- (6) After handling bodily fluids or items containing bodily fluids;
- (7) After handling soiled diapers, clothes, or equipment;
- (8) After handling pets or animals; or
- (9) After outdoor play.

(b) Paper towels or separate cloth towels shall be used for each child for drying hands after handwashing. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-77 to 17-892.2-79 (Reserved)

SUBCHAPTER 9

PHYSICAL FACILITY STANDARDS

§17-892.2-80 Building codes and space requirements. (a) Child care facilities shall conform to the zoning, building, electrical, and plumbing codes of the county or political subdivision in which the facility is located and to state rules as may be applicable to the facility.

(b) The child care facility shall:

- (1) Be located in a safe and sanitary area in conformance with subchapter 3 of this chapter;
- (2) Have ventilation and a sunny exposure or be well-lighted; and
- (3) Be located in a reasonably quiet area or employ suitable noise control devices to limit noise exterior to the child care operation.

(c) All buildings, building appurtenances, outdoor space, equipment, and all other parts of the facility shall be kept repaired, safe, and sanitary at all times.

(d) The space requirements, enclosed areas, and outdoor areas, of the facility shall be as follows:

Standards for Space Requirements

Enclosed areas:

Daytime:

There shall be thirty-five square feet per child of unencumbered instructional or play area exclusive of bathrooms, kitchens, cupboard space, and hallways. The thirty-five square feet per child requirement shall be a general area definition of

the square footage of the entire center, not describing the square footage of each class room.

Nighttime: In rooms used for sleeping, there shall be fifty square feet per child.

Outdoor areas: The square footage for the outside areas shall be a general area requirement related to total child capacity and not limited or qualified by the number of children outside at any one time.

- (1) 720 square feet for 6 children plus 70 square feet per child thereafter up through 10.
- (2) 1,065 square feet for 11 children plus 65 square feet per child thereafter up through 30.
- (3) 2,360 square feet for 31 children plus 60 square feet per child thereafter up through 50. (4) 3,555 square feet for 51 children plus 55 square feet per child thereafter up through 100.
- (5) 6,295 square feet for 101 children plus 45 square feet per child thereafter.

(e) The facility shall be equipped with toilets and lavatories as follows:

§17-892.2-80

Number of children	Toilets	Lavatories
1 - 12	1	1
13 - 30	2	2
31 - 45	3	3
46 - 60	4	4
61 - 75	5	5
76 - 90	6	6
91 - 105	7	7
106 - 120	8	8
121 - 135	9	9
136 - 150	10	10
151 - 165	11	11
166 - 180	12	12
181 - 195	13	13
196 - 210	14	14
211 - 225	15	15

[Eff] (Auth. HRS §346-162) (Imp:
HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-81 to 17-892.2-84 (Reserved)

SUBCHAPTER 9

PROGRAM MODIFICATIONS

§17-892.2-85 Program modifications for drop-in care. (a) All requirements set forth in this chapter shall be met by the provider except for section 17-892.2-41(a) and (c) and section 17-892.2-44(d).

(b) A child care center offering drop-in care shall be prepared to adjust its staffing to meet the program modifications which result when drop-in care is provided.

(c) Children receiving drop-in care shall be cared for in separate areas or groups.

(d) If a center serves both drop-in children and children who attend regularly, the grouping of the children and the program shall be planned so that the needs of both groups are met.

(e) The facility shall have the following information in writing:

- (1) The ages of children accepted for drop-in care;
- (2) The procedures for admittance and release of drop-in children; and
- (3) Arrangements for staffing and separate activities for drop-in children. [Eff
] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-86 Program modifications for night care. A child care facility offering night care shall meet the requirements of this chapter in addition to the following requirements:

- (1) In consultation with parents, special attention shall be given by the caregiver to provide for a transition into night care;
- (2) A selection of toys for quiet activities shall be available;
- (3) Comfortable beds or cots, complete bedding and night clothes shall be available or supplied by the parents;
- (4) Beds shall be placed at least three feet apart;
- (5) Staff shall be available to assist children during eating and pre-bedtime hours and during the morning period when dressing. During sleeping hours, staff shall be within listening distance to provide for the needs of children and to respond to an emergency;
- (6) A child shall not sleep in a building detached from the main facility; and

- (7) Night care facilities shall include at least one shower, bathtub, or bathing facility for the children. [Eff:] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-87 Program modifications for demonstration projects. (a) A child care facility may establish a demonstration project for a specific purpose, or set of purposes, upon receiving written approval from the department.

(b) The child care facility shall submit a written proposal to the department indicating the following:

- (1) Purpose of the project;
- (2) Description of the project;
- (3) Length of the project;
- (4) Specific child care rules that shall be exempted by the project; and
- (5) Justification for the proposed exemptions.

(c) The persons responsible for the project or the designated representatives shall appear in person to discuss the proposal with the department or the department's designated representatives if requested by the department.

(d) A demonstration project which has been approved in writing by the department shall comply with all requirements imposed by the department at the time of its approval as follows:

- (1) The name or description of the project shall include the words "licensed demonstration project";
- (2) Providers shall be able to show that at all times the demonstration project is in compliance with the child care rules, except as specifically exempted or modified in the department's written approval; and
- (3) Within the last quarter of the time specified for the demonstration project, a

written report shall be submitted to the department which shall include:

- (A) Developments, findings, recommendations, and suggestions for further study; and
 - (B) Any proposed recommendations related to the demonstration project for changing or modifying child care rules with justification therefore.
- (4) For demonstration programs that have been approved to care for children less than twenty-four months old, the demonstration program shall adhere to any provisions under chapter 895, that have been determined and specified by the department.
 - (5) For a demonstration program that has been approved to care for children less than twelve months old, the demonstration program shall adhere to requirements set forth under sections 17-895.1-45, 17-895.1-96, and 17-895.1-97.

(e) Proposed demonstration programs disapproved or discontinued by the department shall not be permitted any further use of the words "demonstration project" in the identifying title, logo, or material."

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

2. The adoption of chapter 17-892.2, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on June 1, 2020 and filed with the Office of the Lieutenant Governor.



PANKAJ BHANOT

Director of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

III. New Business – Before Public Hearing

C. Discussion and Action on the Repeal of HAR Title 17 Chapter 895 and Adoption of Chapter 895.1, Licensing of Infant and Toddler Child Care Centers, promulgated by DHS

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
Office of the Director
P. O. Box 339
Honolulu, Hawai'i 96809-0339

RECEIVED
By SBRRB at 12:48 pm, Apr 05, 2021

PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR


BESSD 20.C0604

June 1, 2020

MEMORANDUM:

TO: THE HONORABLE CLARE E. CONNORS, ATTORNEY GENERAL
DEPARTMENT OF THE ATTORNEY GENERAL

THROUGH: JAMES WALTHER, SUPERVISING DEPUTY ATTORNEY GENERAL
HEALTH AND HUMAN SERVICES DIVISION

FROM: PANKAJ BHANOT
DIRECTOR 

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED REPEAL OF CHAPTER 17-895 AND
ADOPTION OF CHAPTER 17-895.1 HAWAII ADMINISTRATIVE RULES, RELATING
TO THE LICENSED INFANT AND TODDLER CHILD CARE CENTERS

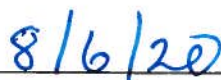
In accordance with Administrative Directive No. 18-02, we have completed revisions and are submitting for your review and approval as to form the proposed repeal of Chapter 17-895 and adoption to Chapter 17-895.1 relating to the Licensing of Infant and Toddler Child Care Centers. A copy of the Notice of Public Hearing is also enclosed for your approval as to form, and a copy of the impact statement is included for your information.

Your expedited response to this request would be greatly appreciated, as we must also secure the Governor's preliminary approval prior to publishing the Notice of Public Hearing. If you have any questions, please contact Dana Balansag, Child Care Program Administrator, at 586-7187.

Enclosures

APPROVED AS TO FORM:


Deputy Attorney General


Date

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

Date: 6/1/2020

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17-895.1

Chapter Name: Licensing of Infant and Toddler Child Care Centers

Contact Person/Title: Dana Balansag

E-mail: dbalansag@dhs.hawaii.gov Phone: 586-7187

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ Yes ☒ No

If "Yes," provide details: _____

I. Rule Description:

☒ New ☒ Repeal ☐ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☒ Yes ☐ No

(If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☒ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☒ No

(If "Yes" no need to submit this form.)

*

*

*

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

Refer to Attachment 1

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

Refer to Attachment 1

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.
- b. Amount of the proposed fee or fine and the percentage increase.
- c. Reason for the new or increased fee or fine.
- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

Refer to Attachment 1

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

Refer to Attachment 1

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

Refer to Attachment 1

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

Refer to Attachment 1

7. How the agency involved small business in the development of the proposed rules.

Refer to Attachment 1

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

Refer to Attachment 1

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1

1. DHS licensed infant and toddler child care centers that care for children ages 6 weeks old and up.

Infant and toddler child care centers will be required to have individuals who work with children in care, including staff and substitutes, complete minimum health and safety training requirements, pre-service and on-going training.

Initial/pre-service health and safety training and 16 hours of on-going health and safety training annually. DHS licensed infant and toddler child care centers will have to find available training opportunities, which could include free trainings offered by the department's training contractor or other community-based or online trainings available.

2. Chapter 17-895.1 Licensing of Infant and Toddler Child Care Center is substantially based on an existing chapter 17-895 that is being repealed. The proposed requirements for DHS licensed infant and toddler child care centers may have the additional direct costs:
 - 1) Any infant and toddler child care centers may need to pay employees for their time to complete 16 hours of health and safety training on an annual basis. Minimum wage: $\$10.10/\text{hour} \times 16 \text{ (hours training)} = \161.60 per employee. If the child care center has substitutes, the substitutes would need to complete 10 hours of training. Minimum wage: $\$10.10/\text{hours} \times 10 \text{ hours (hours training)} = \101 . There are 73 licensed infant and toddler child care centers.
 - 2) Additional costs for the reporting of staff's training certificates to DHS' tracking contractor and record keeping of staff's training certificates may be incurred by infant and toddler child care centers.

DHS is implementing under proposed chapter 17-798.3 a 16% increase in subsidy payment rates for licensed infant and toddler child care centers to help off-set some of the additional costs for facilities that will care for children whose families receive child care subsidies. The current subsidy payment rate for licensed infant and toddler child care centers is \$1,490 and the proposed subsidy payment rate is \$1,733.

The proposed chapter 17-895.1 does not impose new or increased fees or fines.

3. There are none.
4. Licensed infant and toddler staff members may take on-line classes, workshops, conferences, in-service trainings and college credits that meet DHS criteria. Free trainings offered by the department's training contractor or other community-based or online trainings are available.

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1

5. The proposed rules are based on requirements set forth by the Child Care and Development Block Grant (CCDBG) Act of 2014 which require caregivers to complete health and safety training. As such, the proposed rules are required to enforce the CCDBG requirements.
6. Infant and toddler child care center staff members may take on-line classes, workshops, conferences, in-service trainings and college credits to meet DHS criteria. Free trainings offered by the department's training contractor or other community-based or online trainings are available.
7. DHS held discussion sessions with early childhood stakeholders beginning in 2015 to discuss health and safety training hours. Discussions on other proposed rules were held quarterly during DHS Child Care Advisory Committee meetings and during statewide informational sessions that were held between 1/2019 – 3/2019.
 - a. Infant and toddler child care center providers agreed that the 16 hours of on-going health and safety training over a 12 month period was a reasonable amount.

The recommendation to not require annual health and safety training for substitutes and volunteers was partially incorporated. The number of on-going health and safety training hours for substitutes and volunteers were reduced from 16 hours to 10 hours and 8 hours, respectively. The requirement for a substitute and volunteer to complete on-going health and safety training is to comply with the CCDBG Act of 2014 which requires caregivers to complete on-going health and safety training annually. Completion of on-going health and safety training hours increases the health and safety of children and the quality of child care.

8. No

DEPARTMENT OF HUMAN SERVICES

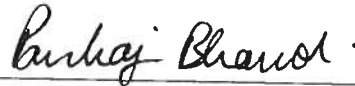
Repeal of Chapter 17-895
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-895, Hawaii Administrative Rules, entitled "Licensing of Infant and Toddler Child Care Centers" is repealed.

2. The repeal of chapter 17-895 shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on May 19, 2020 and filed with the Office of the Lieutenant Governor.



PANKAJ BHANOT

Director

Department of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-895.1
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-895.1, Hawaii Administrative Rules, entitled "Licensing of Infant and Toddler Child Care Centers" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 895.1

LICENSING OF INFANT AND TODDLER CHILD CARE CENTERS

Subchapter 1 Licensing Procedure

§17-895.1-1 Definitions

§17-895.1-2 Application
§17-895.1-3 Inspection and issuance of license
§17-895.1-4 Fines
§17-895.1-5 Denial, suspension, revocation of
 license, and hearings
§§17-895.1-6 to 17-895.1-9 (Reserved)

Subchapter 2 Administration Requirements

§17-895.1-10 Age of children in care
§17-895.1-11 Statement of operation policies
§17-895.1-12 Liability insurance
§17-895.1-13 Information on owner or operator
§17-895.1-14 Change in services and staff
§17-895.1-15 Information and records on each child
§17-895.1-16 Disclosure of information on the
 child
§17-895.1-17 Information and records on facility
§17-895.1-18 Transportation provisions
§§17-895.1-19 to 17-895.1-24 (Reserved)

Subchapter 3 Program Requirements

§17-895.1-25 Program provisions
§17-895.1-26 Communication between parents and
 caregivers
§17-895.1-27 Program materials and equipment
§17-895.1-28 Transition to a new facility
§§17-895.1-29 to 17-895.1-34 (Reserved)

Subchapter 4 Staffing Requirements

§17-895.1-35 Staff training, experience, and
 personal qualifications
§17-895.1-36 Staff-child ratio and group size

\$17-895.1-37 Staffing patterns
\$\$17-895.1-38 to 17-895.1-39 (Reserved)

Subchapter 5 Health Standards for Infants and
 Toddlers

\$17-895.1-40 Health policies and health consultant
\$17-895.1-41 Evidence of child's health
\$17-895.1-42 Emergency care provisions
\$17-895.1-43 First aid and child cardio-pulmonary
 resuscitation (CPR)
\$17-895.1-44 Admission of ill infants and toddlers
\$17-895.1-44.01 Admission of medication
\$17-895.1-45 Admission of infants and toddlers
 with special needs
\$17-895.1-46 Daily nutritional needs
\$17-895.1-47 Drinking water provisions
\$17-895.1-48 Integration of mental health concepts
\$\$17-895.1-49 to 17-895.1-54 (Reserved)

Subchapter 6 Health Standards for Staff

\$17-895.1-55 Staff health standards
\$17-895.1-56 Personal health habits of staff
\$\$17-895.1-57 to 17-895.1-60 (Reserved)

Subchapter 7 Sanitation Standards

\$17-895.1-61 Handling of diapers, training pants,
 linen, and toys
\$17-895.1-62 Handwashing
\$17-895.1-63 Housekeeping
\$\$17-895.1-64 to 17-895.1-70 (Reserved)

Subchapter 8 Environmental Health Standards

\$17-895.1-71	Disaster plan for emergencies
\$17-895.1-72	Accidental injury precautions
\$17-895.1-73	Environmental hazards
\$17-895.1-74	Water supply
\$17-895.1-75	Toilet and lavatory facilities
\$17-895.1-76	Food preparation
\$17-895.1-77	Food protection
\$17-895.1-78	Swimming activities and wading pools
\$\$17-895.1-79 to 17-895.1-84 (Reserved)	

Subchapter 9 Physical Facility Standards

\$17-895.1-85	Building codes and space requirements
\$\$17-895.1-86 to 17-895.1-89 (Reserved)	

Subchapter 10 Program Modifications

\$17-895.1-90	Program modifications for drop-in care
\$17-895.1-91	Program modifications for night care
\$17-895.1-92	Program modifications for demonstration projects
\$\$17-895.1-93 to 17-895.1-95 (Reserved)	

Subchapter 11 Safe Sleep

17-895.1-96	Program requirements
17-895.1-97	Sleep environment

Historical Note: Chapter 17-895.1 is based substantially upon chapter 17-895, Licensing of Infant and Toddler Child Care Centers [Eff 11/07/91; am and comp 12/19/02, am 2/24/17, R]

SUBCHAPTER 1

LICENSING PROCEDURE

§17-895.1-1 Definitions. For the purpose of this chapter:

"Acting director" means a person who assumes the responsibilities of director of the child care facility in the absence of the director.

"Acutely ill" means temperature above ninety-nine degrees (axillary), one hundred degrees (oral), and one hundred and one degrees (rectal) and other symptoms, such as vomiting, diarrhea, undiagnosed general rash, contagious diseases, severe cough, or difficulty in breathing.

"Approved child development or early childhood training courses" means child development or early childhood courses taken from regionally accredited institutions of higher learning and other agencies or organizations authorized by the department which are automatically accepted. Other courses, workshops, or seminars may be approved by the department provided the agency or organization is recognized by the department as having child care expertise, has submitted a description of the course, workshop, or seminar which fully describes the subject matter covered, the total hours of training and name of the qualified trainer (see "qualified trainer").

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Caregiver" means any individual who is responsible for the physical well-being, health,

safety, supervision, and guidance of children in child care.

"Child" means any person who has not reached the age of eighteen years.

"Child care" means those situations where a person or organization has agreed to assume the responsibility for the child's supervision, development, safety, and protection apart from the parent or guardian for any part of a twenty-four hour day.

"Child care aide" or "aide" or "child care assistant" means any person who helps the lead caregiver or caregiver with all aspects of the planned program.

"Child care center" or "group child care center" means a place maintained by any individual, organization, or agency for the purpose of providing child care. The term child care center or group child care center shall include child nurseries, nursery school groups, preschools, child play groups, parent cooperatives, drop-in child care centers, group child care homes, after or before school, holiday, and summer care for elementary school age children, or other similar units operating under any name.

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Child development associate" or "CDA" means the credential issued by the Council for Professional Recognition.

"Child with special needs" means a child with a condition such as a physical, emotional, behavioral, or learning disability or impairment that causes the child to require additional or specialized services or accommodations.

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Council for Professional Recognition" means the organization that administers the CDA credential.

"County building code" means the building code used by the applicable counties.

"Demonstration project" means any place providing child care which is operating with special approval of the department for exemptions to specific licensing or registration rules.

"Director" or "principal" or "lead caregiver" or "operator" means the person at the facility having responsibility for the administration of a child care center and its program.

"Drop-in care" means child care where children are permitted to arrive and leave at irregular, non-scheduled times during the facility's operating hours.

"Drop-in child care center" means a facility which accepts children for drop-in care.

"Emergency" means an unforeseen combination of circumstances which calls for immediate action.

"Facility" means the premises of the address on the application or license certificate for child care, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and outdoor areas.

"Family child care home" or "family child care" or "FCC" means any private residence at which care is provided at any given time to six or fewer children, as defined in section 346-151, HRS.

"First aid kit" means materials and equipment in one location in a suitable container for meeting medical emergencies. A first aid kit shall be of the type approved by the American Red Cross, American Medical Society, or the department of health.

"Form 14" means a printed form made available by the state department of health or the state department of education to record a child's immunizations and health record.

"Group child care home" or "GCH" means child care provided by an individual in a facility that may be an extended or modified family child care home which provides care to no more than twelve children during any part of a twenty-four hour day. GCHs are licensed under the rules for group child care centers.

"Group size" means the number of children assigned to specific staff who occupy an individual classroom or defined physical space within a larger area.

"Guardian" means a person other than a child's parents who has legal authority over and responsibility for a child.

"Health care practitioner" means a physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.), a physician assistant (PA), or an advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States, or a nurse practitioner (NP) licensed by the state of Hawaii.

"Ill" or "illness" is a subjective term which shall be defined by each provider with regard to admitting or not admitting sick children to child care.

"Infant" means a child who is six weeks to twelve months of age.

"Lavatory" means a vessel or basin for washing which is in conformity with plumbing codes in force in the state.

"Lead caregiver" or "teacher" or "teacher-director" or "lead teacher" means a person responsible for planning and implementing all or part of the program activities, preparing program materials, and supervising and training other staff.

"Liability insurance coverage" means a general casualty insurance policy issued to insure against legal liability for injury resulting from negligence to a child during the time the child is under the provider's care.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a child care facility.

"Local sanitary codes" means the specific rules set up by a county, the state department of health, or a comparable federal agency, which govern aspects of health and safety.

"Minor deficiencies" means deficiencies which do not involve risk to life, health, or safety of the children enrolled at the child care center.

"Night care" means child care provided to children who stay at night or overnight at a group child care center, group child care home, or family child care home. Care shall not be provided for twenty-four consecutive hours.

"Panic hardware" means a standard device on doors which permits quick and safe exits upon emergencies (e.g. push bars and plates).

"Person" means any individual with unsupervised access to children in care, caregiver, adult household member, applicant, provider, substitute, volunteer, new hire, rehire, temporary hire, or staff member in a child care facility or exempt child care facility.

"Policy" means a principal plan for the management of a child care facility.

"Primary caregiver" means the individual in the infant and toddler child care center to whom the care of a specific child and family is assigned. Primary care is defined as direct care, verbal and physical interactions, primary responses to infant's or toddler's physical and emotional needs while in the center, and continued interaction with parents regarding the infant's or toddler's experiences.

"Provider" means any individual eighteen years or older, caregiver, facility, agency or organization, exempt care providers, and adult employees, who provide child care to children in the absence of the child's caretaker.

"Provisional license" or "temporary permit" means a temporary license issued at the discretion of the department up to a maximum period of six months to any child care facility which is unable to conform to all the rules at the time the license is issued.

"Qualified nutrition consultant" means a dietitian or nutritionist who meets the advanced educational requirements for membership in the American Dietetic Association and is eligible for registration; or one who has a master's degree in public health nutrition or nutritional sciences.

"Qualified trainer" means a person who has twelve credits in early childhood or child development or related fields such as human development, psychology, social work, or nursing and a combined total of three years of experience in training adults who work with children or has six credits in early childhood or child development or related fields such as human development, psychology, social work, or nursing, and a combined total of five years of experience in training adults who work with children.

"Recalled" means any type of remedial action taken by a business for a corrective action plan agreed upon by the United States consumer product safety commission to address unsafe or potentially unsafe products to protect consumers, including the return of a product to the manufacturer or retailer for a cash refund or a replacement product, the repair of a product, or public notice of the hazard.

"Regionally accredited college or university" means any college or university that is recognized by the following regional accrediting organizations:

- (1) Middle State Associations of Colleges & Schools-Commission on Higher Education;
- (2) Northwest Commission on Colleges & Universities;
- (3) North Central Association of Colleges and Schools-the Higher Learning Commissions
- (4) New England Association of Schools and Colleges-New England Commission of Higher Education;
- (5) Southern Association of Colleges and Schools Commission on Colleges; or
- (6) Western Association of Schools and Colleges-Accrediting Commission for Community and Junior Colleges or Western Association of Schools and Colleges-Senior College and University Commission.

"Regular license" means a certificate of approval issued by the state department of human services to any child care facility which conforms to all the rules at the time the license is issued.

"Regularly" means the typical or normal pattern of the child care center, group child care home, or family child care home, or a practice or schedule that is routine and uniform and is not subject to unexplained or irrational variations.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in care.

"Single service utensils" means the supplies or equipment used once to serve food (e.g. paper plates, cups, disposable forks).

"Staff member" means administrative, child care, office, maintenance, employees, and other support personnel who are employed by the child care facility, including volunteers and substitutes.

"State advisory committee on child care services" means a group of people appointed by the department of human services to advise the department on matters regarding child care, including child care rules.

"Substitute" means a person who serves as a replacement staff person for no more than ten consecutive working days in the same position when the regular staff person is absent on an emergency or unplanned basis.

"Supervision" means to be within sight and hearing distance of the children to insure their safety and protection.

"Temporary hire" means a person who serves as a replacement when the regular staff person is absent on a planned basis.

"Temporary permit" means the same as provisional license.

"Toddler" means a child who is twelve to thirty-six months of age.

"USDA child care food program" means the food standards established by the United States Department of Agriculture.

"Volunteer" means a person working or offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the facility. [Eff]

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(Auth: HRS §346-162) (Imp: HRS §§346-151, 346-162)

SUBCHAPTER 1

LICENSING PROCEDURE

§17-895.1-2 Application. (a) A completed application to operate an infant and toddler child care center must include the following:

- (1) A signed department application form;
- (2) A written statement of operation policies;
- (3) Verification that the facility meets the applicable county codes;
- (4) Results of the background checks as described in §17-801-4, and as indicated in (A) and (B) below:
 - (A) Applicants, their staff members, and prospective staff members shall provide background clearance records and consent to conduct such checks as indicated in section 17-801-4.
 - (B) The department shall conduct the background checks in accordance with chapter 17-801.

(b) The date of application shall be the date a completed application as described in subsection (a) is received by the department.

(c) Notification of the disposition of the completed application for certificate of approval shall be issued no later than ninety days from the date the completed application as defined in subsection (a) is received.

(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed

approved and a license shall be issued.

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application must be submitted unless the licensing unit has granted additional time to satisfy all requirements in subsection (a). [Eff _____] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-895.1-3 Inspection and issuance of license.

(a) In exercising its authority to license child care facilities or renew, suspend, or revoke the license, the department shall analyze the qualifications of providers of child care, review the facility's written policies and program provisions, and inspect the child care facility. Authorized representatives of the department and parents or guardians of the children in care may visit a child care facility at any time during the hours of operation for purposes of observing, monitoring, and inspecting the facilities, activities, staffing, and during investigations of complaints against the facility, and other aspects of the child care facility. The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies' authorized fields.

(b) The applicant or licensee shall cooperate with the department by providing access to its facilities, records, and staff. Failure to comply with reasonable requests may constitute grounds for denial, suspension, or revocation of license.

(c) After the initial licensure, the licensee shall ensure that new staff members comply with section 17-895.1-2(a)(4) within five working days of hire by the child care facility.

(1) New staff members shall meet the conditions in sections 17-801-5(a) and 17-801-5(b) prior to starting employment or volunteering

at the child care facility.

- (2) An applicant, staff member, or rehired staff member, who has left the state or no longer doing child care for a period of one hundred eighty consecutive days or more, shall comply with sections 17-801-5(a), 17-801-5(b), and 17-801-5(c).

(d) Annual background checks shall be conducted. The applicants and staff members shall provide consent to the department to conduct a background check in accordance with chapter 17-801 no later than the anniversary date of the last consent to conduct a background check.

(e) The department shall request the applicant or licensee to terminate the employment of a staff member determined to be not suitable to provide child care for children in accordance with chapter 17-801.

(f) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(b)(2).

(g) The department shall request the applicant or licensee to exclude from the premises, the person who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801.

(h) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(c)(2).

(i) Rules prescribed herein are minimum standards. The department shall issue a license under the following conditions:

- (1) A regular license certificate shall be issued if the result of the department's evaluation indicates compliance with the applicable rules as established by the department; or
- (2) A provisional license certificate shall be issued if the result of the department's evaluation indicates that all of the applicable rules cannot be met immediately but shall be met within six months or less, and the deviations are minor deficiencies.

(j) The length of the licensing period shall be as follows:

- (1) For new applicants and those providers licensed for less than four years, the licensing period is one year and for all other providers the licensing period may be two years, unless subsequently suspended or revoked.
- (2) During a licensing period, a provider may be issued more than one license certificate which may include a provisional license certificate followed by a regular license certificate. When this occurs, the total length of a licensing period shall be according to subsection (1).
- (3) A provisional license may be issued for up to six months; and
- (4) A license shall be renewed for a new licensing period only upon application and upon the department's approval. An application shall be submitted to the department at least ninety days prior to the expiration of the licensing period.
- (k) Each regular license and provisional license shall clearly state the kind of program the licensee is permitted to operate, the address of the licensee, and the number and types of children who can be cared for at the facility.
 - (1) A license certificate shall be valid for:
 - (1) One year for new applicants and for those who have been licensed for less than four years; and
 - (2) Two years for those who have been licensed for four years or more,unless sooner revoked. [Eff _____] (Auth: HRS §346-162) (Imp: HRS §§346-156, 346-161, 346-163, 346-164, 346-165; 42 U.S.C. §§2002, 2005)

§17-895.1-4 Fines. (a) The operation of a child care facility without a license is a violation and shall be punishable by a fine not to exceed the

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maximum amount allowable under the law.

(b) The following offenses may be punishable by a fine, not to exceed the maximum amount allowable under the law, and may also be subject to the denial, suspension or revocation of a license:

- (1) Caring for more children than allowed by the facility's license;
- (2) Violation of the staff-child ratios;
- (3) Improperly certifying staff credentials;
- (4) Failure to comply with timely request for background check as required in chapter 801;
- (5) Allowing conditions to exist at the facility which constitute a risk of harm or an imminent danger to the health, welfare, or safety of the children; or injuries to children resulting from the conditions;
- (6) Failure to report suspected child abuse or neglect that has occurred or will occur; or
- (7) Any behavior that may create an unsafe or unhealthy environment or may pose a risk of harm to children. [Eff _____]
(Auth: HRS §346-156) (Imp: HRS §§346-154, 346-156, 346-162, 350-1; 42 U.S.C. §§2002, 2005, 9833)

§17-895.1-5 Denial, suspension, revocation of license, and hearings. (a) The conditions for denial, suspension, or revocation of a license and the action to be taken by the department shall be as follows:

- (1) The department shall deny, suspend, or revoke a regular license or a provisional license if:
 - (A) An applicant or licensee does not comply with the applicable statutes and rules of the department respecting child care facilities; or
 - (B) The child care facility or any employee of the facility knowingly makes a false statement to any person concerning the

child care facility's liability
insurance coverage.

- (2) An applicant or licensee whose license is denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the license application;
 - (3) The notice shall contain a statement of the reasons for the proposed action and shall inform the applicant or licensee of the right to appeal the decision to the director of the department in writing, within ten working days after the mailing of the notice of the proposed action;
 - (4) Upon receiving a timely written appeal the director of the department shall give notice of and an opportunity for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the application or license shall be denied, suspended, or revoked; and
 - (5) If no timely written appeal is made, processing of the application shall end or the license shall be suspended or revoked as of the termination of the ten day period.
- (b) The license shall be immediately suspended

when:

- (1) Conditions exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;
- (2) The department received a report of allegations which identify risks to the health, safety, or well-being of the children in care. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;

- (3) The provider refuses to terminate a staff member as specified in chapter 17-801; or
 - (4) The provider refuses to exclude from the premises, the person who is the subject of an on-going or pending investigation in accordance with chapter 17-801.
- (c) Upon immediate suspension pursuant to (b), the department shall take the following actions:
- (1) Provide the licensee written notice of the order by personal service, by certified, or registered mail addressed to the location shown on the license;
 - (2) Provide a statement of the reasons for the suspension in the notice and inform the licensee of the right to petition the department to reconsider the order within ten working days after mailing of the notice; and
 - (3) Declare that all operations shall cease as of the date of receipt of the notice, give the licensee reasonable notice upon receiving a written petition, and provide an opportunity for a prompt hearing before a hearing officer with respect to the order of suspension of the license. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of suspension shall be affirmed or reversed.
- (d) At any hearing provided for by this section, the applicant or licensee may be represented by counsel and shall have the right to call, examine, and cross-examine witnesses. Evidence may be received even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to the last known addresses as may be shown in the application, on the license, or otherwise.

(e) Filing of a request for an administrative appeal does not permit the applicant or licensee to continue to care for children under this chapter.

(f) If an applicant or licensee has their regular or provisional license revoked, they shall be unable to apply for another license for:

- (1) A ninety-day period from the date that the license was revoked if the revocation was their first offense; and
- (2) One year from the date that the license was revoked if the revocation was their second offense. [Eff _____] (Auth: HRS §346-162) (Imp: HRS §346-164; 42 U.S.C. §§2002, 2005)

§§17-895.1-6 to 17-895.1-9 (Reserved)

SUBCHAPTER 2

ADMINISTRATION REQUIREMENTS

§17-895.1-10 Age of children in care. An infant and toddler center may provide care to children aged six weeks and older. [Eff: 10/1/05] (Auth: HRS §346-162) (Imp: HRS §§346-14, 346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-11 Statement of operation policies.

(a) The facility shall have written operation policies which cover the following areas:

- (1) Ages of children accepted;
- (2) Maximum number of children permitted by license;
- (3) Specific hours of day, night, holiday, and

- vacation operation;
- (4) Type of child care services provided;
- (5) Whether the facility provides meals and snacks for the infant or toddler, or parents are to provide the meals and snacks;
- (6) Admission requirements and enrollment procedures;
- (7) Provisions which may be made for special needs of individual children;
- (8) Fees and the plan for payment, including fees for different types of services and refund policy;
- (9) Plan for emergency medical care;
- (10) Insurance coverage - each facility shall inform parents or guardians in writing of its policy relating to liability insurance;
- (11) Personal belongings brought to the facility;
- (12) Transportation arrangements;
- (13) Parental permission for trips and related activities outside the facility, if applicable;
- (14) Admission and care of ill children;
- (15) Administering medication;
- (16) Provision and management of diapers and other infant and toddler supplies;
- (17) Sanitation practices;
- (18) Grievances which shall include the department's information for parents to file a complaint;
- (19) Fundraising campaigns - children and staff shall not be exploited in activities which would be detrimental to the children or the program;
- (20) Mandated reporting of suspected child abuse or neglect in accordance with chapter 350, HRS;
- (21) Regular communication between caregivers and parents or guardians to relay information about the child;
- (22) Suspension and expulsion of children which includes the following:

- (A) The conditions under which a child may be suspended or expelled, if applicable;
 - (B) Sufficient timeframe before suspension or expulsion occurs to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in (23)(C) below;
 - (C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children;
 - (D) Parents and guardians are provided written notification of any concerns that could lead to the child's expulsion; and
 - (E) When expulsion occurs, the provider shall maintain a record of the conditions, parental notification, and action taken; and
- (23) Other policies that may be required by the department.
- (b) Written policies and procedures shall be reviewed with each caregiver in the facility.
- (c) Written policies shall be made available for review by parents or guardians at the time of enrollment of the infant or toddler. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-12 Liability insurance. A child care facility shall:

- (1) Obtain and maintain liability insurance coverage as defined in section 346-157, HRS;
- (2) Provide to the department evidence of liability insurance coverage; and
- (3) Notify the department and parents or guardians in writing within seven working

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days of any change, cancellation, or termination of liability insurance coverage, that the coverage has been changed, canceled, or terminated while the parent's or guardian's child is cared for at the facility. [Eff] (Auth: HRS §346-157) (Imp: HRS §346-157)

§17-895.1-13 Information on owner or operator.

(a) The name, address, and telephone number of the facility shall be supplied to the department.

(b) The name, business address, and business telephone number of the persons bearing the responsibility for the child care facility shall be supplied to the department.

(c) The name, business address, and business telephone number of the persons having specific authority and responsibility for overall administration and the services offered shall be supplied to the department.

(d) The name of the owner or sponsoring agency (privately owned, church, or agency owned, etc.) of the facility shall be supplied to the department. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-14 Change in services and staff. A facility shall notify parents or guardians and the department of any changes in the child care services it provides as follows:

- (1) Written notification of changes in the services offered by the facility shall be provided to the department and to parents or guardians of the children enrolled in the facility at least four weeks prior to the effective date of change.
- (2) A facility shall provide to the department written notification of changes in staff who

provide direct care to children within five working days after the change.

[Eff] (Auth: HRS §346-162)

(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-15 Information and records on each child. (a) Admission procedures shall require sufficient information and instruction from the parents or guardians to enable the caregiver to make decisions or act on behalf of the child.

(b) Prior to the admission of a child to a facility, the provider shall obtain in writing from the child's parents or guardians the following information:

- (1) The child's full legal name, birth date, current address, and preferred names;
- (2) The names and addresses of the parents or guardians who are legally responsible for the child;
- (3) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the facility;
- (4) The name, address, and telephone number of person who shall assume responsibility for the child if for some reason the parent or guardian cannot be reached immediately in an emergency;
- (5) The names, addresses, and telephone numbers of persons authorized to take the child from the facility; and
- (6) Health information concerning the child, including any allergies as required by section 17-895.1-41.

(c) The information shall be available on facility forms and shall be kept current.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-16 Disclosure of information on the child. (a) Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility staff or the department, unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises.

(b) The facility shall have release of information forms available for parents or guardians to sign.

(c) The parents or guardians shall be informed in writing of the facility's policy regarding disclosure of information. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005)

§17-895.1-17 Information and records on facility. (a) The facility shall maintain, and make available to the department current records and information including:

- (1) Roster of enrolled children;
- (2) Daily attendance records by names of children;
- (3) Daily plan for feeding the children;
- (4) Daily schedule of activities; and
- (5) A list of staff members, including each staff member's position or title, training, experiences and health records;
- (6) Written permission from the parent to allow the child to have contact with pets or other animals; and
- (7) Log of emergency preparedness drills practiced in accordance with section 17-895.1-71.

(b) The child care facility shall report to the department, within one working day of occurrence, the death of a child or employee, and any illness or injury received at the child care facility that results in a child's hospitalization. [Eff]

] (Auth: HRS. §346-162) (Imp: HRS §346-166; 42
U.S.C. §§2002, 2005)

§17-895.1-18 Transportation provisions. Infant and toddlers transported in vehicles, either to and from the facility or for program activities, shall be protected by adequate supervision, safety precautions, and liability and medical insurance coverage as follows:

- (1) For transportation to and from the facility, the vehicle and driver shall satisfy all relevant motor carrier safety rules and traffic laws of the state;
 - (2) During any field trip or excursion operated or planned by the facility, the staff-child ratio and group size requirements as provided in section 17-895.1-36 shall apply;
 - (3) Children shall be instructed in safe transportation conduct as appropriate for age and stage of development;
 - (4) Prior to transporting children, the child care facility shall obtain written permission from the parent or guardian that each child is allowed to be transported by school bus or other means of transportation such as a personal vehicle;
 - (6) Children shall be secured in the seat of the bus or in the back seat of a personal vehicle in approved car seats or restraints;
 - (7) A child shall not be left unattended in a vehicle;
 - (8) Staff members shall take a head count or attendance record check before and after transportation is provided; and
 - (9) During any field trip or excursion, staff members shall have available with them a first aid kit, emergency contact phone numbers, and medical treatment release forms signed by the child's parent or guardian.
- [Eff] (Auth: HRS §346-162)

§17-895.1-18

(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-19 to 17-895.1-24 (Reserved)

SUBCHAPTER 3

PROGRAM REQUIREMENTS

§17-895.1-25 Program provisions. (a) The program conducted in the facility shall provide for staff supervision of the infants and toddlers at all times and an environment and experiences which are developmentally appropriate which are aimed at promoting the infant or toddler's physical, emotional, intellectual, and social well-being, and supports the growth and integrity of the family unit.

(b) The director of the facility shall provide the department with a brief written description of the facility's program goals and activities, which shall include the following:

- (1) Provisions for the promotion of physical development, which shall include:
 - (A) Varied, developmentally appropriate physical activities; and
 - (B) Opportunities for the infants and toddlers to learn about the health, development, and care of their bodies including exercise, safety, nutrition, and hygiene, as appropriate to their age and development;
- (2) Provisions for the promotion of emotional development, which shall include:
 - (A) Staff recognition of the special difficulties of infant and toddler separations and assistance to families, infants, and toddlers to make the

- transition from home to facility as gently as possible, such as a phased-in orientation process to allow infants and toddlers to experience limited amounts of time at the facility before becoming fully integrated;
- (B) Assignment of each infant or toddler to a primary caregiver who shall be responsible for care the majority of the time;
 - (C) Prompt response by all caregivers to an infant or toddler's physical and emotional needs, i.e., feeding, diapering, holding, touching, and eye contact;
 - (D) Recognition and care of each infant or toddler as an individual with opportunities for individual choices, self-expression, and some personal privacy;
 - (E) Provision of constructive guidance and the setting of clearly defined limits which foster the infant or toddler's ability to be self-disciplined, as appropriate to their age and development;
 - (F) Prohibition of use of:
 - (i) Physical punishment, abuse, or harm including but not limited to spanking, pinching, slapping, or shaking; or
 - (ii) Methods of influencing behavior which are frightening, humiliating, damaging, neglectful, or injurious to the infant or toddler's health or self-esteem; and
 - (G) Providers shall respect each infant's or toddler's cultural, ethnic, and family background, as well as the child's primary language or dialect;
- (3) Provisions for the promotion of intellectual

development, which shall include:

- (A) Offering of frequent, but paced, personal, verbal, and physical interaction between caregiver and infant or toddler as part of the daily routine;
 - (B) Availability of a variety of learning materials, which staff helps children to use; and
 - (C) Hands-on experiences, including both familiar and new activities, to enable the infant or toddler to learn about themselves and the world; and
- (4) Provisions for the promotion of social development, which shall include:
- (A) Caregiver behavior and interactions which emphasize and foster attitudes of mutual respect between adults and children and between children; and
 - (B) Guidance to infants and toddlers to enable them to develop and work out ways of getting along with each other, including an appreciation of cultural and ethnic diversity, as appropriate to the infant or toddler's level of understanding.

(c) The program shall provide a balance of active and quiet activities and shall recognize the infants and toddlers' need for uninterrupted sleep.

(d) In drop-in centers, every effort shall be made to place an infant or toddler, who uses the center frequently, with the same caregiver.

(e) The program shall provide information on and access to parenting resources (i.e., bulletin boards, classes, resource libraries, handouts).

[Eff] (Auth: HRS §46-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-26 Communication between parents and caregivers. (a) Centers shall obtain from the parent

or guardian a description of the infant's or toddler's daily routine and behavior patterns prior to enrollment; and

(b) Caregivers shall relay information and concerns about the health, development, or behavior of the infant or toddler, as well as positive experiences, directly to the parents or guardians on the day of the major change, symptom, or event.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-27 Program materials and equipment.

(a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be developmentally appropriate to the infants and toddlers in care.

(b) The quantity of materials and equipment shall be sufficient to:

- (1) Avoid excessive competition among the children and long waits for use of the materials and equipment; and
- (2) Provide for a variety of experiences and appeal to the individual interests of the infants and toddlers.

(c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.

(d) Materials and equipment shall be safe and kept clean and in good repair, not be recalled, stored in an orderly way, and arranged to allow children to select, remove, and replace the materials and equipment either independently or with assistance, as appropriate to their age and development.

(e) Soft media or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.

(f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.

(g) The following shall be available:

§17-895.1-27

- (1) High chairs, safety seats, or size-appropriate low seating for individual feeding;
 - (2) Adequate padding for safe floor play;
 - (3) Rocking or comfortable chair for infant and toddler feeding and comforting; and
 - (4) Individual storage spaces for children's clothing and personal belongings.
- [Eff _____] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-28 Transition to a new facility. (a)

A facility shall have a written policy to assist the infant or toddler in making a transition from the child care setting to a new type of care by communicating what will happen at the infant's or toddler's level of awareness or understanding.

(b) The provider shall cooperate with parents, guardians, new providers, or other caregivers when information is requested to assist an infant or toddler to adjust to a new environment as allowed by section 17-895.1-16. [Eff _____] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-29 to 17-895.1-34 (Reserved)

SUBCHAPTER 4

STAFFING REQUIREMENTS

§17-895.1-35 Staff training, experience, and personal qualifications. (a) Each caregiving staff shall be qualified through training, experience, and

personal qualities for the age group with which the person works.

(b) Staff growth and development shall be encouraged. The director shall make information about workshops, seminars, training sessions or other courses available to all staff and volunteers.

(c) Each caregiver, substitute, and volunteer within forty-five days of hire, shall complete initial training that is approved by the department in health and safety standards which addresses the following areas:

- (1) Prevention and control of infectious diseases (including immunizations);
- (2) Prevention of sudden infant death syndrome and use of safe sleeping practices;
- (3) Administration of medication, consistent with standards for parental consent;
- (4) Prevention and response to emergencies due to food and allergic reactions;
- (5) Building and physical premises safety;
- (6) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
- (7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event;
- (8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
- (9) Appropriate precautions in transporting children;
- (10) Pediatric first aid and cardiopulmonary resuscitation; and
- (11) Recognition and reporting of child abuse and neglect.

(d) When a caregiver, substitute or volunteer has not provided child care for one hundred eighty consecutive days or more, the initial training in subsection (c) shall be repeated.

(e) After the initial training in health and safety standards is completed with one hundred percent accuracy and the results are received and recorded by the department, each caregiver shall complete

department approved on-going training appropriate to the age of children the caregiver serves within twelve months from the date the initial training was received and recorded by the department, and then annually thereafter.

- (1) Each caregiver staff member shall complete at least sixteen hours of training annually in at least two of the topic areas in subsection (f).
- (2) Substitutes shall complete at least ten hours of training annually in at least two of the topic areas in subsection (f).
- (3) Volunteers who serve ten hours or more a week shall complete at least eight hours of training annually in at least two of the topic areas in subsection (f).
- (4) When an individual does not meet the requirements in subsection (e) and does not provide evidence of working to complete on-going training, the individual shall no longer be eligible to meet the staff-child ratio in accordance with sections 17-895.1-36(f) and 17-895.1-37.

(f) Each caregiver shall provide written evidence to the department to show completion of on-going training. The on-going training course, workshop, or class shall be different from the training topic areas completed in the prior twelve month period, except for safe sleep training required in accordance with section 17-895.1-96(b), and shall be in the following topic areas:

- (1) Physical care of the young child;
- (2) Care of the sick child;
- (3) Child nutrition;
- (4) Child growth and development;
- (5) Children with special needs;
- (6) Learning activities and play;
- (7) Family engagement;
- (8) Managing challenging behaviors;
- (9) Community resources;
- (10) Prevention of child maltreatment and abuse;
- (11) First aid and child cardiopulmonary

- resuscitation;
- (12) Health and safety;
- (13) Child care business or program management;
or
- (14) Physical environment; and
- (15) Safe sleep if permitted to care for children
less than one year of age.
- (g) Applicants and staff members shall be of
reputable and responsible character and shall not have
the following:
 - (1) A criminal history record, employment
history, sex offender registry history,
child abuse or neglect history, or adult
abuse history that may pose a risk to the
infants and toddlers in care as specified in
section 17-801-5; or
 - (2) Any other situations that poses a risk to
the health, safety or well-being of children
in care.
- (h) The director of an infant and toddler center
shall have:
 - (1) A bachelor's degree or higher in early
childhood education (ECE), child development
(CD), or related field from a regionally
accredited college or university or
transferable to a regionally accredited
college or university; thirty hours of
course work in infant and toddler
development from an accredited teacher
training institute or program; and twelve
months of full time experience working with
children under thirty-six months of age in a
licensed group care setting; or
 - (2) Two years of college education in early
childhood education, child development, or
related field; thirty hours of course work
in infant and toddler development from an
accredited teacher training institute or
program; and twenty-four months of full time
experience working with children under
thirty-six months of age in a licensed group
care setting.

- (i) A lead caregiver shall have:
- (1) A bachelor's degree or higher in ECE or CD or related fields, e.g., maternal-child health, nursing, or human development; twelve months of full time experience working with children under thirty-six months of age in a licensed group care setting; twelve semester credits approved ECE or CD courses, which may be part of the bachelor's degree and shall be from a regionally accredited college or university or transferable to a regionally accredited college or university; and thirty hours of course work in infant and toddler development from an accredited teacher training institute or program; or
- (2) A high school diploma, or its equivalent, and a child development associate credential; twenty-four months of full time experience working with children under five years of age in a licensed group care setting of which at least twelve months of experience shall have been with children under thirty-six months of age; twelve semester credits approved ECE or CD courses from a regionally accredited college or university or transferable to a regionally accredited college or university; and thirty hours of course work in infant toddler development from an accredited teacher training institute or program; or
- (3) Two years of college education, preferably in ECE or CD or related fields; twenty-four months of full time experience working with children under five years of age in a licensed group care setting of which at least twelve months of experience shall have been with children under thirty-six months of age; twelve semester credits approved ECE or CD courses from a regionally accredited college or university or transferable to a regionally accredited college or university;

and thirty hours of course work in infant and toddler development from an accredited teacher training institute.

(j) A caregiver shall have:

(1) A high school diploma or its equivalent, twelve months of full time experience working with children under thirty-six months of age in a licensed group care setting, twelve semester credits approved ECE or CD courses from a regionally accredited college or university or transferable to a regionally accredited college or university, and thirty hours of course work in infant and toddler development from an accredited teacher training institute or program; or

(2) A high school diploma or its equivalent, twenty-four months of full time experience working with children under thirty-six months of age in a licensed group care setting, and thirty hours of course work in infant and toddler development from an accredited teacher training institute or program; or

(3) No high school diploma, thirty-six months of full time experience working with children under thirty-six months of age in a licensed group setting, and thirty hours of course work in infant and toddler development from an accredited teacher training institute or program.

(k) A child care aide shall have:

(1) A high school vocational child care training course; or

(2) An orientation training in the center.

(l) A twelve-month non-renewable waiver may be granted to new hires, rehires, and current staff in director, lead caregiver, or caregiver positions, who meet all other requirements except the thirty hours course work in infant and toddler development from an accredited teacher training institute or program, to complete this required course work while concurrently

serving in the capacity of the facility's director, lead caregiver, or caregiver.

(m) All staff members required to complete the thirty hours of course work in infant and toddler development from an accredited teacher training institute or program, as stipulated in subsections (f) through (h), shall, within two years of completion of this course work, obtain fifteen additional hours of course work in infant and toddler development from an accredited teacher training institute or program.

(n) When the fifteen additional hours of professional development in infant and toddler development is completed, the fifteen hours of professional development may count as meeting a portion of the required on-going health and safety training in section 17-895.1-35(e).

(o) The age requirements for staff shall be as follows:

- (1) Child care aide, volunteer, clerical, or maintenance personnel shall be at least fourteen years old, except that a child care aide, who is to be counted in the staff-child ratio, shall be at least eighteen years old; and
 - (2) All other staff shall be at least eighteen years old.
- (p) Volunteers shall:
- (1) Participate in an orientation to the program; or
 - (2) Be a participant in a high school program which includes training in infant and toddler care; and
 - (3) Meet the requirements of regular staff members to be counted in the staff-child ratio.

(q) Temporary hires shall meet qualifications of positions for which hired.

(r) Substitutes for lead caregivers and caregivers shall be at least eighteen years of age and shall have participated in an orientation program of the facility, and the curriculum, lesson plans, and daily activities assigned to the substitute shall be

closely supervised by the center's director.

(s) Substitutes for director shall meet the qualifications of a caregiver and shall have worked in the facility for at least six months.

(t) Substitutes for aides shall meet the qualifications of an aide.

(u) Substitutes may be granted an extension to serve in the same position for more than ten consecutive days upon consultation with and approval of the department. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-36 Staff-child ratio and group size.

(a) The staff-child ratio and group size shall be met and maintained by the facility during all hours of operation.

(b) The staff-child ratio shall be in writing and shall be available to the department.

(c) Staff members shall be on site and shall be regularly assigned to a particular group of children to be included in the staff-child ratio.

(d) The director may serve as a caregiver, and be included in the staff-child ratio, only when total infant and toddler facility size does not exceed sixteen. The director may serve as a caregiver but shall not be included in the staff-child ratio in an infant and toddler program with more than sixteen children.

(1) Exception may be made and the director may be included in the staff-child ratio in cases of emergency or in special situations. This inclusion in the staff-child ratio shall not exceed ten hours per week.

(2) Exception may be made and the director of only those facilities which operate full day may be included in the staff-child ratio during the first hour and the last hour of the regular operational day.

(e) Custodians, cooks, and bus drivers shall not be counted in the staff-child ratio when performing

regular duties.

(f) The following staff-child ratios and group size shall be used in infant and toddler programs:

<u>Ages of Children</u>	<u>Staff-child ratio</u>	<u>Maximum Group Allowed</u>
6 wk - 12 mo.	1:3	6
	1:4	8
12 mo. - 24 mo.	1:3	6
	1:4	8
	1:5	10
	1:4	12
18 mo. - 36 mo.	1:5	10
	1:6	12

(g) Group size refers to the specific number of children assigned to specific staff who occupy an individual classroom or well-defined physical space within a larger room; when groups are assigned space within a larger room, there shall be room dividers to ensure that children stay within their assigned group area and to keep the noise level down.

(h) The ratios and group sizes in the table above shall apply, as stated, only to homogenous age groups.

(i) Multi-age grouping is both permissible and desirable; however, the following requirements and restrictions apply:

- (1) Children who are between the ages of six weeks to eighteen months can be grouped together; when this occurs, the ratio and group size shall be those required for the youngest child in the group according to the table above; or
- (2) Children who are between the ages of six months to thirty-six months can be grouped together; when this occurs, the ratio and group size shall be those required for the

youngest child in the group according to the table above; or

- (3) In multi-age groups, the ratio and group size shall not exceed the ratio and group size for that of one age group higher than the youngest child in the group, and two thirds of the children must be in the oldest age group.

(j) Under no circumstances shall there be more than two children under three months of age in any group.

(k) Children with special needs shall be admitted, provided their needs can be met without jeopardizing the staff-child ratio or the quality of care of the entire group. All reasonable attempts shall be made to meet their needs. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-37 Staffing patterns. (a) There shall always be a minimum of two staff in the center when children are in care.

(b) When only one staff is required to supervise the children, as based on the staff-child ratio, the second staff shall be readily accessible and available to the staff who is supervising the children.

(c) For every group, there shall always be one staff who meets the qualifications of a lead caregiver or caregiver.

(d) When the group size requires three staff, there shall minimally be one staff who meets the qualifications of a lead caregiver and one who meets the qualifications of a caregiver.

(e) These staffing patterns shall be maintained at all times, except for the first hour and the last hour of the operational day when a caregiver can act in the position of a lead caregiver. [Eff]
(Auth: HRS §346-20) (Imp: HRS §346-20; 42 U.S.C. §§2002, 2005)

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§§17-895.1-38 to 17-895.1-39 (Reserved)

SUBCHAPTER 5

HEALTH STANDARDS FOR INFANTS AND TODDLERS

§17-895.1-40 Health policies and health consultant. To assist in developing current and updating health policies, all programs shall have one of the following provisions:

- (1) The facility shall have on file written evidence that an arrangement has been made with a physician in private practice to provide consultation;
- (2) The facility has made a contractual arrangement with a private physician or non-profit health organization in the community to provide health care to the infants and toddlers in the program;
- (3) There is already a procedure existing in the community for the provision of health consultation service, and arrangements have been made for the use of this service; or
- (4) The infant and toddler program has a health advisory group that may serve in such a capacity. [Eff _____] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-41 Evidence of child's health. (a) The facility shall require and obtain from the parent or guardian of each infant and toddler entering their program a health record of the infant or toddler which complies with the provisions of chapter 11-157, which

relate to the school entry examination requirements, immunization, physical examination, and chapter 11-164.2 for tuberculosis clearance which consists of the following:

- (1) Written evidence of a physical clearance obtained within two months of admission to the facility;
- (2) Written evidence that the infant or toddler has received a tuberculin clearance; and
- (3) Initial and continuous written evidence that immunizations are current; or
- (4) A written statement from a licensed physician certifying that the physical condition of the infant or toddler is such that immunizations would endanger the infant or toddler's life or health, in accordance with chapter 11-157; or
- (5) A written statement from a parent or guardian requesting exemption from the required immunizations on the grounds that such immunizations conflict with the parent or guardian's bonafide religious tenets and practices, in accordance with chapter 11-157.

(b) For children experiencing homelessness or in foster care, the child care facility shall allow a grace period of three months from the child's first day in care to obtain the evidence described in subsection (a), in accordance with chapter 11-157, provided that the parents or guardians submit to the facility in writing the health needs for the child, including any allergies, at the time the child is placed in care.

(c) Medical clearance for care of a child with special needs shall be obtained before admission into an infant and toddler facility.

(d) The records of each child enrolled in the program shall include pertinent information about birth, health status, developmental progress, including prematurity and any special needs and efforts necessary to meet these needs.

[Eff] (Auth: HRS §346-162) (Imp:

§17-895.1-41

HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-42 Emergency care provisions. (a)

Every child care facility shall have provisions for emergency care of any child requiring treatment and for care of a child who becomes ill after arrival, as follows:

- (1) The child care facility shall have one of the following written policies which indicate that:

- (A) The responsible individual in the child care center, i.e. director, caregiver or health- trained staff, has obtained the name of the nearest hospital or clinic where such care may be provided and has obtained written permission from each parent or guardian to provide emergency care to the infant or toddler at the hospital or clinic; or
- (B) The child care facility's health consultant has made arrangements for emergency coverage, and written permission from each parent or guardian for use of this alternative emergency coverage for their infant or toddler shall be on file at the facility.

- (b) If health care is provided in the child care facility, the facility shall have on file a written permission from each parent or guardian covering all aspects of health care which is provided at the facility.

- (c) An adult shall accompany the child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program.

- (d) Physical arrangements that are clean and safe for infants and toddlers, who become ill after arrival at the facility, shall be available for their

care until parents or guardians can be notified to provide alternative arrangements.

(e) An operating telephone that is available and is easily accessible to the staff members to be used in case of an emergency;

(f) A plan for accessing a telephone when the child care is provided somewhere other than when not in the usual location where care is regularly provided. [Eff _____] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-43 First aid and child cardio-pulmonary resuscitation (CPR). (a) The first aid requirement shall be as follows:

- (1) There shall be at least one adult caregiver with a current certificate in first aid at the facility when children are present or at an off-site group activity, such as during field trips and excursions.
- (2) A current first aid certificate means a certificate that has not expired.
- (3) The current first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.
- (4) A first aid kit shall be available at the facility at all times.

(b) The child CPR requirement shall be as follows:

- (1) There shall be at least one adult caregiver with a current certificate in child CPR at the facility when children are present or at an off-site group activity, such as during field trips and excursions.
- (2) The child CPR course must be provided by the American Red Cross, American Heart

Association, or any organization whose child CPR certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.

- (3) A current certificate means a certificate that has not expired.
- (4) If the provider is caring for infant children, the course shall include training in infant CPR. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162;
42 U.S.C. §§2002, 2005)

§17-895.1-44 Admission of ill infants and toddlers. (a) Acutely ill infants and toddlers may only be admitted with adequate provision for isolation and adequate personnel to provide individual care.

(b) When health policies of the child care facility allow ill infants or toddlers to be admitted or to remain in the facility, health consultation shall be available regarding special care and medication.

- (1) The child care facility shall have, in writing, the name, address, and telephone number of a physician or health resource that shall be called.
- (2) Written permission shall be required of the parent or guardian to call upon the stated physician or health resource, or another responsible source of care, if the parent or guardian cannot be reached.

(c) Caregiving staff and parents or guardians shall be informed of the child care facility's policies on ill infants and toddlers.

(d) The facility shall, in consultation with its health consultant, establish a readmission policy for children who have been absent because of illness which shall be provided to the parents or guardians.

[Eff] (Auth: HRS §346-162) (Imp:
HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-44.01 Administration of medication.

(a) When medication prescribed by a physician is administered in the facility:

- (1) The medication shall be kept in the original container bearing the prescription label, which shows the infant's or toddler's name, a current date, and the physician's directions for use;
- (2) Medication shall be stored:
 - (A) In a refrigerator, if refrigeration is required; medication shall be separated from food by being enclosed in a covered container; or
 - (B) In a cool, dry, dark, and secured enclosure, which is inaccessible to the infants and toddlers, if refrigeration is not required.
- (3) Medication shall be returned to parents or guardians when no longer in use; and
- (4) There shall be an authorization signed by the parent or guardian for the facility staff to administer medication.

(b) When over the counter medication is recommended by the infant's or toddler's doctor, medication shall be administered at the facility as directed in writing by the doctor. [Eff
] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-45 Admission of infants and toddlers with special needs. (a) When infants and toddlers with special needs are admitted to a facility, the facility shall provide for the special needs of each infant or toddler.

(b) The infant or toddler with special needs shall be admitted only after consultation between the infant's or toddler's source of health care and the

program's health consultant. The consultation shall include written recommendations to accommodate the child's special needs or to define the child's participation in the program.

(c) If the infant's or toddler's health care source considers it advisable, the staff of the program shall receive training related to the nature of the child's special needs before the infant or toddler is admitted to the facility.

(d) Where the nature of the infant's or toddler's special needs or the number of children with special needs in the program necessitates added care, staff and equipment shall be available to cover these requirements. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-46 Daily nutritional needs. (a)

Meals and snacks of a quantity to complement food served at home shall be provided by the parent, guardian, or facility to meet the daily nutritional needs of the infant or toddler.

(b) In a facility providing meal service, the facility shall ensure that the minimum meal components and food amounts as required by the United States Department of Agriculture (USDA) Child Care Food Program, as adapted for Hawaii by the state department of health, shall be provided.

(c) In a facility, where parents or guardians are allowed to provide food for their own child (i.e., formula or other foods for meals or snacks), the facility, in addition to food the child brings, shall provide the minimum amounts required by the USDA Child Care Food Program, by offering and providing children in care:

- (1) Four to eight hours - morning snack or breakfast or afternoon snack;
- (2) Eight hours or more - morning snack or breakfast and afternoon snack, unless the eight hours or more extend into the evening hours when the children may be asleep;

(d) For children twelve to thirty-six months of age, when two snacks are required, at least one of the snacks shall include the provision and offering of milk (or the individual child's formula) or its calcium equivalent.

(e) Information provided by parents, guardians, or the child's physician concerning the child's eating habits, food preferences, or special needs shall be considered in the children's feeding schedules and menus.

(f) Infants and toddlers shall not be offered foods to which they are allergic or, for religious reasons, cannot consume, and the parent or guardian of the child shall arrange for nutritious substitute foods.

(g) A list of food items that are provided by the caregiver shall be posted in a prominent place for review by parents.

(h) Signs of food sensitivity or allergy shall be reported in writing to the parent or guardian on the day this has been observed.

(i) Infants and toddlers shall be encouraged but shall not be required to eat the food offered by the facility, as follows:

- (1) Caregiver shall be alert to and consider individual infant and toddler cues in determining amounts of food to provide;
- (2) When solid foods are introduced, they shall be carefully selected and added one at a time with a few days span between each new addition; and
- (3) Food textures shall be adjusted to accommodate the individual child's chewing and swallowing ability, as well as preferences.

(j) Infants and toddlers shall not be offered foods which pose safety hazards.

(k) Food shall not be used as a punishment or reward.

(l) Infants and toddlers shall be personally attended while being fed.

- (1) Infants being bottle fed shall have bottle

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- held by the caregiver, not propped; and
- (2) Parents or guardians may assume full responsibility for the infant's or toddler's diet.

(m) The child care facility's food service shall be approved and reviewed annually by a qualified nutrition consultant the facility has chosen or provided by an appropriate community resource.

(n) The facility shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resources approved by the state department of health. [Eff
] (Auth: HRS §346-162) (Imp: HRS
§346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-47 Drinking water provisions.

Drinking water shall be offered to infants and toddlers throughout the day in sanitized bottles and cups. [Eff
] Auth: HRS §346- 162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-48 Integration of mental health concepts. Mental health aspects of infant and toddler development shall be integrated into the program as follows:

- (1) At least one parent, guardian, foster parent, or social worker shall be interviewed prior to an infant's or toddler's admission to the child care facility. The personal interview shall be conducted to secure pertinent information on the infant's or toddler's overall development and behavior and to acquaint the parent or guardian with the facility's program and policies;
- (2) The child care facility shall provide its staff members with annual orientation to state or other mental health services for

- infants and toddlers, or otherwise familiarize its staff with consultative and clinical services and programs for early identification of social, emotional, intellectual, and behavioral problems of infants and toddlers; and
- (3) The facility shall refer parents or guardians to sources of professional consultation in mental health upon the parents' or guardians' request or upon the recommendation of the facility's staff.
[Eff _____] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-49 to 17-895.1-54 (Reserved)

SUBCHAPTER 6

HEALTH STANDARDS FOR STAFF

§17-895.1-55 Staff health standards. (a)

Evidence that each caregiver staff member is free from health problems, which would have a harmful effect on the infants and toddlers or which would interfere with effective functioning, shall be available at the facility as follows:

- (1) The results of an employment physical examination, and when indicated on a physical exam that the individual has a mental health disorder or limitation, a psychological exam, given within one year prior to employment of each person who works directly with children that indicates each person is in adequate physical, and if needed, mental health to care for children shall be on file at the facility;

- §17-895.1-56 Personal health habits of staff.**
- (a) The facility shall have written policies, which have been developed with the assistance of the facility's health consultant and that minimally require:
- (1) Staff with fever, other symptoms of illness, or an altered physical or mental state, shall not be allowed to work;
 - (2) Staff with visible skin conditions, such as lesions, boils, or dermatitis, shall not prepare or serve food or handle utensils and feeding equipment;
 - (3) Staff's appearance shall reflect good grooming habits and personal hygiene, including clean and neat hair and nails, appropriate clothing, and good oral hygiene;
 - (4) No smoking, including electronic smoking

devices, is allowed in the presence of the infants and toddlers, nor in any parts of the building, which are used for child care, during the hours of child care operation, and personal nicotine products shall be stored out of reach of children;

- (5) Alcoholic beverages shall not be consumed prior to and during the hours of operation at the child care facility; if alcoholic beverages are stored at the facility, it shall be locked up and inaccessible to children;
- (6) Medication that impairs or limits the staff's ability to provide care shall not be consumed prior to or during the hours of child care; and
- (6) Staff shall take appropriate measures to manage stress by maintaining good mental and physical health.

(b) In-service training shall be provided to staff on various aspects of personal health care and healthy lifestyle, such as care of head lice (ukus), impetigo, viral infections, risk factors, and stress management.

(c) Volunteers shall be subject to the same requirements for health and personal health habits as the caregiving staff. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-57 to 17-895.1-60 (Reserved)

SUBCHAPTER 7

SANITATION STANDARDS

§17-895.1-61 Handling of diapers, training pants, linen, and toys. (a) Diapers, training pants, and linen shall be handled in the following manner:

- (1) When disposable diapers are used, soiled diapers shall be placed in a plastic bag or a plastic lined receptacle;
- (2) When cloth diapers or training pants are used, diapers or training pants soiled with stool shall not be washed at the center; using disposable plastic gloves, the diaper or training pants shall be put in a sealed plastic bag to be picked up by the child's parent or guardian at the end of the day;
- (3) Sheets, diapers, and training pants soiled with blood, body fluids, or waste shall be handled as little as possible to prevent contamination of the area and of the staff handling the linen; and
- (4) Soiled sheets, diapers, and training pants, which are transported to a laundry area outside of the facility, shall be placed in plastic bags while being transported from the child care facility to the laundry.
- (5) Use a clean non-porous surface for changing diapers;
- (6) Use a space set aside for diapering that is separate from eating and food preparation areas; and
- (7) Soiled disposable diapers shall be discarded in a covered container. The covered container shall be kept away from eating, food storage, and food preparation areas and out of children's reach.

(b) Toys shall be provided and handled in the following ways:

- (1) Each of the designated groups shall be provided with developmentally appropriate toys;
- (2) Toys shall not be shared between different groups of children, such as between infants and toddlers;
- (3) Only washable toys shall be used for infants

- and toddlers in diapers or training pants;
and
(4) Toys shall be washed or sanitized daily.
[Eff] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-62 Handwashing. (a) The facility shall have a written policy that specifies when handwashing is required for staff and children, defines handwashing procedure, and provides continuing monitoring to assure that the handwashing procedure is carried out.

(b) Handwashing policy for staff shall require that handwashing is done:

- (1) Before and after eating or drinking;
- (2) Before handling clean utensils or equipment;
- (3) Before and after handling food or beverages;
- (4) Before and after assisting or training the child in feeding and in toileting;
- (5) After going to the bathroom;
- (6) After handling any bodily fluids or items containing bodily fluids;
- (7) After handling soiled diapers, clothes, or equipment;
- (8) After removing disposable gloves; and
- (9) After outdoor play.

(c) Infants and toddlers, who self-feed in any manner, shall have their hands washed with soap and water before and after eating and after toileting.

(d) Handwashing does not require hot water and may be done with cold water and plain soap.

(e) If bar soap is used, it shall be kept on racks that allow for water drainage. If liquid soap is used, the dispenser shall be replaced or cleaned, as necessary.

(f) Paper towels or separate cloth towels shall be used for each child for drying hands after handwashing. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-63

§17-895.1-63 Housekeeping. (a) Facilities shall have written policies for the routine cleaning of the facility, furniture, equipment, and toys. These policies shall specify the type of disinfectant and cleaning agent used, method for cleaning, schedule for cleaning, storage of cleaning material and utensils, disposal of soiled items or spilled body fluids, and cleaning of equipment.

(b) Toys, table tops, furniture, and other similar equipment used by children shall be washed when the toys or equipment become gummy, sticky, or dirty.

(c) Cleaning materials shall be clearly labeled and stored in a secured area that is away from food preparation areas and is inaccessible to the infants and toddlers. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-64 to 17-895.1-70 (Reserved)

SUBCHAPTER 8

ENVIRONMENTAL HEALTH STANDARDS

§17-895.1-71 Disaster plan for emergencies. (a) Each child care facility shall have a written disaster plan to cover emergencies such as fire, flood, or natural disaster or other emergencies, and the plan shall include written procedures for:

- (1) Evacuation;
- (2) Relocation of the child care facility if the facility becomes uninhabitable, or if the facility is ordered to evacuate;

- (3) Sheltering in place at the child care facility;
- (4) Lock-down of the child care facility;
- (5) Communication and reunification with families during and after an emergency;
- (6) Continuity of operations during and after an emergency;
- (7) Accommodation of toddlers during an emergency;
- (8) Providing for the needs of children with disabilities and children with special needs during an emergency;
- (9) Providing for the needs of children with chronic medical conditions during an emergency.

(b) The plan relating to fire emergencies shall be approved by the fire inspector, and the facility's health consultant shall review the plan as related to subsections (a)(8) and (9).

(c) The facility shall complete practice drills for the various emergency situations at regular intervals, or whenever a new procedure has been added.

(d) Each child care facility shall provide emergency preparedness training to staff members.

(e) The facility shall make the plan available for review by or provide a copy of the plan to each family whose child is enrolled at the child care facility.

(f) The diagram of emergency exits shall be posted in a prominent place in the facility.

(g) An underwriters laboratory listed fire warning device or system shall be installed in each facility. Written evidence that the device or system has been inspected and approved by a fire inspector shall be current and on file at the facility.

(h) There shall be an unexpired ABC multi-purpose type fire extinguisher in every room where infants and toddlers are cared for.

(i) The provider shall notify the department within one working day when an emergency resulted in the evacuation, relocation, shelter in place, or lock-down of the facility. [Eff]

§17-895.1-71

(Auth: HRS §346-162) (Imp: HRS §346-162; §§2002, 2005)

§17-895.1-72 Accidental injury precautions. The facility shall ensure that the child care program and premises minimize the risk of accidental injury in the following manner:

- (1) Child care activities and premises shall take precautions not to expose the infants and toddlers to situations which may be hazardous to the particular age or capacity of the infant or toddler;
- (2) The program shall help infants and toddlers to increase awareness of safety practices and accident hazards and to teach them, as appropriate to their age and development, how to avoid such hazards;
- (3) Accident prevention practices and policies shall be available in writing. The practices and policies shall be reviewed annually and the staff shall become familiar with the policies and practices; and
- (4) The facility shall have written procedures for infection control, to use in all situations to prevent the transmission of blood-borne pathogens that may be spread through blood and body fluids.

[Eff] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-73 Environmental hazards. The indoor and outdoor premises of the child care facility shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the infants and toddlers as follows:

- (1) The facility shall be protected against rodents and insects;
- (2) All entrances and exits shall be secured;

- (3) The outdoor space shall be fenced, or shall have natural barriers or other protective conditions to deter infants and toddlers from getting into unsafe areas.
- (4) There shall be no open drainage ditches, wells, or holes into which infants and toddlers may fall.
- (5) Drainage shall be adequate to prevent stagnant pools of water from accumulating.
- (6) Garbage and trash shall be stored in covered containers out of reach of the infants and toddlers and shall be removed frequently enough to avoid creating a health hazard or nuisance.
- (7) Sharp objects, household kitchen items, and tools shall be kept in a safe location and out of children's reach or shall be supervised when used safely;
- (8) Cleaning materials shall be clearly labeled and stored in a secured area which is inaccessible to the children. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times.
- (9) Open fireplaces shall not be used. Floor heaters and all heating elements, including hot water pipes, shall be insulated or installed in a manner which makes the pipes inaccessible to the infants and toddlers.
- (10) Children shall be supervised when using hot water taps;
- (11) Stove top controls shall not be accessible by children;
- (12) Floor space shall be arranged to provide areas for active play, quiet rest, and individual activities.
- (13) Emergency exits shall be clear of obstructions;
- (14) Indoor and outdoor structures, equipment, and toys shall be sturdily constructed and furnishings that have hazardous sharp edges, rust, and splinters are not accessible to

- children;
- (15) Electrical outlets accessible to children shall be covered with child-resistant outlet covers;
 - (16) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured;
 - (17) Furniture, equipment, and toys shall be sturdily constructed, without sharp edges, and shall present minimal hazards to the infants and toddlers; also, furniture and equipment shall be physically proportionate to the infants and toddlers' sizes.
 - (18) Lead based paint shall not be used or have levels greater than is recommended by the Environmental Protection Agency (EPA) on surfaces accessible to the infants and toddlers.
 - (19) Poisonous plants shall be out of reach of the infants and toddlers on the premises.
 - (20) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times.
 - (21) If a lodging house, boarding house, or any other business conflicts with the regular operation of the child care center, the lodging house, the boarding house, or other business shall not be conducted at the center.
 - (22) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured and locked in a separate place. [Eff
] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-74 Water supply. (a) The water supply shall be from a source approved by the health authority and shall be under pressure. The plumbing shall be installed and maintained in a manner approved by local plumbing codes.

(b) Running water shall be available and shall be immediately adjacent and visually accessible to the care area. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-75 Toilet and lavatory facilities.

Toilet and lavatory facilities shall be of a type determined by the availability of water under pressure. Approved facilities, water or non-water carriage, shall be provided for disposal of sewage and other liquid wastes. The following conditions shall apply:

- (1) Where a public sewer is available, all plumbing fixtures and building sewers shall be connected thereto;
- (2) Where a public sewer is not available, a private sewage disposal system of an approved type shall be installed and connected to all plumbing fixtures and building sewers;
- (3) Where water sewage disposal means are not available or feasible, sewage and other liquid wastes shall be disposed in a manner approved by the health authority;
- (4) Where water carried sewage disposal is available, water flush toilets shall be provided. Indoor toilets shall be separated from cooking, sleeping, or eating areas;
- (5) Where water carried sewage disposal is not available, privies shall be used in accordance with local sanitary requirements and shall be designed with step stools or with holes sized to the age group;
- (6) If toilet training chairs are provided for use by children, the toilet training chairs shall be emptied promptly, cleaned, and sanitized after use;
- (7) Lavatories shall be provided in quantities commensurate with toilet facilities. Hot water temperatures shall not exceed one

hundred degrees fahrenheit or thirty-eight degrees celsius, at outlets accessible to children;

- (8) Toilet facilities shall be child sized, or safe, sturdy step stools shall be provided to allow standard sized toilets and lavatories to be used;
- (9) There shall be a sink that is adequate size for the rinsing of children. The sink shall be cleaned and disinfected prior to and after use and shall not be used for handwashing, food preparing, or cleaning; and
- (10) The facility shall ensure an adequate supply of sanitized bedding is available to any program caring for infants and toddlers.
[Eff _____] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-76 Food preparation. Food preparation shall be carried out in a kitchen with proper equipment and cleanup facilities as follows:

- (1) All dishwashing shall be performed in a sanitary manner. A domestic dishwasher shall be acceptable, but if it is not available, the dishes shall be washed and rinsed in a sanitizing solution;
- (2) In a child care facility where food is prepared on the premises, adequate sized equipment for the size of the program shall be available. An approved dishwasher or a three compartment sink shall be used. Both the dishwasher and the three compartment sink shall require approval by the state department of health;
- (3) When food is prepared off the premises and is transported to the child care facility from a licensed preparation source, the food shall be kept in a safe and sanitary condition;

- (4) When single service utensils are used, the utensils shall be stored and handled in a sanitary manner and discarded after a single use; and
- (5) Cooking utensils used in food preparation and service shall be cleaned and stored in a sanitary manner. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

\$17-895.1-77 Food protection. (a) Food protection policies and practices, which comply with accepted practices of local sanitary codes in chapter 11-50, shall be developed and carried out in a manner that insures that all food is protected from contamination during storage, preparation, and service.

(b) Refrigeration shall be available for infant and toddler programs. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

\$17-895.1-78 Swimming activities and wading pools. (a) When swimming or wading pools are part of the child care facility, equipment, or program, the swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are a part of the child care program, the following safety practices shall be observed:

- (1) A certified lifeguard, who may be a caregiving staff, shall be on duty at all times when swimming activities or swimming pools are in use;
- (2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of section 17-895.1-40(b)(1), and the program shall comply with the

sanitary at all times.

(c) The program areas specifically designated for infants and toddlers, both indoors and outdoors, shall be separated by permanent structural walls, fences or other barriers in order to:

- (1) Protect the younger children from traffic and high activity levels of older age groups;
- (2) Minimize congestion and noise pollution; and
- (3) Avoid staff specifically assigned to infant and toddler care from being pulled from infant and toddler programs into other areas at any time.

(d) The space requirements for enclosed areas are as follows:

(1) For daytime care:

- (A) There shall be thirty-five square feet per child of unencumbered instructional or play area exclusive of bathrooms, kitchens, cupboard space, hallways, and spaces consumed by cribs and playpens;
- (B) The thirty-five square feet per child requirement can be based on the general square footage area of the entire center, not necessarily based on the square footage of each classroom; and

(2) For nighttime care, there shall be fifty square feet per child in rooms which are used for sleeping.

(e) The center shall maintain, or have access to an outdoor play area of at least seventy-five square feet for each child using the outdoor area at any one time;

(f) The facility shall be equipped with toilets and lavatories as follows:

§17-895.1-85

<u>Number of children</u>	<u>Toilet(s)</u>	<u>Lavatory(ies)</u>
1 - 12	1	1
13 - 30	2	2
31 - 45	3	3
46 - 60	4	4
61 - 75	5	5

[Eff] (Auth: HRS §346-162) (Imp:
HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-86 to 17-895.1-89 (Reserved)

SUBCHAPTER 10

PROGRAM MODIFICATIONS

§17-895.1-90 Program modifications for drop-in care. (a) All requirements set forth in this chapter shall be met by the provider except for section 17-895.1-41(a) and (d).

(b) Infants and toddlers receiving drop-in care shall be cared for in separate areas or groups from the other infants and toddlers who attend the program regularly.

(c) If a facility serves both drop-in children and children who attend regularly, the grouping of the children and the program shall be planned so that the needs of both groups are met.

(d) The facility shall have the following information in writing:

(1) The ages of the infants and toddlers

- accepted for drop-in care;
- (2) The procedures for admittance and release of drop-in children; and
- (3) Arrangements for staffing and separate activities for drop-in children. [Eff
] (Auth: HRS §346-162)
Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-91 Program modifications for night care. A child care facility offering night care shall meet the requirements of this chapter and the following additional requirements:

- (1) In consultation with parents, special attention shall be given by the caregiver to provide for transition into night care;
- (2) A selection of developmentally appropriate toys for quiet activities shall be available;
- (3) Comfortable cribs, beds or cots that comply with the safe sleep requirements in sections 17-895.1-96 and 17-895.1-97, complete bedding and night clothes shall be available or supplied by the parents;
- (4) Cribs or beds shall be placed at least three feet apart;
- (5) Staff shall be available to assist the infants and toddlers, as required by their age and developmental level, during eating and pre-bedtime hours and during the morning period when dressing;
- (6) During sleeping hours, staff shall be within hearing distance at all times to provide for the needs of the infants and toddlers and to respond immediately in an emergency;
- (7) An infant or toddler shall not sleep in a building detached from the main facility; and
- (8) Night care facilities shall include at least one shower, bathtub, or bathing facility for infants and toddlers. [Eff]

§17-895.1-91

(Auth: HRS §346-162) Imp: HRS §346-162; 42
U.S.C. §§2002, 2005)

§17-895.1-92 Program modifications for demonstration projects. (a) An infant and toddler child care facility may establish a demonstration project for a specific purpose, or set of purposes, upon receiving written approval from the department.

(b) The facility shall submit a written proposal to the department indicating the following:

- (1) Purpose of the project;
- (2) Description of the project;
- (3) Length of the project;
- (4) Specific infant and toddler child care center rules that shall be exempted by the project; and
- (5) Justification for the proposed exemptions.

(c) The persons responsible for the project or the designated representatives shall appear in person to discuss the proposal with the department or the department's designated representatives, if requested by the department.

(d) A demonstration project, which has been approved in writing by the department, shall comply with all requirements imposed by the department at the time of its approval as follows:

- (1) The name or description of the project shall include the words "licensed demonstration project";
- (2) Providers shall be able to show that at all times the demonstration project is in compliance with the infant and toddler child care center rules, except as specifically exempted or modified in the department's written approval; and
- (3) Within the last quarter of the time specified for the demonstration project, a written report shall be submitted to the department which shall include:
 - (A) Developments, findings,

recommendations, and suggestions for further study; and

- (B) Any proposed recommendations related to the demonstration project for changing or modifying infant and toddler child care center rules with justification therefor.

(e) Proposed demonstration programs disapproved or discontinued by the department shall not be permitted any further use of the words "demonstration project" in the identifying title, logo, or material.
[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-93 to 17-895.1-95 (Reserved)

SUBCHAPTER 11

SAFE SLEEP

§17-895.1-96 Program requirements. (a) A child care facility shall have a written operation policy regarding safe sleep when permitted to care for children less than one year of age.

(b) All employees and volunteers of the child care facility caring for children less than one year of age shall review the child care facility's written operation policy regarding safe sleep and complete training in safe sleep practices that is approved by the department, upon hire and on an annual basis, and the child care facility shall maintain a record of policy reviews and trainings completed.

(c) The child care facility shall ensure the following for sleeping children less than one year of age:

- (1) Children shall be placed on their backs to

sleep or in accordance with the written instructions on file at the child care facility from a health care practitioner for alternate sleep positioning;

- (2) Sleeping children are physically monitored and periodically checked; and
- (3) A child who falls asleep in a location or equipment other than a crib or playpen shall be moved to a crib or playpen for the remainder of the nap. [Eff (Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)]

§17-895.1-97 Sleep environment. (a) A child care facility shall use cribs and playpens that have not been recalled by the United States consumer product safety commission; provided that a recalled item may be used if repaired in accordance with the manufacturer's standards, and the child care facility maintains a record of the repair.

(b) Soft bedding, bumper pads, and other objects shall not be placed in the crib or playpen for children less than one year of age.

(c) A clean, tightly fitted crib sheet shall be used to cover the crib or playpen for children less than one year of age.

(d) Sleeping areas shall be kept ventilated and at a safe temperature.

(e) Bed-sharing is not allowed.

(f) The child care facility shall not use recalled items for children, such as cribs, playpens, and other equipment unless the item has been repaired in accordance with the manufacturer's standards and the child care facility maintains a record of the repair.

(g) For children ages one year and older, the following sleeping equipment shall be available:

- (1) Individual bed, crib, cot, mat, or rug for each child who rests; and
- (2) A clean sheet or cover to be used on the

§17-895.1-97

bed, crib, cot, mat, or rug for each child."
[Eff] (Auth: HRS §346-
152.7) (Imp: HRS §346-152.7; 42 U.S.C.
§§2002, 2005, 9833)

2. The adoption of chapter 17-895.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on June 1, 2020 and filed with the Office of the Lieutenant Governor.



PANKAJ BHANOT

Director of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

III. New Business — Before Public Hearing

**IV. Discussion and Action on the Proposed
Repeal of HAR Title 17 Chapter 896 and
Adoption of 896.1, Licensing of Before and
After School Child Care Facilities,
promulgated by DHS**

DAVID Y. IGE
GOVERNOR



RECEIVED
By SBRRB at 12:55 pm, Apr 05, 2021

PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
Office of the Director
P. O. Box 339
Honolulu, Hawai'i 96809-0339

BESSD 20.C0408

April 8, 2020

MEMORANDUM:

TO: THE HONORABLE CLARE E. CONNORS, ATTORNEY GENERAL
DEPARTMENT OF THE ATTORNEY GENERAL

THROUGH: JAMES WALTHER, SUPERVISING DEPUTY ATTORNEY GENERAL
HEALTH AND HUMAN SERVICES DIVISION

FROM: PANKAJ BHANOT *CPB*
✓ DIRECTOR

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED REPEAL OF CHAPTER 17-896 AND
ADOPTION OF CHAPTER 17-896.1 HAWAII ADMINISTRATIVE RULES, RELATING
TO THE LICENSING OF BEFORE AND AFTER SCHOOL CHILD CARE FACILITIES

In accordance with Administrative Directive No. 18-02, we are submitting for your review and approval as to form the proposed repeal of Chapter 17-896 and adoption to Chapter 17-896.1 relating to the Licensing of Before and After School Child Care Facilities. A copy of the Notice of Public Hearing is also enclosed for your approval as to form, and a copy of the impact statement is included for your information.

Your expedited response to this request would be greatly appreciated, as we must also secure the Governor's preliminary approval prior to publishing the Notice of Public Hearing. If you have any questions, please contact Dana Balansag, Child Care Program Administrator, at 586-7187.

Enclosures

APPROVED AS TO FORM:

James W Walther
Deputy Attorney General

7/10/20
Date

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

Date: 4/8/2020

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17-896.1

Chapter Name: Licensing of Before and After School Child Care Facilities

Contact Person/Title: Dana Balansag

E-mail: dbalansag@dhs.hawaii.gov Phone: 586-7187

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ Yes ☒ No

If "Yes," provide details:

I. Rule Description:

☒ New ☒ Repeal ☐ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☒ Yes ☐ No

(If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☒ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☒ No

(If "Yes" no need to submit this form.)

*

*

*

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

Refer to Attachment 1

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

Refer to Attachment 1

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.
- b. Amount of the proposed fee or fine and the percentage increase.
- c. Reason for the new or increased fee or fine.
- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

Refer to Attachment 1

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

Refer to Attachment 1

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

Refer to Attachment 1

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

Refer to Attachment 1

7. How the agency involved small business in the development of the proposed rules.

Refer to Attachment 1

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

Refer to Attachment 1

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1

1. DHS licensed before and after school child care facilities that care for children ages 4 years and eight months and older (school age) who are enrolled in public or private elementary schools.

Before and after school facilities will be required to have individuals who work with children in care, including staff and substitutes, complete minimum health and safety training requirements, pre-service and on-going training.

Initial/pre-service health and safety training and 16 hours of on-going health and safety training annually. DHS licensed before and after school facilities will have to find available training opportunities, which could include free trainings offered by the department's training contractor or other community-based or online trainings.

Before and after school facilities will be required to comply with maximum group size limits of children that can be together in one group. DHS licensed before and after school facilities will have to ensure that there are enough qualified staff to meet the group size requirements.

2. 17-896.1 Licensing of Before and After School Child Care Facilities is substantially based on 17-896. The proposed rules for DHS licensed before and after school facilities may incur the following additional costs:

- 1) Providers may have to pay their employees for their time to complete 16 hours of health and safety training. Based on the Hawaii state minimum wage, it may cost the center an estimated \$161.60 per employee.

Minimum wage: \$10.10/hour x 16 (hours training) = \$161.60 per person
of DHS licensed before and after school facilities: 99

- 2) Additional costs for the reporting of staff's training certificates to DHS' tracking contractor and record keeping of staff's training certificates may be incurred by before and after school facilities.

- 3) \$20 - \$40 for an ABC multi-purpose type fire extinguisher in the child care area.

3. There are none

4. Licensed before and after school facility staff members may take on-line classes, workshops, conferences, in-service trainings and college credits that meet DHS criteria. Free trainings offered by the department's training contractor or other community-based or online trainings are available.

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
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5. The proposed rules are based on requirements set forth by the Child Care and Development Block Grant (CCDBG) Act of 2014 which require caregivers to complete health and safety training and have maximum group size limits.
6. Licensed before and after school facility staff members may take on-line classes, workshops, conferences, in-service trainings and college credits to meet DHS criteria. Free trainings offered by the department's training contractor or other community-based or online trainings are available.

For maximum group size limits, there are times when children will be allowed to be grouped together (i.e. performances, meal and snack time, and assemblies).

7. DHS held discussion sessions with school age stakeholders beginning in 2015 to discuss health and safety training hours. Discussions on other proposed rules were held during quarterly DHS Child Care Advisory Committee meetings.
 - a. Licensed before and after school facility providers agreed that the 16 hours of on-going health and safety training over a 12 month period was a reasonable amount.

The recommendation to not require annual health and safety training for substitutes and volunteers was partially incorporated. The number of on-going health and safety training hours for substitutes and volunteers were reduced from 16 hours to 10 hours and 8 hours, respectively. The requirement for a substitute and volunteer to complete on-going health and safety training is to comply with the CCDBG Act of 2014 which requires caregivers to complete on-going health and safety training annually. Completion of on-going health and safety training hours increases the health and safety of children and the quality of child care.

The recommendation to consider other options to comply with maximum group size limits were incorporated into the proposed rule. The proposed rule allows for some exceptions when the children may be grouped all together.

8. There are none.

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By SBRRB at 12:53 pm, Apr 05, 2021

DEPARTMENT OF HUMAN SERVICES

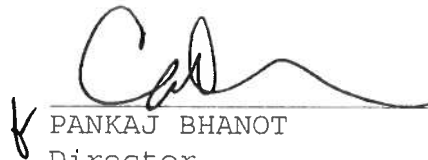
Repeal of Chapter 17-896
Hawaii Administrative Rules

April 8, 2020

1. Chapter 17-896, Hawaii Administrative Rules, entitled "Licensing of Before and After School Child Care Facilities" is repealed.

2. The repeal of chapter 17-896 shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on April 6, 2020 and filed with the Office of the Lieutenant Governor.



PANKAJ BHANOT

Director

Department of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-896.1
Hawaii Administrative Rules

April 8, 2020

1. Chapter 17-896.1, Hawaii Administrative Rules, entitled "Licensing of Before and After School Child Care Facilities" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 896.1

LICENSING OF BEFORE AND AFTER SCHOOL
CHILD CARE FACILITIES

Subchapter 1 Licensing Procedure

§17-896.1-1	Definitions
§17-896.1-2	Application
§17-896.1-3	Inspection and issuance of license
§17-896.1-4	Fines
§17-896.1-5	Denial, suspension, revocation of license, and hearings
§§17-896.1-6 to 17-896.1-9	(Reserved)

Subchapter 2 Administration Requirements

§17-896.1-10	Age of children in care
§17-896.1-11	Statement of operation policies
§17-896.1-12	Liability insurance
§17-896.1-13	Information on owner or operator
§17-896.1-14	Change in services and staff
§17-896.1-15	Information and records on each child
§17-896.1-16	Disclosure of information on the Child
§17-896.1-17	Information and records on facility
§17-896.1-18	Transportation provisions
§§17-896.1-19 to 17-896.1-24	(Reserved)

Subchapter 3 Program Requirements

§17-896.1-25	Program provisions
§17-896.1-26	Communication with parents
§17-896.1-27	Program materials and equipment
§§17-896.1-28 to 17-896.1-34	(Reserved)

Subchapter 4 Staffing Requirements

§17-896.1-35	Staff training, experience, and personal qualifications
§17-896.1-36	Staff-child ratio and group size
§§17-896.1-37 to 17-896.1-39	(Reserved)

Subchapter 5 Health Standards for Children

§17-896.1-40	Health consultation provisions
§17-896.1-41	Evidence of child's health
§17-896.1-42	Emergency care provisions

§17-896.1-43 First aid and child cardio-
 pulmonary resuscitation (CPR)
 §17-896.1-44 Admission of ill children
 §17-896.1-44.01 Administration of medication
 §17-896.1-45 Admission of children with
 special needs
 §17-896.1-46 Daily nutritional needs
 §17-896.1-47 Drinking water provisions
 §17-896.1-48 Integration of mental health
 Concepts
 §§17-896.1-49 to 17-892.2-54 (Reserved)

Subchapter 6 Health Standards for Staff

§17-896.1-55 Staff's health standards
 §17-896.1-56 Personal health habits of staff
 §§17-896.1-57 to 17-896.1-60 (Reserved)

Subchapter 7 Environmental Health Standards

§17-896.1-61 Disaster plan for emergencies
 §17-896.1-62 Accidental injury precautions
 §17-896.1-63 Environmental hazards
 §17-896.1-64 Water supply
 §17-896.1-65 Toilet and lavatory facilities
 §17-896.1-66 Food preparation
 §17-896.1-67 Cleaning of premises
 §17-896.1-68 Swimming activities and wading
 pools
 §17-896.1-69 Handwashing
 §§17-896.1-70 to 17-896.1-79 (Reserved)

Subchapter 8 Physical Facility Standards

§17-896.1-80 Building codes and space
 requirements

Historical Note: The chapter is based substantially upon 17-896, Hawaii Administrative Rules. [Eff 4/11/92; am and comp 12/19/02; R]

SUBCHAPTER 1

LICENSING PROCEDURE

§17-896.1-1 Definitions. For the purpose of this chapter:

"Acting director" means a person who assumes the responsibilities of director of the child care facility in the absence of the director.

"After or before school care aide" means a person responsible for helping the leader carry out the direct care of the children, under the direction of the program leader or assistant program leader.

"After or before school care assistant program leader" means a person responsible for planning, carrying out, or both, direct care of the children under the direction of the program leader.

"After or before school care program leader" means a person responsible for planning, carrying out, or both, the direct care of the children in the program. For example, making contact with parents, keeping appropriate records, observing and evaluating the child's development, supervising staff and volunteers, and working cooperatively with the director and other staff toward achieving program goals and objectives.

"After school care" means child care provided after the end of the regular school day during the academic year for children who are kindergarten age and above who are enrolled in public or private elementary schools.

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Before school care" means child care provided before the start of the regular school day during the academic year for children who are kindergarten age and above and who are enrolled in public or private elementary schools.

"Caregiver" means any individual who is responsible for the physical well-being, health, safety, supervision, and guidance of children in child care.

"Child" means any person who has not reached the age of eighteen years.

"Child care" means those situations where a person or organization has agreed to assume the responsibility for the child's supervision, apart from and in the absence of the child's parent, guardian, or other, for any part of a twenty-four day. Child care may be provided out of the child's home in out-of-home relative care, in the child's home by relatives or non-relatives, in a family child care home, in a group child care home, or in a group child care center.

"Child care center" or "group child care center" means a place other than a private home, maintained by any individual, organization, or agency for the purpose of providing child care. The term child care center shall include child care nurseries, nursery school groups, preschools, child play groups, parent cooperatives, drop-in child care centers, group child care homes, after or before school, holiday, and summer care for elementary school age children, or other similar units operating under any name.

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Child development associate" or "CDA" means any person credentialed by the Council for Professional Recognition to assume primary responsibility for a group of young children in a developmental early childhood program.

"Child with special needs" means a child with a condition such as a physical, emotional, behavioral, or learning disability or impairment that causes the child to require additional or specialized services or accommodations.

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Council for Professional Recognition" means the organization that administers the CDA credential.

"County building code" means the building code used by the applicable counties.

"Director," "principal," or "program coordinator," means the person at the facility having responsibility for its administration and program.

"Emergency" means an unforeseen combination of circumstances which calls for immediate action.

"Facility" means the premises of the address that is on the application or license certificate for child care, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and outdoor areas.

"First aid kit" means materials and equipment in one location in a suitable container for meeting medical emergencies. A first aid kit shall be of the type approved by the American Red Cross, American Medical Society, or the department of health.

"Form 14" means a printed form made available by the state department of health or the state department of education to record a child's immunizations and health record.

"Group child care home" or "GCH" means child care provided by an individual in a facility that may be an extended or modified family child care home which provides care to no more than twelve children during any part of a twenty-four hour day. GCHs are licensed under the rules for group child care centers.

"Group size" means the number of children assigned to specific staff who occupy an individual classroom or defined physical space within a larger area.

"Guardian" means a person other than a child's parents who has legal authority over and

responsibility for a child.

"Ill" or "illness" is a subjective term which shall be defined by each provider with regard to admitting or not admitting sick children to child care.

"Intersession care" means child care provided during the breaks within the academic school year for children who are enrolled in public or private elementary schools.

"Lavatory" means a vessel or basin for washing which is in conformity with plumbing codes in force in the State.

"Liability insurance coverage" means a general casualty insurance policy issued to insure against legal liability for injury resulting from negligence to a child during the time the child is under the provider's care.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a child care facility.

"Local sanitary codes" means the specific rules set up by a county, the state department of health, or a comparable federal agency, which govern aspects of health and safety.

"Minor deficiencies" means deficiencies which do not involve risk to life, health, or safety of the children enrolled at the child care center.

"Person" means any individual with unsupervised access to children in care, caregiver, adult household member, applicant, provider, substitute, volunteer, new hire, rehire, temporary hire, or staff member in a child care facility or exempt child care facility.

"Policy" means a principal plan for the management of a child care facility.

"Provider" means any individual 18 years or older, caregiver, child care facility, agency or organization, exempt care providers, and adult employees, who provide child care to children in the absence of the child's caretaker.

"Provisional license" or "temporary permit" means a temporary license issued at the discretion of the department for up to a period of six months to any

child care facility which is unable to conform to all the rules at the time the license is issued.

"Qualified nutrition consultant" means a dietitian or nutritionist who meets the advanced educational requirements for membership in the American Dietetic Association and is eligible for registration; or one who has a master's degree in Public Health Nutrition or Nutritional Sciences.

"Recalled" means any type of remedial action taken by a business for a corrective action plan agreed upon by the United States consumer product safety commission to address unsafe or potentially unsafe products to protect consumers, including the return of a product to the manufacturer or retailer for a cash refund or a replacement product, the repair of a product, and/or public notice of the hazard.

"Regionally accredited college or university" means any college or university that is recognized by the following regional accrediting organizations:

- (1) Middle State Associations of Colleges & Schools-Commission on Higher Education;
- (2) Northwest Commission on Colleges & Universities;
- (3) North Central Association of Colleges and Schools-the Higher Learning Commissions
- (4) New England Association of Schools and Colleges-New England Commission of Higher Education;
- (5) Southern Association of Colleges and Schools Commission on Colleges; or
- (6) Western Association of Schools and Colleges-Accrediting Commission for Community and Junior Colleges or Western Association of Schools and Colleges-Senior College and University Commission.

"Regular license" means a certificate of approval issued by the state department of human services to any child care facility which conforms to all the rules at the time the license is issued.

"Regularly" means the typical or normal pattern of a child care facility, or a practice or schedule that is routine and uniform and is not subject to

unexplained or irrational variations.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in child care.

"Single service utensils" means the supplies or equipment used once to serve food (e.g. paper plates, cups, disposable forks).

"Staff member" means administrative, child care, office, maintenance, employees, and other support personnel who are employed by the child care facility, including volunteers and substitutes.

"State child care advisory committee" means a group of people appointed by the department of human services to advise the department on matters regarding child care, including child care rules.

"Substitute" means a person who serves as a replacement staff person for no more than ten consecutive working days in the same position when the regular staff person is absent on an emergency or unplanned basis.

"Summer care" means care that is provided after the end of the academic year and occurs during the summer months.

"Supervision" means to be within sight and hearing distance of the children to insure the safety and protection of the children.

"Teacher," "teacher-director," "head teacher," "lead teacher," or "program leader" means a person responsible for planning and implementing all or part of the program activities, preparing program materials, supervising, and training other staff.

"Temporary hire" means a person who serves as a replacement when another caregiver is absent on a planned basis.

"Temporary permit" means the same as provisional license.

"USDA child care food program" means the food standards established by the United States Department of Agriculture.

"Volunteer" means a person working or offering services to a child care facility without

§17-896.1-1

remuneration, except for reimbursable personal expenses allowed by the program. [Eff]
(Auth: HRS §346-162) (Imp: HRS §§346-151, 346-162)

§17-896.1-2 Application. (a) A completed application to operate a before and after school child care center must include the following:

- (1) A signed department application form;
- (2) A written statement of operation policies;
- (3) Verification that the facility meets the applicable county codes;
- (4) Results of the background checks as described in section 17-801-4, and as indicated in (A) and (B) below:
 - (A) Applicants, their staff members, and prospective staff members shall provide background clearance records and consent to conduct background checks as indicated in section 17-801-4.
 - (B) The department shall conduct the background checks in accordance with chapter 17-801.

(b) The date of application shall be the date a completed application as described in subsection (a) is received by the department.

(c) Notification of the disposition of the completed application shall be issued no later than ninety days from the date the completed application as defined in subsection (a) is received.

(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed approved and a license shall be issued.

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application must be submitted unless the licensing unit has granted additional time to satisfy all requirements in

subsection (a). [Eff] (Auth: HRS §346-20) (Imp: HRS §§346-154, 346-162; 42 U.S.C. §§2002, 2005, 5751, 9833; SLH 1986; 50 Fed Reg. 2089)

§17-896.1-3 Inspection and issuance of license.

(a) In exercising its authority to license a before or after school program or renew, suspend, or revoke the license, the department shall analyze the qualifications of staff, review the facility's written policies and program provisions, and inspect the facility.

(b) Authorized representatives of the department and parents or guardians of the children in care may visit the facility at any time during the hours of operation for purposes of observing, monitoring or inspecting the facilities, activities, staffing, and other aspects of the program and facility.

(c) The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies' authorized fields.

(d) The applicant or licensee shall cooperate with the department by providing access to its facilities, records, and staff. Failure to comply with reasonable requests may constitute grounds for denial, suspension, or revocation of license.

(e) After the initial licensure, the licensee shall ensure that new staff members comply with section 17-896.1-2(a)(4) within five working days of hire by the child care facility.

(1) New staff members shall meet the conditions in 17-801-5(a) and 17-801-5(b) prior to starting employment or volunteering at the child care facility.

(2) An applicant, staff member, or rehired staff member, who has left the state for a period of one hundred eighty consecutive days or more, shall comply with sections 17-801-5(a), 17-801-5(b), and 17-801-5(c).

(f) Annual background checks shall be conducted. The applicants and staff members shall provide consent

to the department to conduct a background check in accordance with chapter 17-801 no later than the anniversary date of the last consent to conduct a background check.

(g) The department shall request the applicant or licensee to terminate the employment of a staff member determined to be not suitable to provide child care for children in accordance with chapter 17-801.

(h) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(b)(2).

(i) The department shall request the applicant or licensee to exclude from the premises, the person who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801.

(j) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(c)(2).

(i) Rules prescribed in this chapter are minimum standards. The department shall issue a license under the following conditions:

(1) A regular license certificate shall be issued if the result of the department's evaluation indicates compliance with the applicable rules as established by the department; or

(2) A provisional license certificate shall be issued if the result of the department's evaluation indicates that all of the applicable rules cannot be met immediately but shall be met within six months or less, and the deviations are minor deficiencies.

(j) The length of the licensing period shall be as follows:

(1) For new applicants and those providers licensed for less than four years, the licensing period is one year and for all other providers, the licensing period may be two years, unless subsequently suspended or revoked.

(2) During a licensing period, a provider may be issued more than one license certificate which may include a provisional license

certificate followed by a regular license certificate. When this occurs, the total length of a licensing period shall be according to paragraph (1).

- (3) A provisional license may be issued for up to six months; and
- (4) A license shall be renewed for a new licensing period only upon application and upon the department's approval. An application shall be submitted to the department at least ninety days prior to the expiration of the licensing period.

(k) Each regular license and provisional license shall clearly state the kind of program the licensee is permitted to operate, the address of the licensee, and the number and types of children who can be cared for at the facility.

(1) Implementation of two-year licenses shall be within the discretion of the department. Licenses of one year in length may be issued, if necessary.

[Eff] (Auth: HRS §346-162) (Imp: HRS §§346-154, 346-156, 346-163, 346-165; 42 U.S.C. §§2002, 2005, 5751, 9833; 50 Fed. Reg. 2089)

§17-896.1-4 Fines. (a) The operation of a child care facility without a license is a violation and shall be punishable by a fine not to exceed the maximum amount allowable under the law.

(b) The following offenses may be punishable by a fine, not to exceed the maximum amount allowable under the law, and may also be subject to the denial, suspension or revocation of a license:

- (1) Caring for more children than allowed by the facility's license;
- (2) Violation of the staff-child ratios;
- (3) Improperly certifying staff credentials;
- (4) Failure to comply with timely request for background check as required in chapter 801;
- (5) Allowing conditions to exist at the facility which constitute a risk of harm or an

- imminent danger to the health, welfare, or safety of the children; or injuries to children resulting from the conditions;
- (6) Failure to report suspected child abuse or neglect that has occurred or will occur;
- (7) Any behavior that may create an unsafe or unhealthy environment or may pose a risk of harm to children. [Eff]
(Auth: HRS §346-156) (Imp: HRS §§346-154, 346-156, 346-162, 350-1; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-5 Denial, suspension, revocation of license, and hearings. (a) The conditions for denial, suspension, or revocation of a license and the action to be taken by the department shall be as follows:

- (1) The department shall deny, suspend, or revoke a regular license or a provisional license if:
 - (A) An applicant or licensee does not comply with the applicable statutes and rules of the department respecting child care facilities; or
 - (B) The child care facility or any employee of the facility knowingly makes a false statement to any person concerning the child care facility's liability insurance coverage.
- (2) An applicant or licensee whose license is denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the license application;
- (3) The notice shall contain a statement of the reasons for the proposed action and shall inform the applicant or licensee of the right to appeal the decision to the director of the department in writing, within ten working days after the mailing of the notice

- of the proposed action;
- (4) Upon receiving a timely written appeal, the director of the department shall give notice of and an opportunity for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the application or license shall be denied, suspended, or revoked; and
- (5) If no timely written appeal is made, processing of the application shall end or the license shall be suspended or revoked as of the termination of the ten day period.
- (b) The license certificate shall be immediately suspended when:
 - (1) Conditions exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;
 - (2) The department received a report of allegations which identify risks to the health, safety, or well-being of the children in care. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;
 - (3) The provider refuses to terminate a staff member as specified in chapter 17-801; or
 - (4) The provider refuses to exclude from the premises, the person who is the subject of an on-going or pending investigation in accordance with chapter 17-801.
- (c) Upon immediate suspension pursuant to (b), the department shall take the following actions:
 - (1) Provide the licensee written notice of the order by personal service, by certified, or registered mail addressed to the location shown on the license;

- (2) Provide a statement of the reasons for the suspension in the notice and inform the licensee of the right to petition the department to reconsider the order within ten working days after mailing of the notice; and
- (3) Declare that all operations shall cease as of the date of receipt of the notice, give the licensee reasonable notice upon receiving a written petition, and provide an opportunity for a prompt hearing before a hearing officer with respect to the order of suspension of license. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of suspension shall be affirmed or reversed.
- (d) At any hearing provided for by this section, the applicant or licensee may be represented by counsel and shall have the right to call, examine, and cross-examine witnesses. Evidence may be received, even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to the last known addresses as may be shown in the application, on the license, or otherwise.
- (e) Filing of a request for an administrative appeal does not permit the applicant or licensee to continue to care for children under this chapter.
- (f) If an applicant or licensee has their regular license or provisional license revoked, they shall be unable to apply for another license for:
- (1) A ninety-day period from the date that the license was revoked if the revocation was their first offense; and
- (2) One year from the date that the license was revoked if the revocation was their second offense. [Eff _____] (Auth: HRS §346-162) (Imp: HRS §346-164; 42 U.S.C. §52002, 2005, 9833)

§§17-896.1-6 to 17-896.1-9 (Reserved)

SUBCHAPTER 2

ADMINISTRATION REQUIREMENTS

§17-896.1-10 **Age of children in care.** A before and after school child care facility may provide care to children aged four years and eight months and older who are enrolled in public or private elementary schools. [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-14, 346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-11 **Statement of operation policies.**

(a) A before and after school child care facility shall have written operation policies, which shall be available to the department, caregiver staff, and parents or guardians of children for whom care is, or may be, available.

(b) The policies shall be reviewed with each caregiver in the facility and with parents or guardians at the time of enrollment of a child.

(c) Policies shall cover the following areas:

- (1) Ages of children accepted;
- (2) Maximum number of children permitted by license;
- (3) Specific hours of day, night, holiday, and vacation operation;
- (4) Whether meals or snacks are served;
- (5) Type of child care services to be offered;
- (6) Provisions which may be made for special needs of individual children;

- (7) Admission requirements and enrollment procedures;
- (8) Fees and the plan for payment, including fees for different types of services and refund policy;
- (9) Plan for emergency medical care;
- (10) Insurance coverage - each center shall inform parents or guardians in writing of its policy relating to liability insurance;
- (11) Personal belongings brought to the facility;
- (12) Transportation arrangements;
- (13) Parental permission for trips and related activities outside the facility;
- (14) Disclosure of information on the child, or parents or guardians of the child;
- (15) Fund raising campaigns - children and staff shall not be exploited in activities which would be detrimental to the children or the program;
- (16) Admission of ill children, or children with special needs;
- (17) Administering medication;
- (18) Sanitation practices;
- (19) Brief written description of the facility's program goals;
- (20) Grievances which shall include the department's information for parents to file a complaint;
- (21) Mandated reporting of suspected child abuse or neglect in accordance with chapter 350, HRS;
- (22) Suspension and expulsion of children with includes the following:
 - (A) The conditions under which a child may be suspended or expelled, if applicable;
 - (B) Sufficient timeframe before suspension or expulsion occurs to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in

- §17-896.1-12 Liability insurance. A child care facility shall:

- §17-896.1-13 Information on owner or operator.
(a) The name, address, and telephone number of the facility shall be supplied to the department.

§17-896.1-13

(b) The name, business address, and business telephone number of the persons bearing the responsibility for the facility shall be supplied to the department.

(c) The name, business address, and business telephone number of the persons having specific authority and responsibility for overall administration and the services offered shall be supplied to the department.

(d) The name and address of the owner or sponsoring agency (privately owned, church or agency owned, etc.) shall be supplied to the department.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-14 Change in services and staff. (a)

A facility shall notify parents or guardians and the department of any changes in the child care services it provides as follows:

(1) Written notification of changes in the services offered by the facility shall be provided to the department and to parents or guardians of children enrolled in the facility; and

(2) Notification of any changes in service shall be made no later than thirty days before the date of the change and shall be included in the facility's operating policies.

(b) A facility shall provide to the department written notification of changes in staff members who provide direct care to children within five working days after the change. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-15 Information and records on each

child. (a) Admission procedures shall require that sufficient information and instruction from the parents or guardians be furnished to enable the

caregiver to make decisions or act on behalf of the child.

(b) Prior to admission of a child to a facility, the provider shall obtain in writing from the child's parents or guardians the following information:

- (1) The child's full legal name, birth date, current address, and preferred names;
- (2) The child's likes, dislikes, allergies and other personal information which may impact on the child's over-all behavior;
- (3) The name and address of the parents or guardians who are legally responsible for the child;
- (4) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the child care facility;
- (5) The name, address, and telephone number of persons who shall assume responsibility for the child if for some reason the parents or guardians cannot be reached immediately in an emergency;
- (6) The name, address, and telephone number of persons authorized to take the child from the facility.
- (7) Health information concerning the child, including any allergies as required by section 17-896.1-41.

(c) The information shall be available on facility forms and shall be updated as necessary.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-16 Disclosure of information on the child. Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility staff unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises. [Eff] (Auth: HRS §346-162)

§17-896.1-16

(Imp: HRS §346-166; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-17 Information and records on facility. (a) Written information and records on the facility shall be maintained and made available to the department. The facility shall maintain current records and information including:

- (1) Roster of enrolled children;
- (2) Daily attendance records by names of children;
- (3) Daily menu for facilities which provide meals or snacks;
- (4) Daily schedule of activities; and
- (5) A list of staff members including each staff member's training, position or title, experience, and health records.
- (6) Written permission from the parent to allow the child to have contact with pets or other animals; and
- (7) Log of emergency preparedness drills practiced in accordance with section 17-896.1-61.

(b) The child care facility shall report to the department, within one working day of occurrence, the death of a child or staff member, and any illness or injury received at the child care facility that results in a child's hospitalization. [Eff

] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-18 Transportation provisions. When transportation is provided by a facility, children shall be protected by adequate supervision and safety precautions as follows:

- (1) For transportation to and from the facility, the vehicle and driver shall satisfy all relevant motor carrier safety rules and traffic laws of the state;

- (2) During any field trip or excursion operated or planned by the facility, the staff-child ratios as required in section 17-896.1-36 shall apply;
- (3) Children shall be instructed in safe transportation conduct; and
- (4) Prior to transporting children, the child care facility shall obtain written permission from the parent or guardian that each child is allowed to be transported by school bus or other means of transportation such as a personal vehicle;
- (5) Children shall be secured in the seat of the bus or in the back seat of a personal vehicle in approved car seats or restraints;
- (6) A child shall not be left unattended in a vehicle;
- (7) Staff members shall take a head count or attendance record check before and after transportation is provided; and
- (8) During any field trip or excursion, staff members shall have available with them a first aid kit, emergency contact phone numbers, and medical treatment release forms signed by the child's parent or guardian.
[Eff] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§§17-896.1-19 to 17-896.1-24 (Reserved)

SUBCHAPTER 3

PROGRAM REQUIREMENTS

§17-896.1-25 **Program provisions.** The program conducted in the facility shall provide for staff supervision at all times, except during bathroom use when staff supervision may be within hearing distance of children, and an environment and experiences which are aimed at promoting the individual child's physical, emotional, and social well-being and growth. This shall be done in the following ways:

- (1) At least twenty-five percent of the program time shall be spent in gross motor activities, such as running, climbing and other vigorous activities, to promote physical development.
- (2) To promote emotional development the program shall provide that:
 - (A) There are opportunities for individual self-expression;
 - (B) Each child is recognized as an individual;
 - (C) The child is afforded constructive guidance and the setting of clear-cut limits which foster the child's ability to be self-disciplined;
 - (D) Each child's personal privacy is respected;
 - (E) Providers shall not use:
 - (i) Physical punishment, abuse, or harm including but not limited to spanking, pinching, slapping, or shaking; or
 - (ii) Methods of influencing behavior which are frightening, humiliating, damaging, neglectful, or injurious to the child's health or self-esteem; and

- (F) Providers shall respect each child's cultural, ethnic, and family background, as well as the child's primary language or dialect; and
 - (3) Programs to promote social development shall provide that:
 - (A) Children are guided in developing and working out ways of getting along with each other;
 - (B) Providers interact with the children in ways which emphasize and foster attitudes of mutual respect between adults and children; and
 - (C) Providers behave in ways which help the children develop attitudes of respect for all other persons as individuals and develop an appreciation of cultural and ethnic diversity.
 - (4) The activities and experiences provided by the program are appropriate to the developmental level of the children;
 - (5) The program provides a balance of active and quiet activities; and
 - (6) The program shall provide for the self-direction of the children by:
 - (A) Affording children opportunities to choose activities according to personal desires and interests and to move from one activity to another;
 - (B) Encouraging children to do things independently; and
 - (C) Providing children opportunities to be involved in decision making about group and individual activities.
- [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-26 Communication with parents.
Caregivers shall relay concerns about the health,

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development, or behavior of the child to the parents or guardians promptly and directly. [Eff
] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-27 Program materials and equipment.

(a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be appropriate to the ages of the children in care.

(b) The quantity of materials and equipment shall be sufficient to:

- (1) Avoid excessive competition between the children and to avoid long waits for use of the materials and equipment; and
- (2) Provide for a variety of experiences and appeal to the individual interests of the children.

(c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.

(d) Materials shall be safe and kept clean, in good repair, not be recalled and shall be accessible to children. The materials shall be stored in an orderly way and shall be arranged to allow children to select, remove, and replace the materials either independently or with assistance.

(e) Soft media or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.

(f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.

(g) Storage space for play materials and equipment used by the children shall be available.

(h) Provision shall be made for a place for each child's personal belongings.

(i) There shall be a mat or cot available for any child who needs to rest. [Eff
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C.

§§2002, 2005, 9833)

§§17-896.1-28 to 17-896.1-34 (Reserved)

SUBCHAPTER 4

STAFFING REQUIREMENTS

§17-896.1-35 **Staff training, experience, and personal qualifications.** (a) Each caregiver shall be qualified through training, experience, and personal qualities for the age group with which the person works.

(b) Each caregiver, substitute, and volunteer within forty-five days of hire, shall complete initial training that is approved by the department in health and safety standards which addresses the following areas:

- (1) Prevention and control of infectious diseases (including immunizations);
- (2) Prevention of sudden infant death syndrome and use of safe sleeping practices;
- (3) Administration of medication, consistent with standards for parental consent;
- (4) Prevention and response to emergencies due to food and allergic reactions;
- (5) Building and physical premises safety;
- (6) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
- (7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event;
- (8) Handling and storage of hazardous materials

and the appropriate disposal of
biocontaminants;

- (9) Appropriate precautions in transporting children, if applicable;
- (10) Pediatric first aid and cardiopulmonary resuscitation; and
- (11) Recognition and reporting of child abuse and neglect.

(c) When a caregiver, substitute, or volunteer has not provided child care for one hundred eighty consecutive days or more, the initial training in subsection (b) shall be repeated.

(d) After the initial training in health and safety standards is completed with one hundred percent accuracy and the results are received and recorded by the department, each caregiver shall complete on-going training appropriate to the age of children the caregiver serves within twelve months from the date the initial training was received and recorded by the department, and then annually thereafter.

- (1) Each caregiver staff member shall complete at least sixteen hours of department-approved training annually in at least two of the topic areas in subsection (e).
- (2) Substitutes shall complete at least ten hours of department-approved training annually in at least two of the topic areas in subsection (e).
- (3) Volunteers who serve ten hours or more a week shall complete at least eight hours of department-approved training annually in at least two of the topics areas in subsection (e).
- (4) When an individual does not meet the requirements in subsection (d) or does not provide evidence of working to complete on-going training, the individual shall no longer be eligible to meet the staff-child ratio in accordance with sections 17-896.1-36(e) and (f).

(e) Each caregiver shall provide written evidence to the department to show completion of on-going training. The on-going training course, workshop, or class shall be different from the training topic areas completed in the prior twelve month period, and shall be in the following topic areas:

- (1) Physical care of the young child;
- (2) Care of the sick child;
- (3) Child nutrition;
- (4) Child growth and development;
- (5) Children with special needs;
- (6) Learning activities and play;
- (7) Family engagement;
- (8) Managing challenging behaviors;
- (9) Community resources;
- (10) Prevention of child maltreatment and abuse;
- (11) First aid and child cardiopulmonary resuscitation;
- (12) Health and safety;
- (13) Child care business or program management;
- or
- (14) Physical environment.

(f) Applicants and staff members shall be of reputable and responsible character and shall not have the following:

- (1) A criminal history record, employment history, sex offender registry history, child abuse/neglect history, or adult abuse history that may pose a risk to children in care as specified in section 17-801-5; or
- (2) Any other situations that poses a risk to the health, safety or well-being of children in care.

(g) Directors, program leaders, assistant program leaders, and aides employed in a licensed facility on January 25, 1982, shall be deemed to have adequate minimum qualifications for the type of staff position occupied and to maintain this status when shifting employment to another licensed facility.

(h) The age requirements for staff shall be as follows:

- (1) All staff positions other than child care aide, volunteer, clerical, or maintenance personnel shall be at least eighteen years old; and
- (2) A child care aide shall be at least sixteen years old to be counted in the staff-child ratio and at least thirteen years old to be hired as an aide.
- (i) The director shall have the following qualifications:
 - (1) A bachelor's degree or higher from a regionally accredited college or university or transferable to a regionally accredited college or university and twelve months of experience in working with children; or
 - (2) Child development associate (CDA) certification and twelve months of experience in working with children; or
 - (3) Two years of college education and twenty-four months of experience in working with children; and
 - (4) In all cases, at least six months of experience shall be with children of the appropriate age for the before/after school program being directed.
- (j) The director may teach and may be counted in the staff-child ratio as follows:
 - (1) In a facility with an enrollment of less than fifty children, the director may teach and may be counted in the staff-child ratio; and
 - (2) In a facility with an enrollment of fifty or more children the director may teach but shall not be included in the staff-child ratio.
 - (A) Exception may be made and the director may be included in the staff-child ratio in cases of emergency or in special situations. In any case this inclusion in the staff-child ratio may not exceed ten hours per week.

- (B) Exception may be made and the director may be included in the staff-child ratio during the first hour and the last hour of the regular operational day.
- (C) Exception may be made and the director of a facility with an enrollment of fifty or more children may teach and be counted in the staff-child ratio when the attendance at the facility is less than fifty children.
- (k) A program leader shall meet one of the qualifications:
 - (1) Two years of college education and six months experience in working with school-age children; or
 - (2) Child development associate (CDA) and six months experience in working with school-age children; or
 - (3) Completion of high school and nine months of experience in working with school-age children; and
 - (4) In all cases undergo an orientation training provided by the facility.
- (l) An assistant program leader shall be at least 18 years old, shall always be under the direction of a program leader, and shall undergo orientation training provided by the facility.
- (m) An aide shall be at least thirteen years old, shall always be under the direction of a program leader or an assistant program leader, and shall undergo orientation training provided by the facility. Aides shall be at least sixteen years old to be counted in the staff-child ratio.
- (n) Volunteers shall:
 - (1) Participate in an orientation training provided by the facility; and
 - (2) Meet the requirements of regular staff members to be counted in the staff-child ratio.
- (o) Temporary hires shall meet qualifications of positions for which hired.

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(p) Substitutes for director, assistant program leader, and aide shall meet the qualifications of the position for which hired.

(q) Substitutes for program leaders shall be at least eighteen years of age and shall have participated in an orientation training program of the facility, and the daily activities assigned to the substitute shall be closely supervised by the facility's director.

(r) Substitutes may be granted an extension to serve in the same position for more than ten consecutive days upon consultation with and approval of the department.

(s) Directors of facilities shall make available to all staff members and volunteers information regarding workshops, seminars, training sessions or other courses that are available from any source, public or private, in order to encourage staff growth and development. [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-154, 346-162; 42 U.S.C. §§2002, 2005, 5751, 9833; 50 Fed. Reg 2089)

§17-896.1-36 Staff-child ratio and group size.

(a) Every facility shall have a director.

(b) The staff-child ratio shall be met and maintained at all times by the facility.

(c) The staff-child ratio shall be in writing and shall be made available to the department.

(d) The staff-child ratio shall not exceed twenty children per staff member.

(e) Distribution of staff may include a team comprised of director, as allowed under section 17-896.1-35(j), program leader, assistant program leaders, and child care aides. Aides shall not constitute more than one-third of the required staff-child ratio.

(f) The staff members shall be on site and shall be assigned to a group of children to be included in the staff-child ratio.

(g) The maximum group size shall not exceed 40 children.

(1) When exceptions are made for special events, such as but not limited to, assemblies, performances, meal and snack time, and outdoor play area, the following shall apply:

- (A) The staff-child ratio shall be maintained at all times in accordance with subsection (d).
- (B) Distribution of staff requirements in subsection (e) shall be maintained at all times.

(h) Custodians and cooks shall not be counted in the staff-child ratio when performing regular duties.

(i) When acting as the driver of the facility vehicle for transportation to or from the program or on excursions, the program leader, assistant program leader, or aide shall count toward the staff-child ratio for those children in the vehicle.

[Eff] (Auth: HRS §346-162)) (Imp: HRS §§346-154, 346-162; 42 U.S.C. §§2002, 2005, 5751, 9833; 50 Fed. Reg 2089)

§§17-896.1-37 to 17-896.1-39 (Reserved)

SUBCHAPTER 5

HEALTH STANDARDS FOR CHILDREN

§17-896.1-40 Health consultation provisions.

All programs shall have on file written evidence that an arrangement has been made with a health care professional to provide consultation and this arrangement is satisfactory with the parents of the children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005,

§17-896.1-41

9833)

§17-896.1-41 Evidence of child's health. (a)

The child's enrollment in school shall be evidence of the child's good health.

(b) The child care facility shall have in writing information about a child's specific health condition which requires special attention by the program staff. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-42 Emergency care provisions. (a)

Every child care facility shall have in writing:

(1) The name, address, and telephone number of a physician or health resource that shall be called in case of emergency; or

(2) The name of the nearest hospital or clinic where such care may be provided; and

(3) Permission of the parent or guardian to call the stated physician or health resource, or the hospital or clinic, if the parent or guardian cannot be reached in case of a health emergency.

(b) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program.

(c) Physical arrangements that are clean and safe for children who become ill after arrival at the facility shall be available for the care of the child until parents or guardians can be notified to provide alternative arrangements.

(d) An operating telephone that is available and is easily accessible to the provider to be used in case of an emergency;

(e) A plan for accessing a telephone when not in the usual location where care is being provided.

[Eff] (Auth: HRS §346-162)) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-43 First aid and child cardio-pulmonary resuscitation (CPR). (a) The first aid requirement shall be as follows:

- (1) There shall be at least one adult caregiver with a current certificate in first aid when children are present at the facility or at an off site group activity, such as during field trips and excursions.
- (2) A current certificate means a certificate that has not expired.
- (3) The current first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.
- (4) A first aid kit shall be available at the facility at all times.

(b) The child CPR requirement shall be as follows:

- (1) There shall be at least one adult caregiver with a current certificate in child CPR when children are present at the facility or at an off site group activity, such as during field trips and excursions.
- (2) The child CPR course must be provided by the American Red Cross, American Heart Association, or any organization whose child CPR certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.

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- (3) A current certificate means a certificate that has not expired. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-44 Admission of ill children. (a) When health policies of the child care facility allow ill children to be admitted or to remain in the child care facility, medical consultation shall be available regarding special care and medication.

(b) Both the provider and the parents or guardians shall be familiar with the policies of the facility relevant to ill children.

(c) Provisions shall be made to allow the facility's health consultant and the child's regular source of health care to communicate in order to preserve continuity and consistency of care.

(d) The child care facility shall have, in writing, the name, address, and telephone number of a physician or health resource that shall be called in case of emergency. Written permission of the parent or guardian to call upon the stated physician or health resource, or another responsible source of care, if the parent or guardian cannot be reached, shall be required. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-44.01 Administration of medication.

(a) When medication prescribed by a physician is administered in the facility:

- (1) The medication shall be kept in the original container bearing the prescription label which shows the date filled, the physician's directions for use, and the child's name;
- (2) Medication shall be kept out of reach of children and shall be returned to parents or guardians when no longer in use; and

- (3) There shall be an authorization signed by the parent or guardian for the administration of medication by the facility.

(b) When over-the-counter medication is administered in the facility, the child's parent or guardian or physician shall provide to the child care facility written permission and written instructions to administer the medication. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-896.1-45 Admission of children with special needs. (a) When children with special needs are admitted to the program, the facility shall provide for the special needs of each child.

(b) The child with special needs shall be admitted only after consultation with the child's source of health care and the program's health consultant. The consultation shall include written recommendations to cover the child's special needs or to define the child's participation in the program.

(c) If the child's health care source considers it advisable, the staff members of the program shall receive training related to the nature of the child's condition and the child's potential for growth and development.

(d) Where the nature of the child's special needs or the number of children with special needs in the program necessitates added care, staff and equipment shall be available to cover these requirements. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-46 Daily nutritional needs. (a) To the extent possible, information provided by the parents or guardians concerning the child's eating

habits or special needs shall be considered, and children shall be encouraged, but shall not be required, to eat the food offered by the facility.

(b) The program shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resources approved by the state department of health.

(c) Children in after school programs for two to four hours shall be offered a nutritious snack which may be brought from home or provided by the facility.

(1) In a facility providing snack, the snack shall consist of at least one of the following: fruit, vegetable, milk or its calcium equivalent, an enriched grain product, meat, or a meat alternate.

(2) If a beverage is served in addition to items allowed in subsection (c)(1), it can be water or fruit or vegetable juice; if fruit or vegetable juice, it shall be one hundred percent juice.

(d) In a facility providing breakfast, the breakfast shall consist of milk, fruit, or one hundred percent fruit juice, and an enriched grain product.

(e) In a facility providing full day care, parents may provide the nutritional requirements for that period of time. The facility shall provide a guide to parents or guardians on nutritional snacks and brown bag lunches.

(f) In a facility providing meal service, the minimum components and food amounts required by the United States Department of Agriculture (USDA) child care food program shall be met. The facility shall offer and provide the following combination of meals and snacks for children in care:

(1) Two to four hours - - - - one snack;

(2) Four to eight hours - - - one snack
or breakfast
and
lunch or
supper;

- (3) Eight hours or more - - - one snack or breakfast and lunch or supper and one additional snack unless the eight hours or more extend into the evening hours when the child may be asleep);
- (4) When two snacks are required as in subsection (f)(3) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent.
- (g) Local ethnic foods may be added or substituted for quantity; for allowable food reimbursement, facilities shall consult with the USDA.
- (h) Children shall not be offered foods to which they are allergic or, for religious reasons, cannot consume. Provisions shall be made to secure such information from the parent or guardian, and the parent or guardian of the child shall arrange for nutritious substitute foods.
- (i) A list of food items that are provided by the caregiver shall be posted in a prominent place for review by parents.
- (j) Food shall not be used as a punishment or reward.
- (k) The child care facility's food service shall be reviewed biennially by a qualified nutrition consultant the center has chosen or provided by an appropriate community resource. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-47 Drinking water provisions. There shall be drinking fountains or another device or system whereby drinking water shall be readily accessible to all children. [Eff]

§17-896.1-47

(Auth: HRS §346- 162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-48 Integration of mental health concepts. Mental health aspects of child development shall be integrated into the program as follows:

- (1) At least one parent, guardian, foster parent, or social worker shall be interviewed prior to a child's admission to the child care facility. The interview shall be conducted to secure pertinent information on the child's overall behavior and to acquaint the parent or guardian with the facility's policies.
- (2) The program director shall be aware of mental health, consultant, and clinical services for children for the early identification of social, emotional, intellectual, and behavioral problems of children; and
- (3) The facility shall refer parents or guardians to sources of professional consultation in mental health upon the parents' or guardians' request or upon the recommendation of the facility's staff.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§§17-896.1-49 to 17-896.1-54 (Reserved)

SUBCHAPTER 6

HEALTH STANDARDS FOR STAFF

§17-896.1-55 Staff's health standards. Evidence that each caregiver staff member is free from health problems which would have a harmful effect on the children or would interfere with effective functioning shall be maintained at the facility as follows:

- (1) The results of employment physical examinations, and when indicated on a physical exam that the individual has a mental health disorder or limitation, a psychological exam, given within one year prior to employment of each person who works directly with children that indicates each person is in adequate physical, and if needed, mental health to care for children shall be on file at the facility;
- (2) Written evidence that each person who works directly with children for any period of time is free from communicable tuberculosis in accordance with the requirements for child care facility personnel, under chapter 11-164.2. The tuberculosis clearance must be completed within one year before beginning child care and shall be on file at the facility. Each person shall complete updated clearances in compliance with chapter 11-164;
- (3) Each caregiver with an identified health problem shall provide the facility with a written statement from a physician that the caregiver is able to care for school age children; and
- (4) The facility shall have provisions for substitution of staff who are too ill to function effectively or who present a serious health hazard to others in the facility. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-56 Personal health habits of staff.

The personal health habits of all caregivers shall not interfere with the protection of the health of the children as follows:

- (1) The facility shall have:
 - (A) Health policies developed specifically for the facility which set out aspects of personal health care; or
 - (B) Written guidelines covering appropriate aspects of personal health care that have been developed through a community health agency which are made known to the caregiver; or
 - (C) In-service training for the child care staff members designed and presented by a health-trained individual which includes personal health care;
- (2) No smoking, including electronic smoking devices, is allowed on the premises during child care hours of operation, and personal nicotine products shall be stored out of reach of children;
- (3) Alcoholic beverages shall not be consumed prior to and during the hours of operation at the child care facility; if alcoholic beverages are stored at the facility, it shall be locked up and inaccessible to children;
- (4) Medication that impairs or limits the staff's ability to provide care shall not be consumed prior to or during the hours of child care; and
- (5) Caregivers shall wash hands using water and soap before and after the following activities:
 - (A) Before and after eating or drinking;
 - (B) Before handling clean utensils or equipment;
 - (C) Before and after preparing food or beverages;

- (D) After using the toilet or helping a child with toileting;
- (E) After handling bodily fluids or items containing bodily fluids;
- (F) After handling pets or animals; or
- (G) After outdoor play. [Eff
] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§§17-896.1-57 to 17-896.1-60 (Reserved)

SUBCHAPTER 7

ENVIRONMENTAL HEALTH STANDARDS

§17-896.1-61 Disaster plan for emergencies. (a) Each child care facility shall have a written disaster plan to cover emergencies such as fire, flood, or natural disaster or other emergencies, and the plan shall include written procedures for:

- (1) Evacuation;
- (2) Relocation of the child care facility if facility becomes uninhabitable or if the facility is ordered to evacuate;
- (3) Sheltering in place at the child care facility;
- (4) Lock-down of the child care facility;
- (5) Communication and reunification with families during and after an emergency;
- (6) Continuity of operations during and after an emergency;
- (7) Providing for the needs of children with disabilities and children with special needs during an emergency; and

- (8) Providing for the needs of children with chronic medical conditions during an emergency.

(b) The plan relating to fire emergencies shall be approved by the fire inspector, the facility's health consultant shall review the plan as related to subsections (a)(7)(8).

(c) The facility shall complete practice drills for the various emergency situations at regular intervals, or whenever a new procedure has been added.

(d) Each child care facility shall provide emergency preparedness training to staff members.

(e) The facility shall make the plan available for review by or provide a copy of the plan to each family whose child is enrolled at the child care facility.

(f) The diagram of emergency exits shall be posted in a prominent place in the facility.

(g) Each child care facility shall install an underwriters laboratory listed fire warning device or system in each facility. Written evidence that the device or system has been inspected and approved by a fire inspector shall be current and on file at the facility.

(f) There shall be an unexpired ABC multi purpose type fire extinguisher in the child care area.

(g) The provider shall notify the department within one working day when an emergency resulted in the evacuation, relocation, shelter in place, and lock-down of the facility. [Eff]

(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-62 Accidental injury precautions.

- (1) The facility shall ensure that the risk of accidental injury on the premises is minimized by having accident prevention practices and policies in writing. The practices and policies shall be reviewed annually and the staff shall become familiar

- with the policies and practices.
- (2) Procedures for infection control, to use in all situations to prevent the transmission of blood-borne germs that may be spread through blood and body fluids that might contain blood shall be in writing.
[Eff] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-63 Environmental hazards. The indoor and outdoor premises of a child care facility shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the children as follows:

- (1) The child care facility shall be protected against rodents and insects;
- (2) All entrances and exits shall be secured;
- (3) The outdoor space shall be fenced, shall have natural barriers, or shall have other protective conditions to deter children from getting into unsafe areas;
- (4) There shall be no open drainage ditches, wells, or holes into which children may fall;
- (5) Drainage shall be adequate to prevent stagnant pools of water from accumulating;
- (6) Garbage and trash shall be stored in covered containers out of reach of the children and shall be removed frequently enough to avoid creating a health hazard or nuisance;
- (7) Sharp objects, household kitchen items, and tools shall be kept in a safe location and out of children's reach or are supervised when used safely;
- (8) Cleaning materials shall be clearly labeled and stored in a secured area which is inaccessible to the children. Cleaning materials shall be stored in a secured area away from food preparation areas during food

- preparation times;
- (9) Open fireplaces shall not be used. Floor heaters and all heating elements, including hot water pipes, shall be insulated or installed in a manner which makes the pipes inaccessible to children;
 - (10) Children shall be supervised when using hot water taps;
 - (11) Stove top controls are not accessible by children;
 - (12) Emergency exits shall be clear of obstructions;
 - (13) Indoor and outdoor structures, equipment, and toys shall be sturdily constructed and furnishings that have hazardous sharp edges, rust, and splinters shall not be accessible to children;
 - (14) Electrical outlets accessible to children shall be covered with child-resistant outlet covers;
 - (15) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured;
 - (16) Lead based paint shall not be used or have levels greater than is recommended by the Environmental Protection Agency (EPA) on surfaces accessible to children;
 - (17) Poisonous plants shall be out of reach of children on the premises;
 - (18) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times;
 - (19) If a lodging house, boarding house, or any other business conflicts with the regular operation of the child care facility, the lodging house, boarding house, or other business shall not be conducted at the facility; and
 - (20) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured

and locked in a separate place.

[Eff] (Auth: HRS §346-162)

(Imp: HRS §346-162; 42 U.S.C. §§2002,
2005, 9833)

§17-896.1-64 Water supply. (a) The water supply shall be from a source approved by the health authority. The plumbing shall be installed and maintained in a manner approved by local plumbing codes.

(b) If running water is not available, the water shall originate from a source approved by the health authority, shall be transported to the child care setting in clean, sanitized, covered containers, and shall be protected from contamination.

[Eff] (Auth: HRS §346-162) (Imp:
HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-65 Toilet and lavatory facilities. Toilet and lavatory facilities shall be of a type determined by the availability of water under pressure. Approved facilities, water or non-water carriage, shall be provided for disposal of sewage and other liquid wastes. The following conditions shall apply:

- (1) Where a public sewer is available, all plumbing fixtures and building sewers shall be connected thereto;
- (2) Where a public sewer is not available, a private sewage disposal system of an approved type shall be installed and connected to all plumbing fixtures and building sewers;
- (3) Where water carried sewage disposal means are not available or feasible, sewage and other liquid wastes shall be disposed in a manner approved by the health authority;

- (4) Where water carried sewage disposal is available, water flush toilets shall be provided. Indoor toilets shall be located in rooms separate from those used for cooking, sleeping, or eating; and
- (5) Lavatories shall be provided in quantities commensurate with toilet facilities. If hot water is available, water temperature shall not exceed one hundred degrees fahrenheit, thirty eight degrees celsius, at outlets accessible to children. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-66 Food preparation. (a) Facilities that serve meals, or meals and snacks, shall meet all of the requirements of the department of health, chapter 11-50.

(b) Facilities serving only snacks, which are not potentially hazardous food, and which require minimal use of utensils, shall be exempt from the requirements of subsection (a). These facilities shall have access to a sink with running water. Lavatories in toilet rooms shall not be used for preparation or cleaning of snacks. [Eff]
(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§ 2002, 2005, 9833)

§17-896.1-67 Cleaning of premises. (a) All necessary cleaning equipment shall be available on the premises and a plan for regular cleaning shall be established to protect the health of the children and staff members.

(b) Toys, table tops, furniture, and other similar equipment used by children shall be washed when the toys or equipment become gummy, sticky, or dirty. Plain soap and water shall be an adequate cleansing agent.

(c) Cleaning materials shall be clearly labeled and stored in a secured area that is away from food preparation areas and is inaccessible to the children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-68 Swimming activities and wading pools. (a) When swimming or wading pools are part of the child care facility, equipment, or program, the swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are a part of the child care program, the following safety practices shall be observed:

- (1) A certified lifeguard, who may be the caregiver, shall be on duty at all times when swimming activities or swimming pools are in use;
- (2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of subsection (b). However, children shall be personally attended by a responsible adult at all times;
- (3) Wading pools exempt under subsection (b)(2) shall be emptied immediately after each use; and
- (4) Legible safety rules for the use of all types of pools shall be posted in a conspicuous location and read and reviewed at regular intervals by the caregiver responsible for the care of children.

[Eff] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§ 2002, 2005, 9833)

§17-896.1-69 Handwashing. (a) The staff members and children shall wash their hands using

§17-896.1-69

water and soap before and after the following activities:

- (1) Before and after eating or drinking;
- (2) Before handling clean utensils or equipment;
- (3) Before and after preparing food or beverages;
- (4) After using the toilet or helping a child in toileting;
- (5) After handling bodily fluids or items containing bodily fluids;
- (5) After handling pets or animals; or
- (6) After outdoor play.

(b) Paper towels or separate cloth towels shall be used for each child for drying hands after handwashing. [Eff _____] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§§17-896.1-70 to 17-896.1-79 (Reserved)

SUBCHAPTER 8

PHYSICAL FACILITY STANDARDS

§17-896.1-80 Building codes and space requirements. (a) Programs using the facilities of an approved or licensed public or private school or a city, county, or state facility shall be deemed to have satisfied the department's requirements relating to zoning, building, electrical, and plumbing codes of the county or political subdivision in which the facility is located and to state rules as may be applicable to the facility.

(b) Programs not using the facilities of an approved or licensed public or private school or a city, county, or state facility shall be inspected for


compliance with the zoning, building, electrical and plumbing codes of the county or political subdivision in which the facility is located and to state rules as may be applicable to the facility.

(c) All buildings, building appurtenances, outdoor space, equipment, and all other parts of the facility shall be kept repaired, safe, and sanitary at all times.

(d) The indoor area required for each child is fifteen square feet." [Eff] (Auth: HRS §346-20) (Imp: HRS §346-20; 42 U.S.C. §§2002, 2005, 9833)

2. The adoption of chapter 17-896.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on April 8, 2020 and filed with the Office of the Lieutenant Governor.


f. _____
PANKAJ BHANOT
Director of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

IV. Legislative Matters

A. Discussion and Update on the following:

- a. Governor's Message Submitting for
Consideration for the Gubernatorial Nomination
of Harris Nakamoto to the Small Business
Regulatory Review Board for a term to expire
June 30, 2023**
- b. Governor's Message Submitting for
Consideration for the Gubernatorial Nomination
of James (Kimo) Lee to the Small Business
Regulatory Review Board for a term to expire
June 30, 2024**

V. Administrative Matters

A. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS