

# November 15, 2017 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair	NA	Oahu	Parking Pass	Yes
Reg Baker ✓	NA	Oahu	Parking Pass	Yes
Kyoko Kimura ✓ (T-attached)	HA	Maui	Parking Pass	Yes
Harris Nakamoto, Vice Chair	NA	Oahu	NA	No
Director's ex officio - Mark Ritchie	NA	Oahu	NA	Yes
Robert Cundiff ✓	NA	Oahu	Parking Pass	Yes
Nancy Atmospera-Walch ✓	NA	Oahu	NA	Yes
Garth Yamanaka ✓ T-attached	HA	B.I.	Parking Pass	Yes

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Poll Board Attendance - in process	X
Draft Agenda to Chair for approval	X
Prepare TAF's for Director's approval - ASAP (Linda) - Group TAF	X - Kyoko Garth
Copies of Rule Package for Lte. Gov's Office (2) and Scan for Posting on State Calendar	✓ Partially
Send Chair Minutes for Approval	✓ Draft of Oct. Meeting Approved ✓
Post approved agenda on SBRRB website, State Calendar, & Lte. Governor's Office	✓
Send Agendas to those people who requested it - IMPORTANT	✓ X
Upload Meeting Documents onto Board's Website in Calendar	✓ Partially ✓
Include "discussion leader" names on the agendas to Board members only.	✓
Prepare Agenda ONLY for "Chair" with Names of Attendees	✓
Mail parking permits to those Board members noted (Sent in Nov. 2016 six (6) permits)	✓

STAFF				
Jennifer Waihee-Polk				Via I-pad ✓
Dori Palcovich				✓

Post Meeting Checklist	

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - November 15, 2017

	Name	Title	Organization	Email	Phone
1	Juan Victorino	Administrator	Dept of Labor DCD	juan.v.victorino@hawaii.gov	586-9152
2	JARED REDULLA	ADMINISTRATOR	PUBLIC SAFETY NED	JARED.V. REDULLA @ HAWAII.GOV	837-8470
3	Janet Kaye	Research Specialist	DIR-RIS	Janet.m.Kaye@hawaii.gov	586-9005
4	Jacob Herlitz	Rules Specialist	DOTAX	Jacob.L.Herlitz@hawaii.gov	587-5334
5	PHYLLIS DAYAO	Chief	DIR-RIS	phyllis.a.dayao@hawaii.gov	586-8996
6	Danny Cup Choy	Director	Hawaii Public Policy Advocate	dannychoy@hawaii-publicpolicy.com	447 1640
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Small Business Regulatory Review Board Meeting

Wednesday, November 15, 2017

10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Email: [dbedt.sbrrb.info@hawaii.gov](mailto:dbedt.sbrrb.info@hawaii.gov)  
Website: [dbedt.hawaii.gov/sbrrb](http://dbedt.hawaii.gov/sbrrb)

Tel 808 586-2594

### AGENDA

Wednesday, November 15, 2017 ★ 10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436, Honolulu, HI

David Y. Ige  
Governor

Luis P. Salaveria  
DBEDT Director

#### Members

Anthony Borge  
Chairperson  
Oahu

Robert Cundiff  
Vice Chairperson  
Oahu

Garth Yamanaka  
2<sup>nd</sup> Vice Chairperson  
Hawaii

Harris Nakamoto  
Oahu

Nancy Atmospera-Walch  
Oahu

Kyoko Kimura  
Maui

Reg Baker  
Oahu

Director, DBEDT  
Voting Ex Officio

#### I. Call to Order

#### II. Approval of October 18, 2017 Meeting Minutes

#### III. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 12, Chapter 15, **Hawaii Workers' Compensation Medical Fee Schedule** and Exhibit A, **Workers' Compensation Supplemental Medical Fee Schedule**, promulgated by Department of Labor and Industrial Relations (DLIR) – **Discussion Leader (DL) – Kyoko Kimura**
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13, Chapter 74, **License & Permit Provisions and Fees for Fishing, Fish, and Fish Products**, promulgated by Department of Land and Natural Resources – **DL – Mark Ritchie**
- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 23, Chapter 200, **Regulations of Controlled Substances**, and Chapter 201, **Regulated Chemicals for the Manufacture of Controlled Substances**, promulgated by Department of Public Safety – **DL – Tony**
- D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, Chapter 231, **Administration of Taxes**, promulgated by Department of Taxation, as follows: **DL – Garth Yamanaka**
  1. Amendments to Section 3-14.17, **Revocation of Licenses Because of Abandonment**
  2. Proposed New Section 3-14.26, **Registration of Representatives**
  3. Amendments to Section 9.9-03, **Taxpayers Subject to EFT Program**

#### IV. Legislative Matters

- A. Update on the Board's Proposed Bill for the 2018 Legislative Session, "Relating to the Small Business Regulatory Review Board" – Clarifies the intent of the Small Business Regulatory Review Board's powers when reviewing state and county administrative rules that impact small business

**V. Administrative Matters**

- A. Assignment of Board Members for “Discussion Leader Assignments” for State and County Agencies’ Administrative Rule Review
- B. Update on the Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers under Section 201M-5, Hawaii Revised Statutes

**VI. Next Meeting:** Scheduled for Wednesday, December 6, 2017, at 10:00 a.m., Capitol District Building, Conference Room 436, Honolulu, Hawaii

**VII. Adjournment**

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

## II. Approval of October 18, 2017 Meeting Minutes

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING - Draft

October 18, 2017

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 p.m., with a quorum present. Mr. Reg Baker, the Board's newest interim board member was welcomed.

**MEMBERS PRESENT:**

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, 2<sup>nd</sup> Vice Chair
- Kyoko Kimura
- Harris Nakamoto
- Reg Baker
- Mark Ritchie

**ABSENT MEMBERS:**

- Nancy Atmospera-Walch

**STAFF:** DBEDT  
Dori Palcovich

Office of the Attorney General  
Jennifer Waihee-Polk

### II. APPROVAL OF SEPTEMBER 20, 2017 MINUTES

Mr. Nakamoto made a motion to accept the September 20, 2017 minutes, as presented. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

### III. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 3, Rules of Liquor Commission, City and County of Honolulu, State of Hawaii, promulgated by the City and County of Honolulu Liquor Commission, as follows:

1. Chapter 81, Liquor Commissions, Section 17.51, License Fees
2. Chapter 81, Section 17.58, Trade Name; Change; Fee
3. Chapter 82, Licenses and Permits, General Provisions, Section 33.11, Applications for Individual Permits to Receive Shipments of Liquor
4. Chapter 82, Section 33.6, Direct Shipment of Wine by Wineries
5. Chapter 83, Procedure for Obtaining License, Section 54.1, Filing Fees

Mr. Don Pacarro, Commissioner at the City and County of Honolulu Liquor Commission, explained it was determined that the cost of the new custom-built computer system, which

was one of the main reasons for the proposed fee increases, is \$950,000 rather than the expected cost of \$450,000. However, the Commission decided that it would not raise the license fees for 2018 and instead will raise the fees in 2019 by 50%. Therefore, additional increases will be spread up to 2020; approximately \$200,000, or less, will be due for the expense of the computer system.

Overall, Mr. Pacarro believes that the proposed changes are positive for small business despite some opposition during the public hearing. Many understood the purpose of the increase; ultimately, the licensees will be provided with better service and more efficiency with the new computer system. If over time, more money is collected from fees than expected, the fees will be reduced in order to be fair and equitable. During the public hearings, the restaurant association objected to the proposed fee increases but the bar associations supported the rules as presented.

Approximately \$175,000 in fines were collected over the past few years. Due to the Commission reaching out and being proactive with its "regulation for education" advocacy program by educating the license owners, more owners are aware of the rules, and as a result, less penalties are collected. This past year less than \$70,000 was collected. It was noted that collecting and using fines as a basis to raise money is against the law; further, 20% of the fines collected must be used for education.

Chair Borge stated that over the past several years, the Liquor Commission has been very proactive and progressive in engaging the stakeholders, despite receiving some dissension from small business. Mr. Pacarro thanked Mr. Baker for his assistance with the Hawaii liquor commissions on the recent tax clearance issue that was brought in front of the Federal Small Business Fairness Board.

Ms. Kimura made a motion to recommend that the proposed amendments be forwarded to the City Council and the Mayor for adoption; also recommended was that the Honolulu Liquor Commission review the projected cost of the new computer system in order to minimize and lower the projected license fees as soon as it may be deemed necessary. 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 Amendments to Title 13, Subtitle 11, Ocean Recreation and Coastal Areas, promulgated by Department of Land and Natural Resources (DLNR), as follows:

a. Part I – Small Boat Harbors and Other Boating Facilities

1. Chapter 230, General Provisions
2. Chapter 231, Operations of Boats, Small Boat Harbors, and Permits
3. Chapter 232, Sanitation and Fire Safety
4. Chapter 233, Motor Vehicle and Parking Rules
5. Chapter 235, Offshore Mooring Rules and Areas

b. Part II – Boating

1. Chapter 240, General Provisions
2. Chapter 242, Accidents, Reports, Fines, Enforcement and Records
3. Chapter 243, Vessel Equipment Requirements



4. Chapter 244, Rules of the Road; Local and Special Rules
  5. Chapter 245, Waterway Marking Systems
- c. Part III – Ocean Waters, Navigable Streams & Beaches
1. Chapter 250, General Provisions
  2. Chapter 251, Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches
  3. Chapter 253, Registration and Permit Fees
  4. Chapter 254, Local Ocean Waters
  5. Chapter 255, Waikiki Beach
  6. Chapter 256, Ocean Recreation Management Rules

Mr. Ed Underwood, Administrator at DLNR's Division of Boating and Ocean Recreation (DOBOR) and Mr. Todd Tashima, DOBOR Legal Fellow, explained that approximately 98% of the testimonies received revolved around amendments relating to the feral and abandoned animals, mainly cats. Most of these testimonies came from individuals and humane societies, not from small business. Other testimonies related to restrictions on anchoring and mooring outside designated offshore mooring areas, dive flag requirements, and kiteboarding in Kailua Bay ocean waters.

At the Board of Land and Natural Resources meeting, the proposed rules were approved with the exception of the dive flag proposal. At this time, dive flags will only be required to be illuminated at night, with other changes to be made later. Also, the rule section requiring the relocation of feral animals from the harbors has been delayed until 2019 to give DOBOR enough time to work with the caregiver groups to relocate the animals. Mr. Underwood noted that although there is currently a big campaign against the rule section on the feral animals, DOBOR is hoping that Governor Ige will still sign off on the proposed rules. Chair Borge added that based on a business perspective, feral animals living in the harbors become a health and safety concern to commerce such as the seafood industry as well as the wildlife living in and near the oceans.

Mr. Ritchie made a motion to move the proposed rules to the Governor for adoption. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Title 15, Chapter 218, Kakaako Reserved & Workforce Housing Rules, promulgated by Hawaii Community Development Authority (HCDA) / Department of Business, Economic Development and Tourism (DBEDT)

Mr. Deepak Neupane, Director of Planning & Development at HCDA, explained that he was in front of this Board a year ago before the public hearings; any impact on small business applies mostly to developers. Among other reasons, the rule changes are expected to be positive because they preserve affordable for-sale and rental units produced under HCDA's mandatory Reserved Housing and Voluntary Workforce Housing programs.

The proposal is also expected to relax off-street parking, reduce sale prices from a fixed 140 percent of adjusted median income to 120 percent on average, and allow for a cash-in-lieu of payment as an alternative. Because this program has been in existence for 30 years the developers are familiar with the rules and regulations.

Mr. Ritchie made a motion to move the proposal to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS**

A. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 231, Administration of Taxes, Section 25.5-02(f), Cost Recovery Fees for Collection Actions, promulgated by Department of Taxation (DoTax)

Mr. Jacob Herlitz, DoTax Rules Specialist, explained that these changes will allow DoTax to collect a cost recovery fee for any delinquent accounts or any accounts with negative balances; this applies to all taxes, not just general excise taxes. The fee is currently \$50.00; the proposal raises the fee to \$75.00 but if paid by electronic means it is lowered to \$25.00. Not only have the fees not been increased since the 1990's, but the changes reflect an effort to encourage more electronic fee filing.

Mr. Baker made a motion to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed New HAR Title 18, Chapter 237, General Excise Tax Law, Section 34-13, Persons with a Material Interest in a Tax Return, promulgated by DoTax

Mr. Herlitz explained that the proposed changes add a new section to the rules by defining the definition of a person with a material interest in a return. This would include a return that is related to various income splitting revisions in the general excise tax. The changes will apply to contractors and subcontractors as well as to tourism-related services. The provision is essentially a formalization of DoTax's interpretation of the law so that DoTax will be able to examine the returns of both contractors and the related taxes of the subcontractors as DoTax is currently unable to do this.

Mr. Ritchie made a motion to move the proposed amendments to public hearing. Mr. Baker seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 237D, Transient Accommodations Tax, Section 4-01, Certificate of Registration, and Section 4-02, Display of the Registration Certificate, Repeal of Sections 4-03 through 4-07, and Proposed New Sections 4-08 to 4-35, promulgated by DoTax

Mr. Herlitz explained that the proposed amendments require and enforce an operator of a transient accommodation to designate an on-island local contact and display the contact's name, phone number and email address inside the unit. This information must be provided either in online advertisements or upon a guest's check-in.

The amendments will also require that a unit's transient accommodations tax license number be displayed both inside the accommodation and in all online advertisements, either directly in the advertisement or by a link. Mr. Herlitz was unsure as to how many of the transient accommodations were considered to be small business. DoTax is most interested in the on-line requirement of the enforcement because it is insufficiently staffed to go door-to-door to check if the operators are following the law.

Mr. Ritchie made a motion to move the proposed amendments to public hearing. Mr. Baker seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed New HAR Title 12, Chapter 44.1, Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protects Systems, and Fire Alarm Systems, promulgated by Hawaii State Fire Council / Department of Labor and Industrial Relations (DLIR)

Messrs. Ed Suzuki and Lloyd Rogers, Administrative Specialists from the Hawaii State Fire Council at DLIR, explained that the proposed new rules formalize a statewide certification process. This has been a work-in-progress over the past three years and benefits individuals who perform maintenance and testing of portable fire extinguishers, fire protection systems, and fire alarm systems.

The statewide program will be administered by the County fire departments and include the maintenance and testing of fire alarm systems and private fire hydrants, portable fire extinguishers, water-based fire extinguishing systems, and other fire extinguishing systems formally classified as non-water based fire extinguishing systems. These systems are considered life-saving, and once installed they must be maintained. The people using these systems are primarily firefighters who need to have assurance that the systems operate as they were intended. It is, therefore, very important that these individuals have the technical expertise required to maintain the systems.

It was acknowledged that training will be individualized as it can be done at home and not "on-sight;" however, a County of Kauai representative, for example, will be required to come into Oahu to take the certification test. Currently, the Fire Council has been assisting with the many questions and concerns of the vendors. It was Mr. Suzuki's understanding that neighbor island small businesses, including Kauai, were following the Honolulu model in regards to fire extinguishing systems. The cost for a license will continue to be \$100.00 for three years; however, instead of Honolulu collecting the fee, each county will collect its own fee.

Ms. Kimura made a motion to move the proposed amendments to public hearing. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

## V. ADMINISTRATIVE MATTERS

A. Discussion and Action on Creating an Informal Investigative Task Force for the Purpose of Developing and Redesigning the Board's Website, to include Goals, Content, and Features, in accordance with Section 92-2.5(b), Hawaii Revised Statutes (HRS)

Chair Borge explained that two budget proposals were submitted by this Board, \$18,000 for website development and \$20,000 for operating expenses. He reminded the members that in past meetings there was strong interest in redesigning this Board's existing website by HIC (Hawaii Information Consortium), a quasi-government entity, in order to make it easier and more inviting for small business owners to use and navigate the website.

Ms. Kimura made a motion for the Board to create an informal investigative committee consisting of Messrs. Cundiff and Ritchie to assist in crafting the development and redesign of the Board's existing website. Mr. Yamanaka seconded the motion, and the Board members unanimously agreed. DBEDT staff will also assist in the committee and the Board's deputy attorney general will advise when needed.

Mr. Baker offered to announce in his weekly live-streamed show, "Business in Hawaii with Reg Baker," rules to be reviewed by this Board at upcoming board meetings. The purpose will be to get the word out and engage small businesses to become more proactive and offer a voice in the rules that affect their businesses.

- B. Update on the Department of Accounting and General Services' Small Business Office Regarding the 2017 House Bill 1382, HD1, SD1, CD1, Relating to Procurement – Assists small business in the state procurement process by establishing a temporary small business assistance initiative, small business advisory council, small business office, and small business procurement coordinator position within the state procurement office, and appropriates funds

Chair Borge reminded the members that Ms. Sarah Allen, Administrator at DAGS' State Procurement Office (SPO), has been creating a small business office for the past three years. Mr. Ritchie, who represents DBEDT, sits on SPO's newly created small business council. He explained that the small business office is quite broad and goes beyond small business procurement and set-asides. The council will meet on a quarterly basis to oversee SPO's progress. Other members on the council include representatives from OHA and the Small Business Development Center.

Mr. Ritchie further explained that three under-served groups are expected to be tracked and helped through this office, women-owned businesses, veterans, and native Hawaiians. A new procurement database is being created so that small businesses can self-identify, the definition of small business has yet to be established, and the office is expected to be up and running within DBEDT in about three years.

- C. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

Chair Borge sent a letter to the executive director of Hawaii's Farm Bureau requesting names of members from the agriculture industry that may be interested in sitting on this Board. He reminded the members that the Board is statutorily in need of a member from the County of Kauai.

Members concurred with the proposed scheduled 2018 monthly meeting days and times.

Chair Borge updated the members on the hiring of the Board's office assistant which has been temporarily postponed until a convenient space to place the assistant is found. He requested the guidance of DBEDT's director for approaching the Governor's office regarding the Board's proposed change in Administrative Directive 09-01.

- VI. **NEXT MEETING** – The next meeting is scheduled for Wednesday, November 15, 2017, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.
- VII. **ADJOURNMENT** – Ms. Kimura made a motion to adjourn the meeting and Vice Chair Cundiff seconded the motion; the meeting adjourned at 12:03 p.m.

### **III. Old Business**

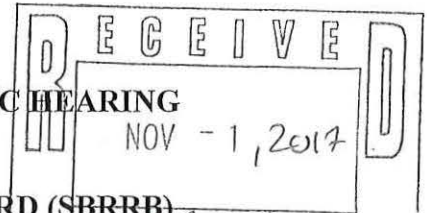
A. Discussion and Action on the Small Business  
Statement After Public Hearing and Proposed  
Amendments to HAR Title 12, Chapter 15, Hawaii  
**Workers' Compensation Medical Fee Schedule** and  
Exhibit A., **Workers' Compensation Supplemental  
Medical Fee Schedule**, promulgated by DLIR

**SMALL BUSINESS STATEMENT "AFTER" PUBLIC HEARING**

**To The**

**SMALL BUSINESS REGULATORY REVIEW BOARD (SBRRB)**

(11/15/17)



Department or Agency: Department of Labor and Industrial Relations (DLIR)

Administrative Rule Title and Chapter: Title 12, Chapter 15

Chapter Name: Hawaii Workers' Compensation Medical Fee Schedule and Exhibit A  
(Workers' Compensation Supplemental Medical Fee Schedule)

Contact Person/Title: JoAnn A. Vidinhar, Administrator, Disability Compensation  
Division

Phone Number: 587-8774

E-Mail Address: [Joann.A.Vidinhar@hawaii.gov](mailto:Joann.A.Vidinhar@hawaii.gov)

Date: November 15, 2017

A. Statement of the topic of the proposed rules or a general description of the subjects involved: Proposed amendments to Hawaii Administrative Rules (HAR), relating to Title 12, Chapter 15 (Hawaii Workers' Compensation Medical Fee Schedule and Exhibit A)

- Amendments to §12-15-32, §12-15-34, §12-15-90, and Exhibit A.
- We are proposing to amend Sections 12-15-32 and 12-15-34, HAR, by allowing physicians and providers of service other than physicians, respectively, to transmit treatment plans by mail or facsimile to an address or facsimile number provided by the employer. The proposed changes implement Act 101, effective June 21, 2016, which adds a new section 386-21.2 to the workers' compensation law, entitled "Treatment plans".
- We are also proposing to amend Section 12-15-90, HAR, and billing codes in Exhibit A, pursuant to section 386-21(c), HRS, which requires the director to update the fee schedule required by this section every three years or annually. Comprehensive MFS surveys were conducted in 2014 and 2016 to update the current fee schedule dated January 1, 2014. However, due to testimonies at the public hearings, the department deferred adoption of the previous proposed MFS administrative rules and Exhibit A. The proposed change to the administrative rules in Section 12-15-90, HAR, changes the effective date of Exhibit A, Workers' Compensation Supplemental Medical Fee Schedule, to January 1, 2018.
- Fees in Exhibit A, Workers' Compensation Supplemental Medical Fee Schedule, are amended.

- B. The draft rules were available for viewing in person at the Disability Compensation Division (DCD), 830 Punchbowl Street, Room 209; on the DCD website at <http://labor.hawaii.gov/dcd>; and on the Lieutenant Governor's Website pursuant to HRS §92-7 since September 25, 2017, one month before the public hearing which was held on October 26, 2017.
- C. Rule Description: Amendment.
- D. Will the proposed rule(s) affect small business? Yes.
- E. 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? No.
- F. Is the proposed rule being adopted pursuant to emergency rulemaking? No.
- I. Please explain how the agency involved small business in the development of the proposed rules.

On February 17, 2017, DLIR's R & S Office sent letters to five prepaid health care plan contractors (PHCPC) requesting their schedule of all maximum allowable medical fees (prevalent physician fee without tax) for a non-work related injury. The survey was conducted using the Auditor's recommendations of using frequently transacted CPT codes. These frequently transacted codes came from four large self-insured carriers including the Department of Human Resources Development (DHRD), Department of Education (DOE), University of Hawaii (UH), and the City & County of Honolulu (C & C), and the National Council on Compensation Insurance (NCCI) who gathers data from Hawaii's private WC insurance carriers.

On February 17, 2017, R&S also sent letters to nine dental insurers requesting their 2017 Hawaii schedule of all maximum allowable dental fees (prevalent non-facility dental fee without tax) according to the 2016 American Dental Association's Current Dental Terminology (CDT) and the number of subscribers and dependents covered by their plan in Hawaii. The dental survey was also conducted using the Auditor's methodology of selecting the CDT codes transacted in workers' compensation cases in at least two of the three years under review. Only eight dental insurers responded.

Codes in Exhibit A will include the following changes due to the survey of prevailing charges. Exhibit A will contain a total of 869 codes (822 CPT, 45 CDT, and two DLIR created codes). The changes to each section in Exhibit A are as follows:

Evaluation and Management: 16 codes are retained and 19 new consistently transacted codes that have a survey average above 2017 Medicare Par plus 10% are added. This represents a 20.5 average percent increase between the 2014 and the proposed 2018 Exhibit A.



Medicine: 66 codes are retained and 93 new codes that have a survey average above 2017 Medicare Par plus 10% are added. This represents a 3.4 average percent increase between the 2014 and the proposed 2018 Exhibit A.

Radiology: 117 codes are retained and 61 new codes that have a survey average above 2017 Medicare Par plus 10% are added. This represents a 0.1 average percent increase between the 2014 and the proposed 2018 Exhibit A.

Surgery: 235 codes are retained and 215 new codes that have a survey average above 2017 Medicare Par plus 10% are added. This represents a 2.5 average percent increase between the 2014 and the proposed 2018 Exhibit A.

Two DLIR created codes in Special Evaluation and Management Services: There is an increase of 2.9% based on the CPI-U (all items) percent change over three years (2014-2016).

Dental Services: 25 codes are retained and 20 new consistently transacted codes are added. This represents a 9.6 average percent increase between the 2014 and the proposed 2018 Exhibit A.

By letter dated June 22, 2017, DLIR requested from the Department of Commerce and Consumer Affairs (DCCA) and the Insurance Commissioner an assessment by the NCCI and review by DCCA 's actuary regarding the proposed 2018 Exhibit A. By response dated July 19, 2017, DCCA reported that NCCI estimates that the impact on overall workers' compensation system costs in Hawaii due to the physician fee schedule change is an increase of 0.9% (\$2 M). The DCCA consulting actuary, Randy Jacobson, in an independent analysis, found the NCCI's methodologies used in determining the overall impact to be reasonable and logical. The DCCA actuary was also asked to comment on the effect the proposed changes will have on motor vehicle insurance since the personal injury protection benefits ("PIP") under motor vehicle insurance is tied to the workers' compensation fee schedule. The DCCA actuary's analysis indicates that if NCCI's assumptions for medical costs are applied to PIP, then there will also be an increase of 1.5% to PIP rates.

- a. Were there any recommendations incorporated into the proposed rules? No.

II. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

A notice of public hearing was published in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on September 25, 2017 for the public

hearing held on October 26, 2017. The notice was also posted on the Department of Labor & Industrial Relations/Disability Compensation Division and Lt. Governor's website.

2. A summary of the public's and small businesses' comments.

There were a total of fourteen (14) written testimonies received, six (6) of which were also given orally. The majority of the testimonies support the proposed amendments and adjustment of the fees in the Workers' Compensation Medical Fee Schedule and support the Department's efforts to increase injured workers' access to medical care and to receive timely care for a safe return to work.

Three testimonies support the proposed amendments to section 12-15-32 and 12-15-34 to allow treatment plans to be faxed instead of mailed and one of these testimonies also requests that other forms of mutually agreed upon electronic treatment plan submissions be allowed.

One testimony recommends that the Consultation Codes should be increased and the entire Radiology section be removed from Exhibit A. This testimony also mentioned that 4 of the codes listed in Exhibit A are bundled by Medicare and should not be included in Exhibit A.

Two testimonies strongly oppose the proposed increases to the Acupuncture rates because they opine that there is no shortage of Acupuncture providers, the increase is not justified, and the increase will also affect the no-fault insurance claims. Six testimonies fully support the increase in Acupuncture rates because they have not had an increase in about 30 years. One testimony in support of the increase, also mentions that acupuncture is a first line non-pharmacologic therapy in coping with the opioid crisis.

Two testimonies request that the new physical therapy evaluation codes be added to the proposed Exhibit A. They also request an increase in the rates for Functional Capacity Evaluation (FCE) and Work Conditioning/Hardening.

One testimony requests an addition of a code for needle electromyography. Another testimony requests that the Exhibit A be increased by 30%.

3. A summary of the agency's response to those comments.

The department states that the adjustments in the proposed fees in Exhibit A are reasonable based on comprehensive survey results. Any other changes to the fees need to be surveyed for future public hearings.

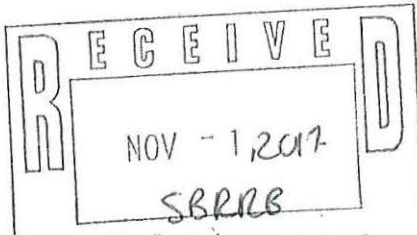
Amendments to Sections 12-15-32 and 12-15-34 are based on Act 101, effective June 21, 2016 which allow treatment plans to be faxed. Act 101 created Section 386-21.2, HRS, which also allows physicians and providers of service to transmit the treatment plan by other secure electronic means beginning January 1, 2021.

Bundled codes (services) are not payable in the Workers' Compensation Medical Fee Schedule as stated at the end of Exhibit A. These codes will be reviewed in our next comprehensive survey of the fee schedule.

Hawaii's Medical Fee Schedule is based upon the Medicare Fee Schedule and not the Medicaid Fee Schedule.

4. The number of persons who:
  - i. Attended the public hearing: 23
  - ii. Testified at the hearing: 6
  - iii. Submitted written comments: 14 (including the 6 who testified)
5. Was a request made at the hearing to change the proposed rule in a way that affected small business?
  - i. If Yes, was the change adopted?
  - ii. If No, please explain the reason the change was not adopted and the problems or negative result of the change.

At their meeting on August 16, 2017, the Small Business Regulatory Review Board registered no objections and gave their unanimous approval of these proposed rules to proceed to public hearing. Since there were no major objections at the public hearing (except for the conflicting opinions regarding the acupuncture rates), the Department recommends approval of the proposed amendments as it will benefit small business and the proposed fee changes are reasonable based on survey results. The proposed changes to Exhibit A may negatively impact small business if the adjustment in fees results in higher premium costs for workers' compensation and commercial no-fault premiums per actuary. On the other hand, there are medical providers that are small business owners themselves and would benefit from the proposed increase in fees. The Department strongly recommends approval of the proposed rules and fees.



SUMMARY OF TESTIMONIES

Chapter 12-15

Hawaii Administrative Rules

Relating to the Workers' Compensation Medical Fee Schedule and Exhibit A, the Supplemental Workers' Compensation Medical Fee Schedule

November 2, 2017

Section 12-15-32 Physicians and Section 12-15-34 Providers of service other than physicians:

Testimony: Norman Kawakami, President, of CHART; and Gregg Pacilio, PT and Board President of the Hawaii Chapter of the American Physical Therapy Association (HAPTA) support the proposed changes to allow treatment plans to be faxed because it is faster and will allow an electronic record of the date sent. Kris Kadzielawa of Solera Integrated Medical Solutions (IMS) also supports the proposed changes and in addition requests that other forms of mutually agreed upon electronic treatment plan transmissions be allowed in addition to mail and facsimile numbers provided by the employer.

DLIR Response: Act 101, effective June 21, 2016, created a new section 386-21.2 in the workers' compensation law, entitled "Treatment plans", which allows the physician to transmit a treatment plan to an employer by mail or facsimile to an address or facsimile number provided by the employer. Beginning January 1, 2021, physicians and other providers of service may also transmit the treatment plan by mail, facsimile, or by secure electronic means.

Section 12-15-90 Workers' compensation medical fee schedule and Exhibit A:

1. Testimony: IMS comments that the overall projected cost increase with the proposed changes is an increase of 7-8%. IMS offers the following comments and recommendations which would reduce the respective increases by approximately 50%.
  - (a) Dental services are projected to increase by 14%. IMS supports this increase since dental reimbursement has not been adjusted in some time and are below market rates.

- (b) Medicine codes (including Evaluation and Management (E&M) codes) receive an overall 7-8% increase to attract treating MDs to workers' compensation but the corresponding Consultation codes have been decreased. IMS recommends that the Consultation codes be increased to the corresponding Initial Office or Hospital E&M codes.

DLIR Response: Medicare has eliminated the consult codes and doctors are allowed to bill the appropriate E&M codes that best describes the services performed in consultations. The fees in the proposed 2018 Exhibit A for consults are based on the results of a statistically valid comprehensive survey.

- (c) Radiology codes are increased about 5%. IMS recommends that the entire Radiology section be removed from Exhibit A and radiology reimbursement should follow Medicare, resulting in a 15% decrease in Radiology expenses.

DLIR Response: Radiology codes were added to Exhibit A in accordance with the Legislative Auditor's methodology to include transacted codes. Those codes were surveyed to arrive at the proposed fees.

- (d) The cost for Surgery (sic) services will increase by close to 30% due to the addition of acupuncture codes to the Medicine section. IMS strongly opposes the increase in Acupuncture rates because there is no documented shortage of Acupuncture providers and the increase is not justified by market rates.

DLIR Response: Acupuncture codes are classified under the Medicine Section in the CPT book. The acupuncture fees in the proposed 2018 Exhibit A are based on the results of a statistically valid comprehensive survey.

- (e) IMS recommends the removal of the following codes: 99000, 99002, 99050, 99053 because they are bundled in Medicare and their value is already factored into the E&M codes.

DLIR Response: We thank IMS for bringing these codes to our attention. Bundled codes are not allowed and there is a provision in the Medical Fee Schedule that

states bundled codes are not payable. We will review these codes in our next update of the fee schedule.

2. Testimony: IMS strongly opposes the proposed increase for Acupuncture rates because there is no documented shortage of Acupuncture providers and the increase is not justified by market rates. Acupuncture visits will rise to approximately \$158-167 per visit, representing an increase of 215-228%. Medicare does not pay for Acupuncture and it is not included in the Medicare Fee Schedule. IMS recommends we use the current values for the Acupuncture codes without electrical stimulation (97810, 97811) and add 10% to the new codes with electrical stimulation (97813, 97814).

IMS also questions the validity of the data supporting the increase and would like to review the data.

Testimony: Linda O'Reilly of Hawaii Insurers Council (HIC) also opposes the increases in the acupuncture fees. She mentions Act 124 passed by the 2017 Legislature that changed the reimbursement rate for acupuncture from \$75 per visit to whatever the workers' compensation medical fee schedule provides. HIC believes the proposed increase would result in more than \$100 per visit and will affect both the workers' compensation and motor vehicle insurance claims, resulting in an increase in premium costs which will likely be charged to employers and consumers of Hawaii.

DLIR Response: The proposed 2018 Exhibit A is based on Act 97 (SLH 2013) and the Legislative Auditor's methodology to adjust the workers' compensation medical fee schedule. The codes in the 2018 proposed WC maximum allowable fees are reasonable because they are based on statistically valid survey results.

3. Testimony: Samantha Preis, President of AcuPlan Hawaii; Karen Altergott L.Ac.; Dr. Joni Kroll, D.Ac., of Kailua Acupuncture Clinic; Koji Kajiwara, L.Ac., of Healing Art Inc.; and Dr. Wai Hoa Low, DAOM, President of Institute of Clinical Acupuncture and Oriental Medicine (ICAOM) are in full support of the proposed changes to the acupuncture fees. Acupuncture is not part of Medicare and has not experienced any increase in fees for approximately 30 years. They believe that it is about time that their fees are brought up to local and national standards. Justin

Hays, L.Ac., of Maui Acupuncture requests adopting a workers' compensation payment schedule that is in alignment with the cost of medicine today. ICAOM also mentions that acupuncture can reduce the opioid epidemic since it has been recommended that acupuncture is a first line non-pharmacologic therapy in coping with the opioid crisis.

DLIR Response: The proposed 2018 Exhibit A is based on Act 97 (SLH 2013) and the Legislative Auditor's methodology to adjust the workers' compensation medical fee schedule. The codes in the 2018 proposed WC maximum allowable fees are reasonable because they are based on statistically valid survey results.

4. Testimony: CHART; HAPTA; Deborah Lockett, MPH, Vice President of PT Hawaii, Inc.; and Scott McCaffrey, MD, Past President of Work Injury Medical Association of Hawaii (WIMAH) support the proposed amendments and support steps towards increasing the injured workers' access to medical care and to receive timely care for safe return to work. Dr. McCaffrey states that DLIR and all stakeholders of the workers' compensation system should work together to achieve mutually agreeable goals to overcome the lack of participation by local doctors in treating the injured workers.

DLIR Response: The DLIR takes seriously the issue of physician shortages in workers' compensation. DLIR is aware that physicians and other health care providers believe their fees are inadequate. DLIR agrees with Dr. McCaffrey that all stakeholders in the workers' compensation system should work together to achieve mutually agreeable goals. In 2016, DLIR convened a Working Group consisting of the various workers' compensation stakeholders (HCR 168). The Group discusses ways to improve the workers' compensation process.

5. Testimony: HAPTA and PT Hawaii Inc. request that the new physical therapy evaluation codes (97161, 97162, 97163, 97164) be added to the proposed Exhibit A. In addition, HAPTA recommends increasing the Functional Capacity Evaluation (FCE) reimbursement for code 97750 to \$50.00/15 minutes instead of \$40.25/15 minutes to reflect the FCE treatment and time to complete the report. HAPTA also recommends increasing the reimbursement for Work Conditioning/Hardening to \$250.00 instead of the proposed \$119.69 for the initial 2 hours. CHART also recommends

increasing the reimbursement for code 97545 Work Conditioning/Work Hardening to at least 40% higher than the current charge of \$119.69 to be more reflective of the entire scope of the service involved.

DLIR Response: The 2013 Legislature passed Act 97 which require the Legislative Auditor to assist the director of DLIR to identify which fee adjustments are necessary to ensure that injured employees have better access to treatment, and determine a methodology for conducting the statistically valid surveys of prevailing charges that are necessary for adjustment of the fees. The proposed Exhibit A is based on the Legislative Auditor's methodology to use transacted codes (codes that have been delivered and paid for in at least two of a three-year period). These transacted codes were surveyed and are included in the proposed 2018 Exhibit A. The DLIR opines that the 2018 proposed WC maximum allowable fees are reasonable because they are above Medicare plus 10% and based on statistically valid survey results.

Adding additional codes to the proposed Exhibit A is a substantive change and was not noticed for this public hearing. The DLIR will consider this recommendation and may address it at a future public hearing.

6. Testimony: Scott Morioka, MD, President of Hawaii Society of Physical Medicine and Rehabilitation testified that code 95886 for needle electromyography is not included with the other electromyogram/nerve conduction testing (EMG/NCS) codes. This code is important for ruling out radiculopathy because it involves testing five or more muscles. Dr. Morioka recommends that this code 95886 be included in Exhibit A.

DLIR Response: The code was not added to Exhibit A based on the statistically valid survey results being less than Medicare plus 10 percent, pursuant to Section 386-21(c), HRS. Providers may be reimbursed at 110% of the Medicare Fee Schedule applicable to Hawaii.

7. Testimony: Paola Grover, Co-Owner of PT Hawaii Inc. requests that Exhibit A be increased by at least 30% over the Medicaid fee schedule.

DLIR Response: The Hawaii Workers' Compensation Medical Fee Schedule is based upon the Medicare Fee Schedule and not the Medicaid Fee Schedule.



DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR

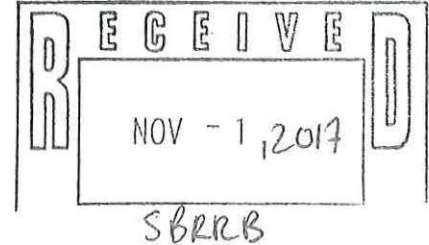


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November 2, 2017



TO: The Honorable David Y. Ige  
Governor, State of Hawaii

FROM: Linda Chu Takayama, Director  
Department of Labor and Industrial Relations

SUBJECT: Approval to Adopt Amendments to Hawaii Administrative Rules in Title 12, Chapter 15, Workers' Compensation Medical Fee Schedule and the Workers' Compensation Supplemental Medical Fee Schedule.

In accordance with Administrative Directive No. 09-1, the Department of Labor and Industrial Relations ("DLIR") respectfully requests your final approval to amend Hawaii Administrative Rules in Title 12, Chapter 15 Workers' Compensation Medical Fee Schedule, and Exhibit A, entitled "Workers' Compensation Supplemental Medical Fee Schedule", effective January 1, 2018.

The facts and circumstances regarding the proposed amendments have not changed from that provided in our August 23, 2017 memo to you. The reasons for the proposed changes as set forth in the August 23, 2017 memo are explained in detail below.

The department proposes amendments to Sections 12-15-32 and 12-15-34, in Title 12, Chapter 15, Hawaii Administrative Rules (HAR), pursuant to Act 101, effective June 21, 2016, which adds a new section 386-21.2, entitled "Treatment plans", to the workers' compensation law to allow physicians and providers of service other than physicians for workers' compensation claims to transmit a treatment plan by mail or facsimile to an address or facsimile number provided by the employer.

DLIR also proposes to amend Section 12-15-90 of the Workers' Compensation Medical Fee Schedule Administrative Rules, in Title 12, Chapter 15, HAR, and billing codes in the Workers' Compensation Supplemental Medical Fee Schedule (MFS), also known as "Exhibit A", pursuant to section 386-21(c), Hawaii Revised Statutes (HRS), which requires the director to update the fee schedule required by this section every three years or annually. Comprehensive MFS surveys were conducted in 2014 and 2016 to update the current fee schedule dated January 1, 2014. However, due to testimonies at the public hearings, the department deferred adoption of

the proposed MFS administrative rules and Exhibit A. The proposed change to the administrative rules in Section 12-15-90, HAR, changes the effective date of Exhibit A, Workers' Compensation Supplemental Medical Fee Schedule, to January 1, 2018.

The proposed amendments to section 12-15-90, HAR, and billing codes in Exhibit A, were surveyed and amended pursuant to Act 97, (SLH 2013), which required the State Auditor to assist DLIR in the administrative adjustment of the workers' compensation medical fee schedule. The DLIR conducted the survey using the Auditor's recommendation to include current procedural terminology (CPT) codes representing medical services that have been delivered and paid for ("transacted CPT codes") in at least two of a three-year period and to allow the Director to decide whether to retain or remove dental codes from the fee schedule.

On February 17, 2017, DLIR's Research & Statistics Office (R&S) conducted a comprehensive survey of prevalent charges for services received by Hawaii's providers for a 3 year period. R&S sent letters to five prepaid health care plan contractors (PHCPC) requesting their schedule of all maximum allowable medical fees (prevalent physician fee without tax) for a non-work related injury. The survey was conducted using the Auditor's recommendations of using frequently transacted CPT codes. These frequently transacted codes came from four large self-insured employers including the Department of Human Resources Development (DHRD), Department of Education (DOE), University of Hawaii (UH), and the City & County of Honolulu (C & C), and the National Council on Compensation Insurance (NCCI), who gathers data from Hawaii's private workers' compensation insurance carriers. One PHCPC provided R&S with an outdated schedule of fees and could not update it before the survey close date. Therefore, the 2017 survey summary is based on responses from four PHCPC.

On February 17, 2017, R&S also sent letters to nine dental insurers, which were chosen from a list provided by the Department of Commerce and Consumer Affairs (DCCA), requesting their 2017 Hawaii schedule of all maximum allowable dental fees (prevalent non-facility dental fee without tax) according to the 2016 American Dental Association's Current Dental Terminology (CDT) and the number of subscribers and dependents covered by their plans in Hawaii. The dental survey was also conducted using the auditor's methodology. Only eight dental insurers responded.

R&S analyzed the 2014 Workers' Compensation Medical Fee Schedule, 2017 Medicare Fee Schedule, 2017 Federal Workers' Compensation Fee Schedule (OWCP), and 2017 survey results from the prepaid health care plan contractors to determine the prevailing charges for eligible CPT codes for a new proposed 2018 medical fee schedule.

Codes in Exhibit A will include the following changes due to the survey of prevailing charges. Exhibit A will contain a total of 869 codes (822 CPT, 45 CDT, and two DLIR created codes). The changes to each section in Exhibit A are as follows:

Evaluation and Management: 16 codes are retained and 19 new consistently transacted codes that have a survey average above 2017 Medicare Par plus 10% are added. This

represents a 20.5 average percent increase between the 2014 and the proposed 2018 Exhibit A.

Medicine: 66 codes are retained and 93 new codes that have a survey average above 2017 Medicare Par plus 10% are added. This represents a 3.4 average percent increase between the 2014 and the proposed 2018 Exhibit A.

Radiology: 117 codes are retained and 61 new codes that have a survey average above 2017 Medicare Par plus 10% are added. This represents a 0.1 average percent increase between the 2014 and the proposed 2018 Exhibit A.

Surgery: 235 codes are retained and 215 new codes that have a survey average above 2017 Medicare Par plus 10% are added. This represents a 2.5 average percent increase between the 2014 and the proposed 2018 Exhibit A.

Two DLIR created codes in Special Evaluation and Management Services: There is an increase of 2.9% based on the CPI-U (all items) percent change over three years (2014-2016).

Dental Services: 25 codes are retained and 20 new consistently transacted codes are added. This represents a 9.6 average percent increase between the 2014 and the proposed 2018 Exhibit A.

By letter dated June 22, 2017, DLIR requested from the Department of Commerce and Consumer Affairs (DCCA) and the Insurance Commissioner an assessment by the NCCI and review by DCCA's actuary regarding the proposed 2018 Exhibit A. By response dated July 19, 2017, DCCA reported that NCCI estimates that the impact on overall workers' compensation system costs in Hawaii due to the physician fee schedule change is an increase of 0.9% (\$2 M). The DCCA consulting actuary, Randy Jacobson, in an independent analysis, found the NCCI's methodologies used in determining the overall impact to be reasonable and logical. The DCCA actuary was also asked to comment on the effect the proposed changes will have on motor vehicle insurance since the personal injury protection benefits ("PIP") under motor vehicle insurance is tied to the workers' compensation fee schedule. The DCCA actuary's analysis indicates that if NCCI's assumptions for medical costs are applied to PIP, then there will also be an increase of 1.5% to PIP rates.

The Hawaii Workers' Compensation Supplemental Medical Fee Schedule is based upon the Medicare Fee Schedule. When the Medicare reimbursement rates drop or increase, there is a corresponding drop or increase in the workers' compensation reimbursement rates. It should be noted that the reimbursement rates of medical providers have failed to keep pace with the higher costs of medical care, leading some physicians to opt out of providing treatment to injured workers in the workers' compensation system. Section 386-21, HRS, allows the Director to determine if the allowance under the Medicare program is reasonable. The proposed fees in Exhibit A, in general, will reimburse medical providers at a higher rate than Medicare; as it will help to ensure at all times, a standard of services and care intended for our injured workers.

The Hawaii Small Business Regulatory Flexibility Act (Chapter 201M) and the Governor's Administrative Directive No. 09-01, requires an assessment of the impact on small business. Assessments such as these were conducted in coordination with the NCCI and reviewed by Randy Jacobson, the DCCA's consulting actuary. NCCI estimates the impact of the changes to the Hawaii Workers' Compensation Supplemental Medical Fee Schedule proposed to be effective January 1, 2018, would result in an increase of 0.9% (\$2M) on Hawaii's overall workers' compensation system costs. The consulting actuary agrees with NCCI's assessment of an overall increase of 0.9% on workers' compensation costs and adds that there will also be an increase of 1.5% on the no-fault personal injury protection (PIP) rates.

DLIR submitted a Small Business Impact Statement with the proposed rules and Exhibit A to the Small Business Regulatory Review Board (SBRRB) for their review on July 28, 2017. DCD Administrator, JoAnn Vidinhar, presented the proposed amendments to Anthony Borge, Chairperson, and members of the SBRRB, at their August 16, 2017 meeting.

Per memo dated August 17, 2017, Chairman Borge kindly notified the DLIR that after review of the proposal and hearing from testifiers in favor of the amendments, the Board members unanimously agreed to recommend that the proposed rules proceed to public hearing.

As Governor, you approved the request to hold the public hearing on September 11, 2017. The notice of public hearing was published on September 25, 2017 in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island newspapers.

The public hearing was held in Honolulu on October 26, 2017 at 830 Punchbowl Street, Rooms 310 and 313. Twenty-three people attended the public hearing; six provided oral testimony and fourteen (including the oral testifiers) presented written testimony.

The following testimonies were submitted:

- | <u>NAME</u>                       | <u>REPRESENTING</u>  |
|-----------------------------------|--|
| 1. Kris Kadzielawa,               | Managing Director, of Solera Integrated Medical Solutions (IMS)  |
| 2. Linda O'Reilly,                | Assistant Vice President of Claims (Workers' Compensation) of First Insurance Co. on behalf of Hawaii Insurers Council |
| 3. Scott McCaffrey, MD,           | Past President of Work Injury Medical Association of Hawaii (WIMAH)  |
| 4. Deborah Luckett, MPH,          | Vice President of PT Hawaii, Inc.  |
| 5. Samantha Preis,                | President of AcuPlan Hawaii  |
| 6. Herbert Yee, PT,               | for Hawaii Chapter – American Physical Therapy Association (HAPTA)   |
| 7. Norman Kawakami,               | President, of CHART  |
| 8. Justin Hays, Lac,              | Maui Acupuncture   |
| 9. Karen Altergott L.Ac.          |  |
| 10. Dr. Joni Kroll, D.Ac., L.Ac., | of Kailua Acupuncture Clinic   |

11. Dr. Wai Hoa Low, DAOM, President, of Institute of Clinical Acupuncture and Oriental Medicine (ICAOM)
12. Koji Kajiwara, L.Ac, of Healing Art Inc.
13. Scott Morioka, MD, Hawaii Society of Physical Medicine and Rehabilitation
14. Paola Grover of PT Hawaii Inc.

A more detailed summary of testimonies is attached. A brief summary of the testimonies follows.

The majority of testifiers support the proposed amendments and adjustment of the fees in the Workers' Compensation Medical Fee Schedule (WCMFS) and Exhibit A and support the Department's efforts to increase injured workers' access to medical care and to receive timely care for a safe return to work.

Three testimonies support the proposed amendments to section 12-15-32 and 12-15-34 to allow treatment plans to be faxed instead of mailed and one of these testimonies also requests that other forms of mutually agreed upon electronic treatment plan submissions be allowed.

One testimony recommends that the Consultation Codes should be increased and the entire Radiology section be removed from Exhibit A. This testimony also mentions that 4 of the codes listed in Exhibit A are bundled by Medicare and should not be included in Exhibit A.

Two testimonies strongly oppose the proposed increases to the Acupuncture rates because they opine that there is no shortage of Acupuncture providers, the increase is not justified, and the increase will also affect the no-fault insurance claims. Six testimonies fully support the increase in Acupuncture rates because they have not had an increase in about 30 years. One testimony in support of the increase, also mentions that acupuncture is a first line non-pharmacologic therapy in coping with the opioid crisis.

Two testimonies request that the new physical therapy evaluation codes be added to the proposed Exhibit A. They also request an increase in the rates for Functional Capacity Evaluation (FCE) and Work Conditioning/Hardening.

One testimony requests an addition of a code for needle electromyography. Another testimony requests that Exhibit A be increased by 30% over the Medicaid Fee Schedule.

The Department provides the following brief responses to some of the testimonies.

The majority of testimonies submitted favors the proposed amendments including the proposed changes to the Supplemental Medical Fee Schedule known as Exhibit A. The Department states that the adjustments in the proposed fees in Exhibit A are reasonable based on comprehensive survey results. Any other changes to the fees need to be surveyed for future public hearings.

Amendments to Sections 12-15-32 and 12-15-34 are based on Act 101, effective June 21, 2016, which allow treatment plans to be faxed. Act 101 created Section 386-21.2, HRS, which also allows physicians and providers of service to transmit the treatment plan by other secure electronic means beginning January 1, 2021.

The Honorable David Y. Ige  
November 2, 2017  
Page 6

Bundled codes (services) are not payable in the Workers' Compensation Medical Fee Schedule as stated at the end of Exhibit A. These codes will be reviewed in our next comprehensive survey of the fee schedule.

Hawaii's Medical Fee Schedule is based upon the Medicare Fee Schedule and not the Medicaid Fee Schedule.

In summary, since there were no major objections at the public hearing (except for the conflicting opinions regarding the acupuncture rates), the Department strongly recommends approval of the proposed amendments and fees.

Therefore, I respectfully request your approval, at your earliest convenience, to adopt the amendments as proposed to Title 12, Chapter 15, workers' compensation medical fee schedule including Exhibit A, entitled the "Workers' Compensation Supplemental Medical Fee Schedule" dated January 1, 2018.

Enclosures

Three (3) copies of proposed rules in standard format  
Summary of Testimonies of the October 26, 2017 Public Hearing

c: Department of Budget and Finance  
Department of Business, Economic Development and Tourism/Small Business  
Advisory Board  
Director of Commerce and Consumer Affairs,  
Insurance Commissioner

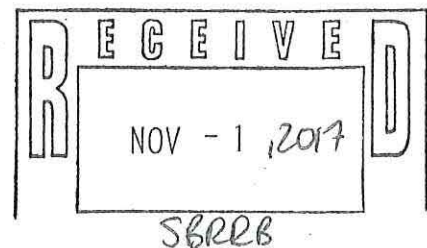
STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendments to Chapter 12-15  
Hawaii Administrative Rules

November 2, 2017

**SUMMARY**

1. §12-15-32 is amended.
2. §12-15-34 is amended.
3. §12-15-90 is amended.
4. Exhibit A is amended.



§12-15-32 Physicians. (a) Frequency and extent of treatment shall not be more than the nature of the injury and the process of a recovery requires. Authorization is not required for the initial fifteen treatments of the injury during the first sixty calendar days.

(b) If the physician believes treatments in addition to that allowed by subsection (a) are required, the physician shall transmit a treatment plan to the employer by mail or facsimile under separate cover at least seven calendar days prior to the start of the additional treatments to an address or facsimile number provided by the employer. A treatment plan shall be for one hundred twenty calendar days and shall not exceed fifteen treatments within that period. Treatments provided with less than seven calendar days notice are not authorized. A complete treatment plan shall contain the following elements:

- (1) Projected commencement and termination dates of treatment;
- (2) A clear statement as to the impression or diagnosis;
- (3) A specific time schedule of measurable objectives to include baseline measurements at the start of the treatment plan and projected goals by the end of the treatment plan;
- (4) Number and frequency of treatments;
- (5) Modalities and procedures to be used;  
and
- (6) An estimated total cost of services.

Treatment plans which do not include the above specified elements but which are reasonable and necessary may not be denied by the employer, but upon written notification from the employer, the physician shall correct the deficiency(s) and the employer's liability is deferred as long as the treatment plan



§12-15-32

remains deficient. Neither the injured employee nor the employer shall be liable for services provided under a treatment plan that remains deficient. Both the front page of the treatment plan and the envelope in which the plan is mailed or the cover sheet if the plan is sent by facsimile shall be clearly identified as a "WORKERS' COMPENSATION TREATMENT PLAN" in capital letters and in no less than ten point type.

(c) A treatment plan shall be deemed received by an employer when the plan is sent by mail or facsimile with reasonable evidence showing that the treatment plan was received.

(d) The employer may file an objection to the treatment plan with documentary evidence supporting the denial and a copy of the denied treatment plan with the director, copying the physician and the injured employee. Both the front page of the denial and the envelope in which the denial is filed shall be clearly identified as a "TREATMENT PLAN DENIAL" in capital letters and in no less than ten point type. The employer shall be responsible for payment for treatments provided under a complete treatment plan until the date the objection is filed with the director. Furthermore, the employer's objection letter must explicitly state that if the attending physician or the injured employee does not agree with the denial, they may request a review by the director of the employer's denial within fourteen calendar days after postmark of the employer's denial, and failure to do so shall be construed as acceptance of the employer's denial.

(e) The attending physician or the injured employee may request in writing that the director review the employer's denial of the treatment plan. The request for review shall be filed with the director, copying the employer, within fourteen

calendar days after postmark of the employer's denial. A copy of the denied treatment plan shall be submitted with the request for review. Both the front page of the request for review and the envelope in which the request is filed shall be clearly identified as a "REQUEST FOR REVIEW OF TREATMENT PLAN DENIAL" in capital letters and in no less than ten point type. For cases not under the jurisdiction of the director at the time of the request, the injured employee shall be responsible to have the case remanded to the director's jurisdiction. Failure to file a request for review of the employer's denial with the director within fourteen calendar days after postmark of the employer's denial shall be deemed acceptance of the employer's denial.

(f) The director shall issue a decision, after a hearing, either requiring the employer to pay the physician within thirty-one calendar days in accordance with the medical fee schedule if the treatments are determined to be reasonable and necessary or disallowing the fees for treatments determined to be unreasonable or unnecessary. Disallowed fees shall not be charged to the injured employee.

(g) The decision issued pursuant to subsection (f) shall be final unless appealed pursuant to section 386-87, HRS. The appeal shall not stay the director's decision.

(h) The psychiatric evaluation or psychological testing with the resultant reports shall be limited to four hours unless the physician submits prior documentation indicating the necessity for more time and receives pre-authorization from the employer. Fees shall be calculated on an hourly basis as allowed under Medicare.

(i) For physical medicine, treatments may include up to four procedures, up to four modalities, or a

§12-15-32

combination of up to four procedures and modalities, and the visit shall not exceed sixty minutes per injury. When treating more than one injury, treatments may include up to six procedures, up to six modalities, or a combination of up to six procedures and modalities, and the entire visit shall not exceed ninety minutes.

(j) Any physician who exceeds the treatment guidelines without proper authorization shall not be compensated for the unauthorized services.

(k) No compensation shall be allowed for preparing treatment plans and written justification for treatments which exceed the guidelines.

(l) Failure to comply with the requirements in this section may result in denial of fees.

(m) Treatment, prescribed on an in-patient basis in a licensed acute care hospital where the injured employee's level of care is medically appropriate for an acute setting as determined by community standards, are excluded from the frequency of treatment guidelines specified herein. [Eff 1/1/96; am 1/1/97; am ] (Auth: HRS §§386-21, 386-21.2, 386-26, 386-72) (Imp: HRS §§386-21, 386-21.2, 386-26, 386-27)

§12-15-34 Providers of service other than physicians. (a) Frequency and extent of treatment shall not be more than the nature of the injury and the process of a recovery require. Any health care treatment or service performed by a Hawaii licensed or certified provider of service other than a physician shall be directed by the attending physician based on a written prescription signed, dated, and approved by the attending physician. The prescription may authorize up to an initial fifteen treatments of the injury during the first sixty calendar days. For therapists, the prescription may authorize up to an initial twenty treatments of the injury during the first sixty calendar days.

(b) If the attending physician believes treatments in addition to that allowed by subsection (a) are required, the provider of service other than a physician, in lieu of the attending physician, may transmit a treatment plan for review and approval to the attending physician who shall, after approval, transmit the treatment plan to the employer by mail or facsimile under separate cover at least seven calendar days prior to the start of the additional treatments to an address or facsimile number provided by the employer. A treatment plan shall be for one hundred twenty calendar days and shall not exceed fifteen treatments within that period. Treatments provided with less than seven calendar days notice are not authorized. A complete treatment plan shall contain the following elements:

- (1) Projected commencement and termination dates of treatment;
- (2) A clear statement as to the impression or diagnosis;
- (3) A specific time schedule of measurable objectives to include baseline measurements at the start of the

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treatment plan and projected goals by the end of the treatment plan;

(4) Number and frequency of treatments;

(5) Modalities and procedures to be used;

and

Treatment plans which do not include the above specified elements but which are reasonable and necessary may not be denied by the employer, but upon written notification from the employer, the physician or the provider of service, with approval by the attending physician, shall correct the deficiency(s) and the employer's liability is deferred as long as the treatment plan remains deficient. Neither the injured employee nor the employer shall be liable for services provided under a treatment plan that remains deficient. Both the front page of the treatment plan and the envelope in which the plan is mailed or the cover sheet if the plan is sent by facsimile shall be clearly identified as a "WORKERS' COMPENSATION TREATMENT PLAN" in capital letters and in no less than ten point type.

(c) A treatment plan shall be deemed received by an employer when the plan is sent by mail or facsimile with reasonable evidence showing that the treatment plan was received.

(d) The employer may file an objection to the treatment plan with documentary evidence supporting the denial and a copy of the denied treatment plan with the director, copying the attending physician, the provider of service and the injured employee. Both the front page of the denial and the envelope in which the denial is filed shall be clearly identified as a "TREATMENT PLAN DENIAL" in capital letters and in no less than ten point type. The employer shall be responsible for payment for treatments provided under a complete treatment plan until the date the objection is filed with the director. Furthermore, the

employer's objection letter must explicitly state that if the attending physician or the injured employee does not agree with the denial, they may request a review by the director of the employer's denial within fourteen calendar days after postmark of the employer's denial, and failure to do so shall be construed as acceptance of the employer's denial.

(e) The attending physician or the injured employee may request in writing that the director review the employer's denial of the treatment plan. The request for review shall be filed with the director, copying the employer, within fourteen calendar days after postmark of the employer's denial. A copy of the denied treatment plan shall be submitted with the request for review. Both the front page of the request for review and the envelope in which the request is filed shall be clearly identified as a "REQUEST FOR REVIEW OF TREATMENT PLAN DENIAL" in capital letters and in no less than ten point type. For cases not under the jurisdiction of the director at the time of the request, the injured employee shall be responsible to have the case remanded to the director's jurisdiction. Failure to file a request for review of the employer's denial with the director within fourteen calendar days after postmark of the employer's denial shall be deemed acceptance of the employer's denial.

(f) The director shall issue a decision, after a hearing, either requiring the employer to pay the provider of service other than a physician within thirty-one calendar days in accordance with the medical fee schedule if the treatments are determined to be reasonable and necessary or disallowing the fees for treatments determined to be unreasonable or unnecessary. Disallowed fees shall not be charged to the injured employee.

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(g) The decision issued pursuant to subsection (f) shall be final unless appealed pursuant to section 386-87, HRS. The appeal shall not stay the director's decision.

(h) The provider of service other than a physician shall submit reports at least monthly to the attending physician and employer regarding an injured employee's progress. The preparation and submission of written reports or progress notes to the employer by the provider of service other than a physician are an integral part of the service fee.

(i) Treatments may include up to four procedures, up to four modalities, or a combination of up to four procedures and modalities, and the visit shall not exceed sixty minutes per injury. When treating more than one injury, treatments may include up to six procedures, up to six modalities, or a combination of up to six procedures and modalities, and the entire visit shall not exceed ninety minutes. This section applies to providers of service other than physicians including physical therapists, occupational therapists, massage therapists, and acupuncturists.

(j) Any provider of service other than a physician who exceeds the treatment guidelines without proper authorization shall not be compensated for the unauthorized services.

(k) No compensation shall be allowed for preparing treatment plans and written justification for treatments which exceed the guidelines.

(l) Failure to comply with the requirements in this section may result in denial of fees.

(m) Therapy by physical therapists and occupational therapists, prescribed on an in-patient basis in a licensed acute care hospital where the injured employee's level of care is medically appropriate for an acute setting as determined by community standards or, prescribed on an out-patient

§12-15-34

post-surgery basis not to exceed thirty calendar days,  
are excluded from the frequency of treatment  
guidelines specified herein. [Eff 1/1/96; am 1/1/97;  
am ] (Auth: HRS §§386-21, 386-  
21.2, 386-26, 386-72) (Imp: HRS §§386-21, 386-21.2,  
386-26, 386-27)



§12-15-90 Workers' compensation medical fee schedule. (a) Charges for medical services shall not exceed one hundred ten per cent of participating fees prescribed in the Medicare Resource Based Relative Value Scale System fee schedule (Medicare Fee Schedule) applicable to Hawaii or listed in exhibit A, located at the end of this chapter and made a part of this chapter, entitled "Workers' Compensation Supplemental Medical Fee Schedule", dated January 1, 2018. The Medicare Fee Schedule in effect on January 1, 1995 shall be applicable through June 30, 1996. Beginning July 1, 1996 and each calendar year thereafter, the Medicare Fee Schedule in effect as of January 1 of that year shall be the effective fee schedule for that calendar year.

(b) If maximum allowable fees for medical services are listed in both the Medicare Fee Schedule and the Workers' Compensation Supplemental Medical Fee Schedule, dated January 1, 2018, located at the end of this chapter as exhibit A, charges shall not exceed the maximum allowable fees allowed under the Workers' Compensation Supplemental Medical Fee Schedule, dated January 1, 2018, located at the end of this chapter as exhibit A.

(c) If the charges are not listed in the Medicare Fee Schedule or in the Workers' Compensation Supplemental Medical Fee Schedule, dated January 1, 2018, located at the end of this chapter as exhibit A, the provider of service shall charge a fee not to exceed the lowest fee received by the provider of service for the same service rendered to private patients. Upon request by the director or the employer, a provider of service shall submit a statement to the requesting party, itemizing the lowest fee received for the same health care, services, and supplies furnished to any private patient during the one-year period preceding the date of a particular charge. Requests shall be submitted in writing within twenty calendar days of receipt of a

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questionable charge. The provider of service shall reply in writing within thirty-one calendar days of receipt of the request. Failure to comply with the request of the employer or the director shall be reason for the employer or the director to deny payment.

(d) Fees listed in the Medicare Fee Schedule shall be subject to the current Medicare Fee Schedule bundling and global rules if not specifically addressed in these rules. The Health Care Financing Administration Common Procedure Coding System (HCPCS) alphabet codes adopted by Medicare will not be allowed, except for injections and durable medical equipment, unless specifically adopted by the director. The director may defer to a fee listed in the Medicare HCPCS Fee Schedule when a fee is not listed in the Workers' Compensation Supplemental Medical Fee Schedule, Exhibit A.

(e) Providers of service will be allowed to add the applicable Hawaii general excise tax to their billing. [Eff 1/1/96; am 1/1/97; am 11/22/97; am 12/17/01; am 12/13/04; am 11/6/06; am 12/14/07; am 2/28/11; am 12/30/13; am ] (Auth: HRS §§386-21, 386-26, 386-72) (Imp: HRS §§386-21, 386-26)

The amendments to Title 12, Chapter 15, Hawaii Administrative Rules, relating to the Hawaii Workers' Compensation Medical Fee Schedule; and Exhibit A, entitled "Workers' Compensation Supplemental Medical Fee Schedule", on the Summary Page dated November 2, 2017 were adopted on November 2, 2017 following a public hearing held on October 26, 2017, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on September 25, 2017.

The amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

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LINDA CHU TAKAYAMA  
Director  
Labor & Industrial Relations

APPROVED AS TO FORM:

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Deputy Attorney General

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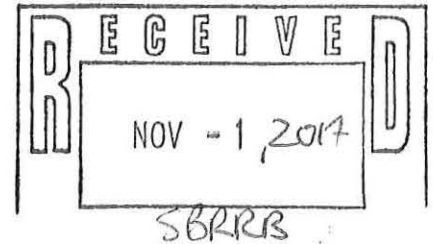
DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

Dated:

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Filed

**EXHIBIT A**  
**Chapters 12-15**  
**Hawaii Administrative Rules**



**WORKERS' COMPENSATION SUPPLEMENTAL  
MEDICAL FEE SCHEDULE**

**January 1, 2018**

The codes in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from the American Medical Association, the American Dental Association or the State Department of Labor and Industrial Relations.

The five character codes included in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from 2017 Current Procedural Terminology (CPT®), copyright 2016 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians.

The responsibility for the content of the Workers' Compensation Supplemental Medical Fee Schedule is with DLIR and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in the Workers' Compensation Supplemental Medical Fee Schedule. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of the Workers' Compensation Supplemental Medical Fee Schedule should refer to the most current CPT codes and descriptive terms. Applicable FARS/DFARS apply.

CPT is a registered trademark of the American Medical Association

The five character codes starting with the letter "D" included in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from Current Dental Terminology 2017, copyright 2016 by the American Dental Association (ADA). CDT is developed by the ADA to achieve uniformity, consistency and accurate reporting of dental treatment.

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## SURGERY

### Integumentary System

Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
10060	\$157.64	12007	\$362.23	13133	\$231.43
10061	\$275.03	12011	\$189.70	13151	\$613.78
10120	\$207.95	12013	\$209.90	13152	\$791.54
10121	\$389.06	12014	\$234.78	13153	\$254.90
11000	\$77.14	12015	\$285.09	13160	\$980.01
11001	\$30.19	12031	\$365.59	14040	\$1,120.24
11010	\$704.34	12032	\$486.33	15004	\$478.26
11043	\$311.92	12034	\$472.91	15050	\$675.48
11044	\$435.71	12035	\$550.06	15100	\$1,021.38
11055	\$61.93	12041	\$352.17	15101	\$223.27
11056	\$74.47	12042	\$456.14	15120	\$1,136.58
11601	\$280.48	12044	\$533.29	15240	\$1,119.97
11602	\$309.48	12051	\$385.71	15260	\$1,428.80
11719	\$17.85	12052	\$432.67	15738	\$1,716.06
11730	\$144.22	12053	\$526.58	16000	\$93.91
11740	\$73.79	12054	\$566.83	16020	\$114.04
11750	\$335.40	13100	\$446.08	16025	\$201.24
11760	\$315.28	13101	\$603.72	16030	\$244.84
12001	\$177.25	13121	\$630.55	17003	\$11.57
12002	\$188.55	13122	\$167.70	17004	\$190.91
12004	\$214.66	13131	\$513.16		
12005	\$268.32	13132	\$818.38		

### Musculoskeletal System

20520	\$275.03	21407	\$804.03	23130	\$771.72
20525	\$741.23	21408	\$1,105.80	23350	\$181.12
20526	\$90.56	21423	\$981.30	23405	\$765.14
20550	\$80.50	21470	\$1,492.05	23410	\$1,204.09
20551	\$80.50	22551	\$2,623.25	23412	\$1,203.42
20552	\$73.79	22552	\$575.17	23420	\$1,425.45
20553	\$83.85	22554	\$1,846.24	23430	\$1,056.51
20600	\$77.14	22558	\$2,143.21	23440	\$924.08
20605	\$90.56	22585	\$480.17	23455	\$1,428.80
20610	\$103.97	22600	\$1,612.67	23500	\$274.66
20612	\$73.79	22612	\$2,015.75	23552	\$805.59
20900	\$653.33	22614	\$523.22	23570	\$288.42
20902	\$611.91	22630	\$1,947.78	23620	\$327.14
20924	\$647.67	22632	\$380.07	23650	\$415.90
20926	\$522.86	22633	\$2,224.80	23655	\$586.95
20930	\$230.30	22634	\$589.95	23700	\$241.74
20931	\$132.37	22830	\$988.38	24149	\$1,445.40
20936	\$212.96	22840	\$975.65	24305	\$712.82
20937	\$228.07	22842	\$1,076.63	24340	\$755.24
21310	\$177.76	22845	\$1,072.27	24341	\$1,113.53
21320	\$402.48	22849	\$1,565.01	24342	\$1,044.47
21360	\$673.04	22850	\$879.71	24343	\$896.22
21365	\$1,369.05	22852	\$843.51	24344	\$1,337.40
21390	\$989.27	22856	\$1,961.79	24357	\$607.07
21395	\$1,232.63	23120	\$722.81	24358	\$707.69

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
24359	\$882.10	26541	\$990.84	27724	\$1,536.89
24366	\$836.02	26548	\$964.87	27750	\$422.90
24515	\$1,075.75	26560	\$724.92	27758	\$1,091.92
24600	\$496.39	26567	\$843.41	27759	\$1,301.35
24605	\$707.69	26600	\$409.19	27760	\$400.96
24665	\$807.11	26605	\$390.09	27766	\$812.38
24666	\$933.53	26608	\$604.42	27786	\$383.95
24685	\$807.82	26686	\$766.57	27792	\$932.41
25000	\$494.63	26720	\$292.03	27810	\$572.21
25024	\$950.44	26725	\$466.21	27814	\$1,116.88
25105	\$598.10	26727	\$670.80	27823	\$1,279.56
25111	\$440.34	26735	\$868.69	27827	\$1,436.56
25118	\$501.82	26742	\$440.86	27828	\$1,677.54
25240	\$532.00	26750	\$258.26	27840	\$455.45
25246	\$204.80	26756	\$521.87	27842	\$608.22
25260	\$910.33	26765	\$684.22	27870	\$1,260.53
25270	\$734.92	26770	\$368.94	28002	\$562.94
25272	\$816.43	26860	\$709.98	28008	\$534.81
25290	\$541.39	26951	\$812.42	28090	\$583.33
25295	\$648.49	26952	\$802.24	28122	\$769.79
25310	\$765.83	27096	\$308.57	28222	\$628.86
25320	\$1,221.89	27130	\$2,049.29	28238	\$818.88
25337	\$1,101.29	27216	\$1,306.30	28300	\$801.64
25390	\$946.95	27227	\$2,020.01	28400	\$303.94
25400	\$985.62	27228	\$2,290.97	28415	\$1,382.88
25405	\$1,268.46	27235	\$1,161.20	28445	\$1,423.67
25440	\$945.86	27236	\$1,460.79	28475	\$318.49
25447	\$1,021.81	27245	\$1,843.43	28485	\$623.84
25505	\$768.07	27248	\$972.95	28510	\$154.60
25545	\$841.64	27350	\$801.09	28725	\$960.18
25605	\$828.44	27370	\$200.54	28730	\$905.27
25606	\$819.26	27380	\$754.00	29065	\$140.87
25607	\$922.97	27385	\$811.67	29075	\$127.45
25608	\$1,094.27	27403	\$786.02	29105	\$127.45
25609	\$1,327.47	27405	\$860.78	29125	\$100.62
25628	\$925.74	27427	\$872.96	29130	\$60.37
25645	\$728.49	27446	\$1,412.69	29200	\$37.76
25825	\$969.31	27447	\$2,190.16	29240	\$35.84
26020	\$539.71	27457	\$1,154.99	29260	\$35.88
26035	\$1,052.64	27486	\$1,715.47	29280	\$36.10
26055	\$788.19	27487	\$2,259.18	29405	\$120.74
26075	\$405.17	27506	\$1,891.66	29425	\$124.10
26080	\$486.92	27524	\$1,069.93	29445	\$168.01
26105	\$415.26	27530	\$482.72	29515	\$103.97
26110	\$402.15	27535	\$1,157.13	29520	\$39.68
26115	\$705.01	27536	\$1,452.54	29530	\$35.84
26145	\$634.34	27560	\$435.24	29540	\$32.27
26320	\$439.73	27570	\$198.82	29550	\$23.80
26340	\$432.67	27603	\$741.23	29580	\$64.03
26350	\$1,026.32	27625	\$713.94	29581	\$82.88
26356	\$1,703.83	27640	\$1,021.38	29584	\$93.24
26410	\$811.67	27650	\$972.66	29700	\$78.97
26418	\$831.79	27652	\$931.79	29806	\$1,509.30
26426	\$768.16	27658	\$463.51	29807	\$1,472.41
26433	\$664.43	27675	\$605.33	29820	\$707.69
26440	\$780.74	27680	\$562.20	29821	\$778.13
26445	\$730.00	27687	\$562.38	29822	\$751.30
26480	\$943.79	27691	\$923.08	29823	\$895.52
26525	\$820.08	27695	\$591.50	29824	\$859.14
26540	\$942.47	27698	\$842.56	29825	\$747.56

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
29826	\$297.00	29873	\$686.88	29888	\$1,401.97
29827	\$1,517.72	29874	\$700.13	29891	\$829.79
29828	\$1,304.71	29875	\$670.75	29897	\$620.41
29835	\$620.55	29876	\$832.92	29898	\$746.85
29837	\$647.07	29877	\$885.46	29905	\$837.86
29838	\$754.47	29879	\$942.47	29906	\$853.65
29844	\$636.24	29880	\$960.01	29914	\$1,219.87
29846	\$665.85	29881	\$896.85	29915	\$1,243.14
29848	\$644.78	29882	\$929.52	29916	\$1,244.58
29862	\$996.51	29884	\$788.02		
29867	\$1,623.86	29887	\$910.84		

### Respiratory System

31231	\$295.15	31570	\$408.32	32551	\$187.59
31240	\$195.12	31575	\$139.42		

### Cardiovascular System

35206	\$930.99	36247	\$1,969.13	36569	\$321.58
35207	\$962.38	36410	\$23.76	36600	\$40.25
36245	\$1,676.00	36415	\$4.34	36620	\$60.85
36246	\$1,063.21	36430	\$46.91		

### Digestive System

45378	\$516.23	49568	\$315.26	49652	\$891.84
49505	\$670.38	49585	\$545.80	49653	\$1,111.71
49507	\$704.11	49587	\$574.68		
49520	\$774.58	49650	\$528.36		
49560	\$884.14	49651	\$672.45		

### Urinary System

51700	\$93.90	51798	\$25.86		
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### Male Genital System

55520	\$550.26				
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### Female Genital System

57288	\$869.84				
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### Maternity Care and Delivery

59025	\$59.78				
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### Nervous System

62270	\$202.86	63047	\$1,560.24	64421	\$189.60
62362	\$469.40	63048	\$301.63	64445	\$164.79
62368	\$70.76	63075	\$1,949.94	64450	\$147.58
62369	\$154.95	63655	\$1,002.58	64455	\$59.00
62370	\$162.36	63663	\$997.19	64479	\$299.22
63030	\$1,368.43	63685	\$446.50	64480	\$142.36
63035	\$271.67	63688	\$453.26	64483	\$345.46
63042	\$1,654.98	64405	\$129.38	64484	\$187.82
63045	\$1,545.83	64415	\$146.81	64491	\$113.76

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
64492	\$115.25	64634	\$243.72	64718	\$805.79
64495	\$104.69	64635	\$531.08	64721	\$607.07
64510	\$163.33	64636	\$222.21	64772	\$691.03
64520	\$236.08	64640	\$169.41	64776	\$505.52
64550	\$23.48	64646	\$182.63	64782	\$561.69
64616	\$153.36	64702	\$622.43	64831	\$906.97
64617	\$222.68	64704	\$448.22	64832	\$410.15
64633	\$536.70	64708	\$601.10	64856	\$1,236.90

### Eye and Ocular Adnexa

65205	\$80.50	65435	\$107.33	68720	\$946.84
65210	\$97.27	67036	\$1,125.88	68810	\$200.71
65222	\$100.62	67145	\$650.54	68815	\$514.53
65426	\$972.66	67820	\$62.56		
65430	\$137.61	67917	\$767.01		

### Auditory System

69200	\$191.18	69210	\$73.79
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### Operating Microscope

69990	\$305.21
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## RADIOLOGY

Fees include both the technical and professional components. In the absence of any prior agreement, the professional component shall be thirty-five percent of the scheduled fee.

### Diagnostic Radiology (Diagnostic Imaging)

70030	\$40.25	70547	\$740.74	72074	\$70.43
70100	\$46.96	70548	\$730.72	72080	\$57.02
70110	\$57.02	70551	\$300.55	72100	\$57.02
70140	\$46.96	70553	\$492.15	72110	\$80.50
70150	\$67.08	71010	\$40.25	72114	\$103.97
70160	\$46.96	71020	\$50.31	72120	\$73.79
70200	\$67.08	71035	\$50.31	72125	\$409.19
70220	\$63.73	71100	\$50.31	72128	\$409.19
70250	\$53.66	71101	\$60.37	72131	\$409.19
70260	\$77.14	71110	\$63.73	72132	\$523.22
70330	\$70.43	71111	\$80.50	72133	\$623.84
70336	\$673.55	71120	\$53.66	72141	\$291.72
70355	\$40.25	71130	\$57.02	72142	\$425.24
70360	\$40.25	71250	\$425.96	72146	\$292.19
70450	\$345.46	71260	\$523.22	72148	\$290.76
70470	\$529.93	71270	\$637.26	72149	\$420.22
70480	\$368.39	71275	\$391.50	72156	\$495.50
70486	\$181.30	71550	\$669.54	72157	\$496.45
70488	\$590.30	71552	\$1,210.74	72158	\$493.57
70491	\$486.33	72020	\$36.89	72170	\$43.60
70496	\$382.38	72040	\$53.66	72190	\$57.02
70498	\$381.41	72050	\$77.14	72192	\$405.83
70540	\$656.55	72052	\$97.27	72193	\$506.45
70543	\$545.87	72070	\$53.66	72195	\$670.30
70544	\$660.51	72072	\$60.37	72197	\$665.03

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
72200	\$43.60	73220	\$658.28	73723	\$618.59
72202	\$53.66	73221	\$309.76	74000	\$43.60
72220	\$46.96	73222	\$497.73	74020	\$60.37
72265	\$264.97	73223	\$618.10	74022	\$70.43
72275	\$171.05	73525	\$157.64	74150	\$405.83
72295	\$385.71	73560	\$43.60	74160	\$533.29
73000	\$43.60	73562	\$50.31	74175	\$400.59
73010	\$43.60	73564	\$57.02	74176	\$258.28
73020	\$36.89	73565	\$44.97	74178	\$461.83
73030	\$46.96	73580	\$194.53	74181	\$669.89
73040	\$167.70	73590	\$43.60	74183	\$666.46
73050	\$54.08	73600	\$40.25	75635	\$849.89
73060	\$46.96	73610	\$46.96	75710	\$643.97
73070	\$40.51	73620	\$40.25	75716	\$677.51
73080	\$50.31	73630	\$46.96	75736	\$643.97
73090	\$43.60	73650	\$40.25	75774	\$560.12
73100	\$43.60	73660	\$40.25	76000	\$62.36
73110	\$50.31	73700	\$382.36	76001	\$211.30
73115	\$147.58	73701	\$479.62	76100	\$118.89
73120	\$40.25	73706	\$465.16	76376	\$29.87
73130	\$46.96	73718	\$567.99	76377	\$90.31
73200	\$382.36	73720	\$661.63		
73201	\$479.62	73721	\$309.28		
73218	\$656.66	73722	\$502.05		

### Diagnostic Ultrasound

76512	\$164.55	76775	\$150.93	76881	\$151.10
76513	\$150.93	76801	\$160.58	76882	\$43.49
76514	\$19.06	76815	\$110.54	76937	\$40.24
76519	\$122.71	76817	\$126.92	76942	\$76.68
76700	\$197.89	76856	\$167.70		
76705	\$147.58	76857	\$61.49		
76770	\$187.82	76870	\$167.70		

### Radiologic Guidance

77001	\$110.55	77012	\$158.81
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### Bone/Joint Studies

77073	\$45.95	77080	\$53.78
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### Radiation Oncology

77290	\$674.15	77334	\$264.97	77336	\$140.87
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### Nuclear Medicine

78104	\$348.82	78305	\$318.63	78452	\$646.29
78122	\$258.26	78306	\$355.52	78805	\$271.67
78300	\$234.78	78320	\$415.90	78806	\$496.39

Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
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### MEDICINE

Fees include both the technical and professional components. In the absence of any prior agreement, the professional component shall be thirty-five percent of the scheduled fee.

#### Vaccines, Toxoids

90636	\$99.07	90715	\$46.96	90746	\$63.32
90714	\$21.90	90732	\$86.62		

#### Psychiatry

90791	\$154.68	90834	\$99.69	90847	\$151.70
90792	\$173.73	90837	\$167.74		
90832	\$84.86	90846	\$126.80		

#### Biofeedback

90901	\$53.27				
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#### Gastroenterology

91035	\$626.61	91110	\$1,217.70		
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#### Ophthalmology

92002	\$110.68	92071	\$45.43	92225	\$34.44
92004	\$201.24	92082	\$62.57	92235	\$169.72
92012	\$110.68	92083	\$83.46	92250	\$86.01
92014	\$160.99	92132	\$39.75	92284	\$82.71
92015	\$23.50	92133	\$47.73	92285	\$27.47
92020	\$42.42	92134	\$52.21	92286	\$49.17
92025	\$48.21	92136	\$115.85	92310	\$78.69

#### Special Otorhinolaryngologic Services

92507	\$97.37	92550	\$25.24	92590	\$74.94
92511	\$144.51	92551	\$13.52	92591	\$99.11
92526	\$106.68	92557	\$63.40	92592	\$35.51
92541	\$69.74	92567	\$26.83	92595	\$51.33
92542	\$67.08	92570	\$38.42	92610	\$106.71
92545	\$50.39	92577	\$29.60	92611	\$107.45
92547	\$23.48	92587	\$69.43		
92548	\$140.87	92588	\$96.86		

#### Cardiovascular

93000	\$33.45	93040	\$16.84	93289	\$82.28
93005	\$20.12	93042	\$10.06	93306	\$298.79
93010	\$11.21	93224	\$187.96	93308	\$137.15
93015	\$135.82	93225	\$57.02	93325	\$80.50
93016	\$26.86	93226	\$93.91	93351	\$353.39
93017	\$83.85	93280	\$73.19		
93018	\$20.12	93282	\$79.37		

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
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### Noninvasive Vascular Diagnostic Studies

93926	\$171.42	93971	\$158.92	93976	\$250.52
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### Pulmonary

94010	\$46.80	94645	\$18.48	94727	\$54.02
94060	\$80.14	94664	\$23.22	94729	\$69.46
94150	\$47.46	94667	\$35.44	94760	\$6.71
94640	\$24.64	94726	\$69.18	94762	\$43.60

### Neurology and Neuromuscular Procedures

95805	\$721.28	95907	\$147.58	95929	\$277.90
95810	\$821.21	95908	\$157.64	95930	\$172.20
95811	\$862.70	95909	\$214.66	95951	\$2,089.25
95851	\$27.00	95910	\$285.09	95957	\$397.70
95852	\$20.13	95911	\$342.11	95971	\$61.93
95861	\$224.72	95912	\$399.13	95972	\$72.10
95885	\$87.20	95913	\$462.85		
95887	\$107.33	95925	\$182.99		

### Central Nervous System Assessments/Tests

96101	\$97.27				
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### Health and Behavior Assessment/Intervention

96150	\$25.59	96152	\$23.15		
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### Hydration, Therapeutic, Prophylactic, Diagnostic Injections and Infusions, and Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration

96360	\$92.58	96366	\$24.00	96376	\$20.77
96361	\$24.07	96367	\$39.97		
96365	\$91.06	96375	\$29.03		

### Physical Medicine and Rehabilitation

97010	\$5.04	97116	\$36.89	97542	\$38.34
97012	\$20.12	97124	\$33.54	97545	\$119.69
97014	\$16.77	97140	\$36.89	97546	\$51.17
97016	\$24.15	97150	\$20.67	97605	\$51.27
97024	\$8.49	97530	\$46.96	97606	\$61.71
97032	\$23.48	97532	\$32.90	97750	\$40.25
97110	\$43.60	97535	\$43.90	97760	\$50.31
97112	\$43.60	97537	\$37.31		

### Acupuncture

97810	\$52.39	97813	\$55.95		
97811	\$35.31	97814	\$39.55		

### Chiropractic Manipulative Treatment

98940	\$30.19				
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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
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**Special Services, Procedures and Reports**

99000	\$8.17	99050	\$48.25
99002	\$10.89	99053	\$70.50

**Qualifying Circumstances for Anesthesia**

99100	\$44.79
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**Other Services and Procedures**

99173	\$3.42	99183	\$131.33
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**DENTAL SERVICES**

**Diagnostic**

D0120	\$41.81	D0210	\$94.66	D0272	\$30.96
D0140	\$52.13	D0220	\$19.29	D0330	\$83.69
D0150	\$57.69	D0230	\$15.07	D0470	\$64.96

**Preventive**

D1110	\$68.87
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**Restorative**

D2160	\$115.71	D2335	\$183.74	D2940	\$73.72
D2330	\$84.86	D2391	\$106.64	D2950	\$179.19
D2331	\$127.28	D2740	\$837.28	D2954	\$204.42
D2332	\$158.31	D2750	\$789.63		

**Endodontics**

D3310	\$412.71
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**Periodontics**

D4211	\$211.85
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**Prosthodontics, Removable**

D5110	\$988.75	D5211	\$776.37	D5820	\$395.17
D5130	\$1,048.91	D5212	\$806.73		

**Implant Services**

D6010	\$1,712.90	D6059	\$1,131.93	D6104	\$296.69
D6057	\$566.15	D6065	\$1,074.45		

**Prosthodontics, Fixed**

D6240	\$752.13	D6245	\$756.50	D6750	\$786.07
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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
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**Oral & Maxillofacial Surgery**

D7140	\$92.58	D7880	\$490.00
D7210	\$198.03	D7953	\$307.20

**Adjunctive General Services**

D9110	\$76.43	D9430	\$55.53	D9942	\$102.80
D9310	\$91.08	D9940	\$408.83		

**EVALUATION AND MANAGEMENT**

**Office or Other Outpatient Services**

99201	\$70.36	99205	\$304.83	99214	\$158.77
99202	\$114.00	99211	\$37.07	99215	\$212.24
99203	\$165.55	99212	\$66.32		
99204	\$245.01	99213	\$107.83		

**Hospital Inpatient Services**

99232	\$124.79
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**Consultations**

99241	\$66.58	99245	\$237.19	99254	\$183.81
99242	\$99.81	99251	\$53.76	99255	\$222.85
99243	\$143.46	99252	\$83.10		
99244	\$186.63	99253	\$126.71		

**Emergency Department Services**

99281	\$50.31	99283	\$133.00	99285	\$322.51
99282	\$90.19	99284	\$225.58		

**Critical Care Services**

99292	\$147.36
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**Case Management Services**

99366	\$65.67	99367	\$85.93	99368	\$55.55
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**Preventive Medicine Services**

99395	\$116.14	99408	\$40.23
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**Non-Face-to-Face Services**

99441	\$22.23	99443	\$60.50
99442	\$40.98		

Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
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### Special Evaluation and Management Services

Code	Description	Maximum Fee
99456A*	Complex consultation pursuant to Section 386-79, HRS - work related or medical disability examination by other than the treating physician that includes: <ul style="list-style-type: none"> <li>▪ completion of a medical history commensurate with the patient's condition;</li> <li>▪ performance of an examination commensurate with the patient's condition;</li> <li>▪ formulation of a diagnosis, assessment of capabilities and stability, and calculation of impairment;</li> <li>▪ development of future medical treatment plan;</li> <li>▪ completion of necessary documentation/certificates and report; and</li> <li>▪ review of records relating to the patient's condition.</li> </ul>	
	First hour .....	\$207.25
99456B*	Each additional 30 minute increment (an increment must be at least 30 minutes.).....	\$103.63

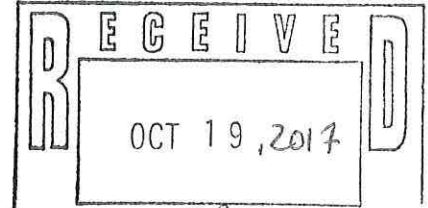
\*Department of Labor Code

**Bundled Services:** Certain codes, such as telephone calls, are considered by the Health Care Financing Administration (HCFA) to be "bundled" services. Bundled services are not payable, nor should they be billed, when performed incident to or in conjunction with another service even if the other service is performed on a different day. When services that are designated as bundled are denied, the physician may not collect from the patient.



### **III. Old Business**

**B. Discussion and Action on the Small Business  
Statement After Public Hearing and Proposed  
Amendments to HAR Title 13, Chapter 74, License &  
Permit Provisions and Fees for Fishing, Fish, and  
Fish Products, promulgated by DLNR**



RULE-MAKING CHECKLIST  
FOR  
"SMALL BUSINESS STATEMENT" AFTER PUBLIC HEARING  
(§201M-3, Section 2, Act 168, Session Laws of Hawaii 1998, as amended)

DEPARTMENT OR AGENCY: Department of Land and Natural Resources  
Chapter and Title: Chapter 13-74, LICENSE AND PERMIT PROVISIONS AND FEES FOR FISHING, FISH, AND FISH PRODUCTS  
Name and Phone Number of Contact Person: Mr. Alton Miyasaka, 587-0092

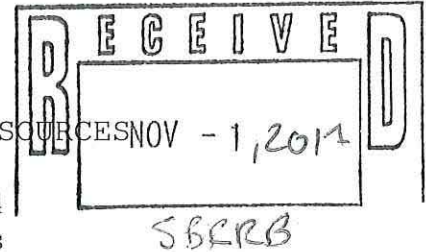
1. Summarize how the comments or testimonies from small business were solicited.  
The Division of Aquatic Resources met several times with different commercial marine license holders to gather comments on the proposed fee increase. The Department also held a total of eight Statewide public hearings, at least one on each of the main Hawaiian Islands, to gather testimonies on the proposal. During the hearings, we asked specifically for comments on a revised plan to increase the fees in one step from \$50 to \$150/year to occur upon rule approval instead of the proposed two step increases to first \$100/year upon approval then to \$150/year on January 1, 2018. We also asked for comments on a proposed weekly reporting requirement for dealers to report to us purchases made directly from commercial fishers.
2. Summarize the written and oral comments or testimonies received from the public and small business regarding any proposed rule that affects small business.  
In general, commercial fishers were opposed to what they viewed as relatively large increases but were also understanding of the need for the increases as the fees were last raised almost 20 years ago in 1999. Some opposing fishers would have preferred multiple but slow, regular increases instead of a few large increases. Some questioned what they would receive for these higher fees.  
  
Some commercial fishers said that they had no problem with the proposed fee increases with the full-time fishers saying they would have supported higher fees. We did not receive any comment on the proposed weekly, instead of monthly, dealer reporting requirement. Additional discussions immediately after the hearings were held to answer any questions persons attending had. These discussions seemed to be well received.
3. Summarize the department's or agency's response to the comments or testimonies received in Item 2.  
Given the relatively small annual fee for the license and the amount of income that may be generated from commercial fishing, the proposed increases would not be a significant burden for the serious fisher. The type of fishers that would be most impacted by the increases are the part-time commercial fishers that are more typical of non-commercial fishers but sell their catch to recover their fishing costs (known as expense fishers). The part-time crew fishers are the other type of fishers that only fish a few times a year but fill in as crew to keep the vessel operator company or just take-home fish for the table. These fishers are expected to not renew their licenses at the higher fee level but that decision would be made by the fishers based on their individual fishing activity. In our view, the

proposed increases are long overdue, the proposed fees are not unreasonable, and the revenues are needed to recover our costs.

4. How many persons attended the public hearings?  
Forty-seven persons signed on the attendance sheet. In addition, a small but unknown number of persons attended but did not sign in.
5. How many persons orally testified at the public hearings?  
Thirty-three persons testified at the hearings
6. How many persons submitted written comments or testimonies in response to the proposed rule?  
The Division received 3 written testimonies on this proposed rule.
7. If there was a request to change the proposed rule at the public hearing in a way that affects small business and no change was made, explain why the request was not accepted.  
Some commercial fishers were opposed to the increases while some were in support. One fisher suggested a higher operator of vessel fee with a reduced fee for crew. The Department will address this option in a future rule on a proposed commercial vessel license with fees. Fishers who were opposed to the increases did not provide their acceptable alternative option but implied the fees should remain the same until more information was provided. We held open discussions after the hearing to answer both related and unrelated questions with the public appearing to be satisfied with the answers. We did not receive any comments on the weekly dealer reporting requirement.

DEPARTMENT OF LAND AND NATURAL RESOURCES NOV - 1, 2017

Amendments to Chapter 13-74  
Hawaii Administrative Rules



(November 9, 2017)

1. Section 13-74-20, Hawaii Administrative Rules, is amended to read as follows:

"§13-74-20 Commercial marine license. (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license. Additionally, any person providing vessel charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license.

(b) Licenses to persons with proof of identity to engage in the activities described in subsection (a) shall require the person's name, address, age, place of birth, length of residence in the State, height, weight, color of hair and eyes, citizenship, and such other information as the department may require.

(c) The fee for the issuance or renewal of a commercial marine license shall be[:

(1) Residents, \$50;

(2) All other persons, \$200;

(3) Duplicate license, \$10.] \$150. The fee for a duplicate license shall be \$10.

(d) No person may:

(1) Renew a commercial marine license more than two months prior to its expiration date; or

(2) Be issued more than one commercial marine license at any one time.

[(d)] (e) The department may require persons issued the commercial marine license to submit reports of their fishing activity. Such reports shall be submitted to the department monthly; provided that persons taking bottomfish as defined in chapter 13-94, in the main Hawaiian islands, shall, in addition to

their monthly report for species other than bottomfish, submit trip reports of their bottomfish fishing activity if requested. The monthly and trip reports shall be subject to section 13-74-2, sections 189-3 and 189-3.5, HRS, and as may be otherwise provided by law." [Eff 8/12/93; am 1/15/99; am 10/18/10; am ] (Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-3.5)

2. Chapter 13-74, Hawaii Administrative Rules, is amended by adding a new section 13-74-46 to read as follows:

"§13-74-46 Commercial marine dealer report. (a) Every commercial marine dealer shall submit to the department a report of all marine life obtained, purchased, transferred, exchanged, or sold during a weekly reporting period, which begin on Sundays and end on the following Saturdays. A report shall be submitted to the department by the Tuesday following the end of each weekly reporting period. Reports shall contain the following information:

- (1) The name, address, and telephone number of the commercial marine dealer;
- (2) The time period for which the report is being submitted;
- (3) The species, numbers, weights, and values of each of the varieties of marine life landed in the State that the dealer obtained, purchased, transferred, exchanged, or sold during the reporting period;
- (4) The name and current license number of the commercial marine licensee from whom the marine life was obtained or purchased; and
- (5) Other information as required on forms provided by, or as directed in writing by, the department.

(b) Reports shall be submitted to the department weekly." [Eff ] (Auth: HRS §189-10)  
(Imp: HRS §189-10)

Ramseyer Format (11/9/17)

5. Material, except source notes, to be repealed is bracketed. New material is underscored.

6. Additions to update source notes to reflect these amendments are not underscored.

7. These amendments to chapter 13-74, 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 November 9, 2017 and filed with the Office of the Lieutenant Governor.

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SUZANNE D. CASE  
Chairperson  
Board of Land and Natural  
Resources

APPROVED AS TO FORM:

Deputy Attorney General

### **III. Old Business**

- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 23, Chapter 200, **Regulations of Controlled Substances**, and Chapter 201, **Regulated Chemicals for the Manufacture of Controlled Substances**, promulgated by Department of Public Safety

DAVID Y. IGE  
GOVERNOR



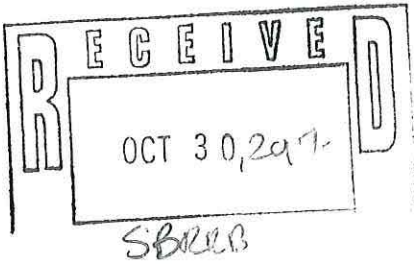
STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**NOLAN P. ESPINDA**  
DIRECTOR

**CATHY ROSS**  
DEPUTY DIRECTOR  
ADMINISTRATION

**Jodie F. Maesaka-Hirata**  
DEPUTY DIRECTOR  
CORRECTIONS

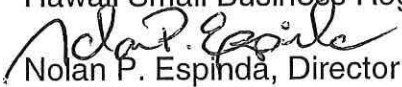
**Renee R. Sonobe Hong**  
DEPUTY DIRECTOR  
LAW ENFORCEMENT



No. \_\_\_\_\_

October 17, 2017

TO: Mr. Anthony Borge  
Hawaii Small Business Regulatory Review Board

FROM:   
Nolan P. Espinda, Director

SUBJECT: NOTIFICATION OF REQUEST FOR FINAL APPROVAL FOR  
ADOPTION OF REVISIONS TO HAWAII ADMINISTRATIVE  
RULES TITLE 23, CHAPTERS 200 AND 201

This memorandum is to notify you that the Department of Public Safety ("PSD") is requesting Governor Ige's final approval for adoption of revisions to Hawaii Administrative Rules ("HAR") Title 23, chapters 200 and 201. The revisions propose registrant fee increases, requirements for registrant information changes and clarify the term, "failure to pay fees."

The Narcotics Enforcement Division ("NED") accepted public testimony on the proposed revisions from June 9, 2017-July 17, 2017. The NED also held a public hearing on the proposed revisions on July 17, 2017. No testimony, comments or suggestions were received from the public regarding the proposed revisions. A copy of PSD's rulemaking submittal and the minutes from the public hearing is attached for your convenience.

On August 10, 2017, PSD approved the adoption of the proposed revisions to Title 23, chapters 200 and 201. PSD does not believe that the proposed revisions will have a significant impact on small businesses. The Department of the Attorney General has since reviewed the proposed revisions and has approved the proposed revisions to Title 23, chapters 200 and 201 as to form.

If you have any questions, please contact Jared Redulla, PSD-NED Administrator, at (808) 837-8470 or via email at [Jared.K.Redulla@hawaii.gov](mailto:Jared.K.Redulla@hawaii.gov).



Mr Anthony Borge  
October 17, 2017  
Page 2

Attachments

Final Rule amendments in Standard Format (3)  
PSD rulemaking submittal  
Small Business Statement

Cc: Director, Budget and Finance  
Small Business Regulatory Review Board

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**NOLAN P. ESPINDA**  
DIRECTOR

**CATHY ROSS**  
DEPUTY DIRECTOR  
ADMINISTRATION

**Jodie F. Maesaka-Hirata**  
DEPUTY DIRECTOR  
CORRECTIONS

**Renee R. Sonobe Hong**  
DEPUTY DIRECTOR  
LAW ENFORCEMENT

No. \_\_\_\_\_

October 17, 2017

**TO:** The Honorable David Y. Ige  
Governor of Hawaii

**FROM:** Nolan P. Espinda, Director

**SUBJECT:** REQUEST FOR FINAL APPROVAL FOR ADOPTION OF  
REVISIONS TO HAWAII ADMINISTRATIVE RULES TITLE 23,  
CHAPTERS 200 AND 201

The Department of Public Safety ("PSD") requests final approval for adoption of revisions to Hawaii Administrative Rules ("HAR") Title 23, chapters 200 and 201. The revisions propose registrant fee increases, requirements for registrant information changes and clarify the term, "failure to pay fees."

The Narcotics Enforcement Division ("NED") accepted public testimony on the proposed revisions from June 9, 2017-July 17, 2017. The NED also held a public hearing on the proposed revisions on July 17, 2017. No testimony, comments or suggestions were received from the public regarding the proposed revisions. A copy of PSD's rulemaking submittal and the minutes from the public hearing is attached for your convenience.

On August 10, 2017, PSD approved the adoption of the proposed revisions to Title 23, chapters 200 and 201. PSD does not believe that the proposed revisions will have a significant impact on small businesses. The Department of the Attorney General has since reviewed the proposed revisions and has approved the proposed revisions to Title 23, chapters 200 and 201 as to form.

If you have any questions, please contact Jared Redulla, PSD-NED Administrator, at (808) 837-8470 or via email at [Jared.K.Redulla@hawaii.gov](mailto:Jared.K.Redulla@hawaii.gov).

The Honorable David Y. Ige  
October 17, 2017  
Page 2

Attachments

Final Rule amendments in Standard Format (3)  
PSD rulemaking submittal  
Small Business Statement

Cc: Director, Budget and Finance  
Small Business Regulatory Review Board

809170

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4<sup>th</sup> Floor  
Honolulu, Hawaii 96814

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DIRECTOR

CATHY ROSS  
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ALAN ASATO  
DEPUTY DIRECTOR  
CORRECTIONS

SHAWN TSUHA  
DEPUTY DIRECTOR  
LAW ENFORCEMENT

No. 2015-2258

September 1, 2015

The Honorable David Y. Ige  
Governor, State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

**SUBJECT: REQUEST TO CONVENE PUBLIC HEARING TO AMEND  
HAWAII ADMINISTRATIVE RULES**

The Department of Public Safety (PSD) is proposing amendments to Title 23 Chapter 200 and Title 23 Chapter 201, Hawaii Administrative Rules (HAR), entitled Regulations of Controlled Substances and Regulated Chemicals for the Manufacture of Controlled Substances, to increase the registration fee for registrants due to increased operating cost for services provided by the Narcotics Enforcement Division (NED), to registrants. The last fee increase was done in 2000 and since then there has been increased cost due to the implementation of an electronic online controlled substance registration system, increases in personnel salaries, inter-island travel cost for inspections and statutory changes to Hawaii's Uniform Controlled Substance Act, Chapter 329 Hawaii Revised Statutes (HRS), requiring increased regulatory and investigative services for controlled substance and regulated chemical registrants. Since 2000 PSD has had to fund services utilizing NED's Controlled Substance Registration Revolving Fund as authorized by Section 329-59, HRS, that were previously paid for by grants. Since the last fee increase in 2000, NED has been impacted by the expansion of the State's Electronic Prescription Accountability System to require all individuals and entities dispensing pharmaceutical controlled substances in Schedules II through V (pharmaceutical controlled substances that are deemed to have a degree of danger or probable danger to the user, possible biomedical hazard to the user or probable physical and social impact of widespread abuse of the substance) to electronically transmit this data to a central repository as required by Chapter 329, Part VIII HRS and the increased cost of staff to regulate and enforce these provisions. In 2008, Governor Lingle signed Act 119 into law, authorizing the use of the controlled substance registration revolving fund to offset costs of investigating violations of the Uniform Controlled Substances Act including operations of NED's forensic drug laboratory. In 2012 Governor Abercrombie signed Act 119, into law establishing a real time pseudoephedrine tracking system and enforcement program within the NED. Since 2000, NED has also had to take on an increased volume of pharmaceutical controlled substances being turned into NED

from registrants and the public for disposal. NED has been utilizing federal grant funds to offset the cost of these new enhancements. Since 2013, however, NED has not been awarded any federal grants and now must rely upon controlled substance registration fees and general funds to pay for these programs that have proven to be an excellent tool for practitioners and pharmacist in treating their patients as well as a deterrent for individuals attempting to fraudulently obtain these pharmaceutical controlled substance. The proposed rule changes would also allow NED to fill vacant positions and increase its manpower in order to enforce and conduct compliancy inspections relating to controlled substances and regulated chemicals.

Prescription drug abuse is the Nation's fastest-growing drug problem. While there has been a marked decrease in the use of some illegal drugs like cocaine, data from the National Survey on Drug Use and Health (NSDUH) show that nearly one-third of people aged 12 and over who used drugs for the first time in 2009 began by using a prescription drug non-medically. The same survey found that over 70 percent of people who abused prescription pain relievers got them from friends or relatives, while approximately 5 percent got them from a drug dealer or from the Internet. Additionally, the latest "Monitoring the Future Study"—the nation's largest survey of drug use among young people showed that prescription drugs are the second most-abused category of drugs after marijuana. In our military, illicit drug use increased from 5 percent to 12 percent among active duty service members over a three-year period from 2005 to 2008, primarily attributed to prescription drug abuse.

**Washington, D.C. October 7, 2013** - Hawaii has the 34th highest drug overdose mortality rate in the United States, with 10.9 per 100,000 people suffering drug overdose fatalities, according to a new report, *Prescription Drug Abuse: Strategies to Stop the Epidemic*.

The number of drug overdose deaths - a majority of which are from prescription drugs - in Hawaii increased by 68 percent since 1999 when the rate was 6.5 per 100,000. Nationally, rates have doubled in 29 states since 1999, quadrupled in four of these states and tripled in 10 more. Hawaii did scored six out of ten on New Policy Report Card of Promising Strategies to help curb prescription drug abuse listing Hawaii's prescription accountability system, doctor shopping laws and enforcement, prevention and education programs for registrants.

In accordance with Administrative Directive 09-01, I am submitting the following for your consideration.

- I. *Explain the exact changes to be made and the purpose, reasons for the changes, and justification for the change. If applicable, cite the present rule and quote the proposed rule change in full without paraphrasing.*

PSD is proposing the following amendments to Chapters 23-200 and 23-201, HAR, entitled Regulations of Controlled Substances and Regulated Chemicals for the Manufacture of Controlled Substances. The last fee increase was done in 2000.

**Proposed Fee Increase:**

**Title 23, Chapter 200 Regulations of Controlled Substances, HAR**

Registration or re-registration to:

- Manufacture controlled substances; proposed annual fee of \$195 from \$100 - increase of 95%.
- Distribute controlled substances; proposed annual fee of \$145 from \$75 - increase of 93%.
- Administer, prescribe, dispense, or to conduct instructional activities with, controlled substances Schedule II through V; proposed annual fee of \$115 from \$60 - increase of 92%.
- Conduct research or instructional activities with a controlled substance listed in Schedules I through V); proposed annual fee of \$115 from \$60 - increase of 92%.
- Conduct chemical analysis with controlled substances listed in any schedule; proposed annual fee of \$115 from \$60 - increase of 92%.
- Engage in a narcotics treatment program, including a compounder; proposed annual fee of \$115 from \$60 - increase of 92%.
- Duplicate registration certificate fee of \$20 from \$10 - increase of 100%.
- Late registration fee of \$50 from \$25 - increase of 100%.

**Title 23, Chapter 201 Regulated Chemicals for the Manufacture of Controlled Substances, HAR**

Registration or re-registration to:

- Manufacture for distribution regulated chemicals for the manufacture of controlled substances; proposed annual fee of \$195 from \$100 - increase of 95%.
- Conduct business as a wholesale distributor, importer; or exporter of regulated chemicals for the manufacture of controlled substances; proposed annual fee of \$145 from \$75 - increase of 93%.
- Retail distributor of regulated chemicals for the manufacture of controlled substances; proposed annual fee of \$145 from \$75 - increase of 93%.
- Duplicate registration certificate fee of \$20 from \$10 - increase of 100%.
- Late registration fee of \$50 from \$25 - increase of 100%.

The proposed rule changes also increase the controlled substance and precursor chemical fees, which have not been increased since 2000. The amendments would increase the efficiency of the department of public safety (PSD)'s internal and external responsibilities, functions, operations, and activities. For example, the controlled

substance and chemical registrations would be processed and completed more efficiently and in a timelier manner by the implementation of a web based computerized online controlled substance registration process. Computers and software need to be upgraded to fully accomplish this, and additional funds are required for this purpose. The increase would also assist in the funding of PSD's expanded electronic prescription monitoring program that would allow registrants with controlled substance authority to electronically access the State's electronic prescription monitoring program through a secure website giving practitioners another tool in treating their patients. NED has been utilizing federal grant funds to offset the cost of these new enhancements to its prescription monitoring program. In 2013, however, NED was not awarded any federal grants and now must rely upon controlled substance registration fees and general funds to pay for the program. The proposed rule changes would also allow NED to fill its vacant positions resulting in the ability to conduct more compliance inspections of Hawaii's controlled substances and regulated chemical registrants.

The proposed charges are significantly less than what the Federal Drug Enforcement Administration (DEA) is charging for controlled substance certifications and regulated chemical permit registration processing. The DEA controlled substance registration fee for practitioners, hospital/clinics, retail pharmacies, central fill pharmacies, teaching institutions and researchers is \$731.00 for 3 years or \$243.67 annually. The DEA's controlled substance registration does not provide access to an electronic prescription accountability system, pseudoephedrine tracking system, registrant and public drug disposal program, 24/7 law enforcement response to pharmacies and practitioners on cases relating to fraudulent obtaining of controlled substance. Presently NED provides all these services for an annual registration fee of only \$60.00. Further, due to Hawaii being a dual registration state, registrants must first obtain a State controlled substance certificate or regulated chemical permit prior to applying for DEA's controlled substance certificate or regulated chemical permit.

2. *Describe the manner in which the proposal would affect the agency's internal and external responsibilities, programs, functions, operations, activities, and inter-relationships.*

The proposed rule change would allow NED to carry out its mandate to conduct controlled substance and regulated chemical compliance inspections and investigations. The proposed rule changes would generate the funding necessary to pay for the improvements to the State's controlled substance and regulated chemical registration process, electronic prescription monitoring program and fund the manpower performing these functions, therefore increasing the efficiency of PSD's internal and external responsibilities, functions, operations, and activities. For example, the controlled substance and chemical registrations would be processed and completed more efficiently and in a timelier manner by allowing the registrants to access an online website to electronically fill out and submit their controlled substance and chemical registration applications.

3. *Identify the final result expected by instituting the proposed (e.g. a program improvement/clarification of statute.*

The final result expected would be an increase in the timeliness of the completion of NED's processing of controlled substance and chemical registrations. Further the additional funds would allow for increased access and availability of controlled substance prescription information through NED's prescription monitoring program. This program gives physicians, pharmacists, dentists, veterinarians and other medical professionals the ability to check on past history of their patients prior to treatment. The increase in funding would enhance NED's ability to enforce and conduct compliancy inspections, resulting in the decrease of pharmaceutical diversion and violations by registrants.

4. *Identify any program and financial impacts on the State that will arise upon the implementation of the proposal to include:*

- a. *Long-and short-range program impacts:*

The controlled substance and regulated chemical registrants will see a slight increase in fees, however the short term benefits of these amendments include continued funding of the electronic prescription accountability system, maintaining the ability for controlled substance registrants to re-register online, ensure the continuation of the controlled substance disposal program for registrants and timely investigative services by NED of suspects forging or altering practitioners' controlled substance prescriptions.

The long-term impact and benefits enjoyed by the controlled substance and regulated chemical registrants from the fee increases will be the expansion of the electronic prescription accountability system to further assist practitioners and their delegates to access the system; the expansion of the online registration system to allow access for verifications of controlled substance and regulated chemical certificates; expansion of the pharmaceutical drug take back program and the ability to fill all of the NED investigative positions to better support the registrants.

- b. *Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed adoption, amendment, or repeal of the rule, and estimates for anticipated savings or funding shortfalls projected over the subsequent four-year planning period, and the assumptions used to arrive at the estimates.*

The proposed fee increases being proposed by the rule amendment will not impact general funds and are currently budgeted within NED's program expenditure ceiling. The fee increases will help offset the annual cost of the following existing registrant support programs: electronic on-line controlled substance registration system (approximately \$15,000.00); electronic prescription accountability system (\$56,000.00);



pseudoephedrine tracking program (free but generates regulatory and investigative cost); NED forensic drug laboratory (\$90,000.00); registrant drug disposal program; pharmaceutical public drug take back program (approximately \$50,000.00); increases in registration (3 positions) and investigative (5 positions) staff salaries and overtime cost (\$24,000.00); interisland travel cost (\$300.00 per airfare, car and manpower per registrant inspection) for controlled substance and regulated chemical registrant inspections.

5. *Describe long and short term impacts to the public or the economy of the State.*

As noted, there are slight fee increases to registrants, with minimal impact in the long and short term to the public or the economy of the State. The public, including registrants, will receive more efficient service as well as better medical care due to practitioners having access to NED's electronic prescription monitoring database.

6. *Identify the alternatives explored in lieu of implementing the proposal.*

Possible decrease in services to controlled substance and regulated chemical registrants, resulting in an increase of pharmaceutical controlled substances diversion from registrants and these illegally obtained drugs being sold on the streets of Hawaii.

7. *Provide an explanation of whether the proposal will affect small business. For purposes of this Directive, a proposal will affect small business if the proposal will impact a for-profit enterprise consisting of fewer than 100 full-time or part-time employees and 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.*

As noted, there will be slight fee increases to registrants, including some small businesses, including pharmacies, with minimal impact. The public, including registrants, will receive more efficient service as well as better medical care due to practitioners having access to NED's electronic prescription monitoring database.

*If a proposal affects small business, the department or agency will describe:*

a. *Whether it has considered the availability and practicability of less restrictive alternatives that could be implemented in lieu of adopting the proposal;*

Yes, but options such as decreased services and increased processing times for controlled substance and regulated chemical certificates are not considered viable alternatives.

b. *Whether it has considered creative, innovative, or flexible methods of compliance for small business in lieu of adopting the proposed rule;*

The Honorable David Y. Ige  
September 1, 2015  
Page 7

As noted the additional funds are required to maintain the current level of service, especially in light of the fact that there has been no fee increase since 2000.

- c. *Whether it has prepared a "Small Business Impact Statement" that has been submitted to the Small Business Regulatory Review Board for consideration under HRS Chapter 201M.*

Yes, On July 15, 2015 the Small Business Regulatory Review Board (SBRRB) conducted a hearing on PSD's Pre Public Hearing Small Business Impact Statement proposing changes to Title 23 Chapter 200 and Title 23 Chapter 201, Hawaii Administrative Rules (HAR), entitled Regulations of Controlled Substances and Regulated Chemicals for the Manufacture of Controlled Substances. Upon review the SBRRB members unanimously agreed that the rules proceed to public hearing. (Refer to attached copy).

I respectfully request approval to convene a public hearing concerning the proposed amendments to §23-200 and §23-201 HAR.

Sincerely,



Nolan P. Espinda  
Director

Attachment

APPROVED:



David Y. Ige  
Governor, State of Hawaii

11-30-15  
Date:



## SMALL BUSINESS REGULATORY REVIEW BOARD

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Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St., 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594

### MEMORANDUM

David Y. Ige  
*Governor*

Luis P. Salaveria  
*Director, DBEDT*

#### Members

Anthony Borge  
*Chair  
Oahu*

Harris Nakamoto  
*Vice Chair  
Oahu*

Barbara Bennett  
*2<sup>nd</sup> Vice Chair  
Kauai*

Kyoko Y. Kimura  
*Maui*

Phillip Kasper  
*Maui*

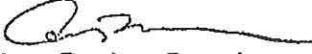
Robert Cundiff  
*Oahu*

Nancy Atmospera-Walch  
*Oahu*

Garth Yamanaka  
*Hawaii*

Director, DBEDT  
*Voting Ex Officio*

TO: Keith Kamita, Administrator  
Narcotics Enforcement Division  
Department of Public Safety

FROM: Anthony Borge, Chair   
Small Business Regulatory Review Board

DATE: July 17, 2015

SUBJECT: Proposed Amendments to Hawaii Administrative Rules,  
Chapter 23 - Title 200, "Regulations of Controlled Substances"  
and Chapter 201, "Regulation Chemicals for the Manufacture of  
Controlled Substances"

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The Small Business Regulatory Review Board (SBRRB) provides recommendations to State and County agencies on proposed rules and proposed rule amendments pursuant to Chapter 201M, Hawaii Revised Statutes.

Thank you for attending the SBRRB's July 15, 2015 board meeting and discussing with the members the amendments to the above-captioned Hawaii Administrative Rules. Upon review, the SBRRB members unanimously agreed that the rules proceed to public hearing.

Thank you for keeping the SBRRB members apprised of the regulatory activity at the Department of Public Safety.

c: Governor David Y. Ige  
Garth Yamanaka, Acting SBRRB Discussion Leader

Department of Public Safety

Amendment of Chapters 23-200 and 23-201

Hawaii Administrative Rules

August 10, 2017

SUMMARY

1. §23-200-4 is amended.
2. §23-200-5 is amended.
3. §23-200-7 is amended.
4. §23-200-8 is amended.
5. §23-201-4 is amended.
6. §23-201-5 is amended.
7. §23-201-7 is amended.
8. §23-201-8 is amended.

**§23-200-4 Fees for registration or re-registration.** (a) For each registration or re-registration to manufacture controlled substances, the registrant shall pay an application fee of \$195 for an annual registration.

(b) For each registration or re-registration to distribute controlled substances, the registrant shall pay an application fee of \$145 for an annual registration.

(c) For each registration or re-registration to administer, prescribe, dispense, or to conduct instructional activities with, controlled substances listed in sections 329-16 through 329-22, Hawaii Revised Statutes (schedules II through V), the registrant shall pay an application fee of \$115 for an annual registration.

(d) For each registration or re-registration to conduct research or instructional activities with a controlled substance listed in sections 329-14 through section 329-22, Hawaii Revised Statutes (schedules I through V), the registrant shall submit for approval, a research protocol of the activity to be conducted. The research protocol shall be in accordance with section 1301.13 and 1301.18, Title 21, Code of Federal Regulations. The applicant shall also pay an application fee of \$115 for an annual registration.

(e) For each registration or re-registration to conduct chemical analysis with controlled substances listed in any schedule, the registrant shall pay an application fee of \$115 for an annual registration.

(f) For each registration or re-registration to engage in a narcotics treatment program, including a compounder, the registrant shall pay an application fee of \$115 for an annual registration.

(g) For each duplicate registration requested, the registrant shall submit a written request and shall pay a fee of \$20. [Eff 4/15/2000; am ]  
(Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-32, 329-33)

**§23-200-5 Persons required to register but exempt from fee.** (a) The director shall exempt the requirement of paying a registration fee for registration or re-registration for:

- (1) Any hospital or other institution which is operated by an agency of the United States (including the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, Department of Veterans Affairs), of any State, or any political subdivision or agency thereof; and
- (2) Any individual practitioners who are required to obtain an individual registration in order to carry out their duties as an official of an agency of the United States (including the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, Department of Veterans Affairs), of any State, or any political subdivision or agency thereof.

(b) In order to claim an exemption from payment of a registration or re-registration application fee, the registrant shall have completed the certification on the appropriate controlled substance application form wherein the registrant's superior (if the registrant is an individual) or officer (if the registrant is an agency) certifies to the status and address of the registrant and to the authority of the registrant to acquire, possess, or handle controlled substances.

(c) Any person who is exempt from the registration fee may apply to re-register not earlier than sixty days prior to the expiration date of the registration. A fee of \$50 shall be paid for re-registration after the expiration date on the certificate of registration. Exemption from payment of a controlled substance registration or re-registration fee does not relieve the registrant of any other requirements or duties prescribed by law.

(d) In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analyses, laboratories must obtain annually a registration to conduct chemical analyses. Such laboratories shall be exempted from payment of any fee for registration.

[Eff 4/15/2000; am

] (Auth: HRS §§329-31, 353C-2)

(Imp: HRS §329-32)

**§23-200-7 Time and method of registration.** (a) Registration and re-registration fees shall be paid at the time when the application for registration or re-registration is submitted for filing. Payment shall be made in the form of a personal, certified, cashier's check or money order made payable to the narcotics enforcement division, department of public safety. Payment made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. No prorated or full refund will be issued once the certificate is processed. In the event that the application is not accepted for filing or is denied, the payment shall be refunded to the applicant.

(b) Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required, until the application for registration is granted and a certificate of registration is issued by the administrator to such person.

(c) All controlled substance applications shall be processed by the department within 60 days after receipt of the completed application, to include all requested documentation. In the absence of a national disaster, state emergency, or union strike which would prevent the department from reviewing the application, any application pending more than 60 days after receipt of the completed application shall be deemed granted.

(d) State registration shall expire as noted on the certificate of registration. Any person who is registered may apply to be re-registered not earlier than sixty days prior to the expiration date on the certificate of registration. An additional fee of \$50 shall be paid for re-registration after the expiration date on the certificate of registration.

(e) Failure to register with the department will prohibit the registrant from engaging in any activity utilizing controlled substances.

(f) The administrator may require an applicant to submit such documents or written statements of fact relevant to the application as he deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within thirty days after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the administrator in granting or denying the application. [Eff 4/152000; am ]  
(Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

**§23-200-8 Modification, transfer and termination of certificate of registration.** (a) Registrants may apply to modify their registration to handle additional controlled substances by filing an application in the same manner as an application for new registration. In the event of a change of a name, location or business address, the registrant shall submit a letter to the department of public safety, narcotics enforcement division. The letter shall contain the new name, location or business address and the effective date of the change. Such notification shall be within thirty days of such fact. No fee shall be required to be paid for the modification.

(b) Failure to report a change of name, location or business address within thirty days will invalidate the registration and require re-registration and the imposition of the \$50 late fee.

(c) No registration or any authority conferred thereby shall be assigned or otherwise transferred.

(d) A certificate of registration issued to any person shall terminate if and when such person dies, ceases legal existence, and discontinues business or professional practices. Such person or the person's representative shall notify the administrator in writing within thirty days of such fact. [Eff 4/15/2000; am

] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)



**§23-201-4 Annual fees for initial and renewal permits.** (a) For each initial and renewal permit, to manufacture for distribution the applicant shall pay a fee of \$195.

(b) For each initial and renewal permit, to conduct business as a wholesale distributor, importer, or exporter, the applicant shall pay a fee of \$145.

(c) For each initial and renewal permit, to conduct business as a retail distributor the applicant shall pay a fee of \$145.

(d) For each duplicate permit, the permittee shall submit a written request and shall pay a fee of \$20. [Eff 4/15/2000; am ] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-67)

**§23-201-5 Persons required to obtain a permit but exempt from fee.**

(a) The director shall exempt from payment of the fee for registration or re-registration any official or agency of the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, Department of Veterans Affairs, or Public Health Service authorized to procure or purchase regulated chemicals for official use.

(b) Any official, employee, or other civil officer or agency of the United States, State or any political subdivision or agency thereof, who is authorized to purchase regulated chemicals, to obtain such substances from official stocks, to dispense, to conduct research, instructional activities, or chemical analyses with such substances, or any combination thereof, in the course of their official duties or employment.

(c) Any person who is exempt from the permit registration fee may apply to re-register not earlier than sixty days prior to the expiration date of the permit. A fee of \$50 shall be paid for processing of a permit after the expiration date on the permit.

(d) In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analyses, laboratories must obtain annually a registration to conduct chemical analyses. Such laboratories shall be exempted from payment of any fee for registration.

[Eff 4/15/2000; am

] (Auth: HRS §§329-31, 353C-2)

(Imp: HRS §329-32)

**§23-201-7 Time and method of registration.** (a) Registration and re-registration fees shall be paid at the time when the application for registration or re-registration is submitted for filing. Payment shall be made in the form of a personal, certified or cashier's check or money order made payable to the narcotics enforcement division, department of public safety. Payment made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. No prorated or full refund will be issued once the certificate is processed. In the event that the application is not accepted for filing or is denied, the payment shall be refunded to the applicant.

(b) Any person who is required to obtain a permit and who has not obtained a permit from the department may apply for a permit at any time. No person required to obtain a permit shall engage in any transactions for which the permit is required, until the application for permit is granted and a permit is issued by the department to such person. All regulated chemical permit applications shall be processed by the department within sixty days after receipt of the completed application, including all requested documentation. In the absence of a national disaster, state emergency or union strike which would prevent the department from reviewing the permit application, any application pending more than sixty days after receipt of the completed application shall be deemed granted.

(c) Each permit shall expire annually as noted on the permit. Any permittee may apply for renewal not earlier than sixty days prior to the expiration date of their permit. An additional fee of \$50 shall be paid for renewal after the expiration date on the permit.

(d) Failure to obtain a permit from the department will prohibit the applicant from engaging in any activity utilizing regulated chemicals designated in section 329-61, Hawaii Revised Statutes.

(e) The administrator may require an applicant to submit such documents or written statements of fact relevant to the application as he deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within thirty days after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the administrator in granting or denying the permit application.

(f) The failure to renew the permit on a timely basis, or failure to pay the applicable fees, including by making payment with a check that is dishonored upon first deposit, shall cause the permit to be automatically forfeited. [Eff 4/15/2000; am ] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-67)

**§23-201-8 Modification, transfer, and termination of permits.**

(a) Any person may apply to modify his permit registration to authorize the handling of additional regulated chemicals by filing a new permit application. In the event of a change of a name or address, the permittee shall submit a letter to the department of public safety, narcotics enforcement division. The letter shall contain the new name or address and the effective date. Such notification shall be within thirty days of such fact. No fee shall be required to be paid for the modification.

(b) Failure to report a change of address will invalidate the permit and require re-registration and the imposition of the \$50.00 late fee.

(c) No permit issued to a person shall be assigned or otherwise transferred to any other person.

(d) A permit issued to a person will terminate if and when the person dies, ceases legal existence, or discontinues business. The person or the person's representative, shall within thirty days, return the permit to the department.

[Eff 4/15/2000; am

] (Auth: HRS §§329-31, 353C-2)

(Imp: HRS §329-67)

DEPARTMENT OF PUBLIC SAFETY

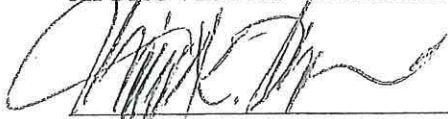
Amendments to chapters 23-200 and 23-201, Hawaii Administrative Rules, on the Summary page dated August 10, 2017, were adopted August 10, 2017, following a public hearing held on July 17, 2017, after public notice was given in the Honolulu Star Advertiser, West Hawaii Today, the Hawaii Tribune Herald, the Garden Isle News, and the Maui News on June 9, 2017 through June 11, 2017.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.



NOLAN P. ESPINDA  
Director  
Department of Public Safety

APPROVED AS TO FORM:



Deputy Attorney General

DAVID Y. IGE  
Governor  
State of Hawaii

Date:

Filed

Department of Public Safety

Amendments to Chapters 23-200 and 23-201  
Hawaii Administrative Rules

September 1, 2015

1. Section 23-200-4, Hawaii Administrative Rules, is amended to read as follows:

"§23-200-4 Fees for registration or re-registration. ~~[(a)]~~ (a) For each registration or re-registration to manufacture controlled substances, the registrant shall pay an application fee of \$~~[100.00]~~ 195.00 for an annual registration.

(b) For each registration or re-registration to distribute controlled substances, the registrant shall pay an application fee of \$~~[75.00]~~ 145.00 for an annual registration.

~~[(e)]~~ (c) For each registration or re-registration to administer, prescribe, dispense, or to conduct instructional activities with, controlled substances listed in sections 329-16 through 329-22, Hawaii Revised Statutes (schedules II through V), the registrant shall pay an application fee of \$~~[60.00]~~ 115.00 for an annual registration.

~~[(d)]~~ (d) For each registration or re-registration to conduct research or instructional activities with a controlled substance listed in sections 329-14 through section 329-22, Hawaii Revised Statutes (schedules I through V), the registrant shall submit for approval, a research protocol of the activity to be conducted. The research protocol shall be in accordance with section 1301.13 and 1301.18, Title 21, Code of Federal Regulations. The applicant shall also pay an application fee of \$~~[60.00]~~ 115.00 for an annual registration.

~~[(e)]~~ (e) For each registration or re-registration to conduct chemical analysis with controlled substances listed in any schedule, the registrant shall pay an application fee of \$~~[60.00]~~ 115.00 for an annual registration.

~~[(f)]~~ (f) For each registration or re-registration to engage in a narcotics treatment program, including a compounder, the registrant shall pay an application fee of \$~~[60.00]~~ 115.00 for an annual registration.

~~[(g)]~~ (g) For each duplicate registration requested, the

registrant shall submit a written request and shall pay a fee of \$~~[10.00]~~20.00.

[Eff APR 15 2000] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-32, 329-33)

2. Section 23-200-5, Hawaii Administrative Rules, is amended to read as follows:

"§23-200-5 Persons required to register but exempt from fee. ~~[(a)]~~(a) The director shall exempt the requirement of ~~[obtaining]~~ paying a registration fee for registration or re-registration for:

- (1) Any hospital or other institution which is operated by an agency of the United States (including the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, ~~[Veteran's Administration]~~ Department of Veterans Affairs), of any State, or any political subdivision or agency thereof; and
- (2) Any individual practitioners who are required to obtain an individual registration in order to carry out their duties as an official of an agency of the United States (including the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, ~~[Veteran's Administration]~~ Department of Veterans Affairs), of any State, or any political subdivision or agency thereof.

(b) In order to claim exemption from payment of a registration or re-registration application fee, the registrant shall have completed the certification on the appropriate controlled substance application form wherein the registrant's superior (if the registrant is an individual) or officer (if the registrant is an agency) certifies to the status and address of the registrant and to the authority of the registrant to acquire, possess, or handle controlled substances.

(c) Any person who is exempt from the registration fee may apply to re-register not earlier than sixty days prior to the expiration date of the registration. A fee of \$~~[25]~~50.00 shall be paid for re-registration after the expiration date on the certificate of registration. Exemption from payment of a controlled substance registration or re-registration fee does not relieve the registrant of any other requirements or duties prescribed by law.

(d) In order to enable law enforcement agency

laboratories to obtain and transfer controlled substances for use as standards in chemical analyses, laboratories must obtain annually a registration to conduct chemical analyses. Such laboratories shall be exempted from payment of any fee for registration." [Eff APR 15 2000] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

3. Section 23-200-7, Hawaii Administrative Rules, is amended to read as follows:

"§23-200-7 Time and method of registration.

[(a)](a) Registration and re-registration fees shall be paid at the time when the application for registration or re-registration is submitted for filing. Payment shall be made in the form of a personal, certified, cashier's check or ~~[money order]~~ money order made payable to the narcotics enforcement division, department of public safety. Payment made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. No prorated or full refund will be issued once the certificate is processed. In the event that the application is not accepted for filing or is denied, the payment shall be refunded to the applicant.

(b) Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required, until the application for registration is granted and a certificate of registration is issued by the administrator to such person.

(c) All controlled substance applications shall be processed by the department within 60 days after receipt of the completed application, to include all requested documentation. In the absence of a national disaster, state emergency, or union strike which would prevent the department from reviewing the application, any application pending more than 60 days after receipt of the completed application shall be deemed granted.

(d) State registration shall expire as noted on the certificate of registration. Any person who is registered may apply to be re-registered not earlier than sixty days prior to the expiration date on the certificate of registration. An additional fee of \$~~[25.00]~~ 50.00 shall be paid for re-registration after the expiration date on the certificate of registration.



~~[(e)]~~ (e) Failure to register with the department will prohibit the registrant from engaging in any activity utilizing controlled substances.

(f) The administrator may require an applicant to submit such documents or written statements of fact relevant to the application as he deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within thirty days after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the administrator in ~~[granting]~~ granting or ~~[denying]~~ denying the application."

[Eff APR 15 2000] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

4. Section 23-200-8, Hawaii Administrative Rules, is amended to read as follows:

"~~§23-200-8~~ §23-200-8 Modification, transfer and termination of certificate of registration. ~~[(a)]~~ (a) Registrants may apply to modify their registration to handle additional controlled substances by filing an application in the same manner as an application for new registration. In the event of a change of a name, location or business address, the registrant shall submit a letter to the department of public safety, narcotics enforcement division. The letter shall contain the new name, location or business address and the effective date of the change. Such notification shall be within thirty days of such fact. No fee shall be required to be paid for the modification.

~~[(b)]~~ (b) Failure to report a change of name, location or business address within thirty days will invalidate the registration and require re-registration and the imposition of the \$~~[25]~~ 50.00 late fee.

(c) No registration or any authority conferred thereby shall be assigned or otherwise transferred.

(d) A certificate of registration issued to any ~~[persons]~~ person shall terminate if and when such person dies, ceases legal existence, discontinues business or professional practices. Such person or the person's representative shall notify the administrator in writing within thirty days of such fact."

[Eff APR 15 2000 ~~[1]]~~ (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

5. Section 23-201-4, Hawaii Administrative Rules, is amended to read as follows:

"§23-201-4 Annual fees for ~~initial~~ initial and renewal permits. ~~(a)~~ (a) For each initial and renewal permit, to manufacture for distribution the applicant shall pay a fee of \$~~100.~~ 195.00.

~~(b)~~ (b) For each initial and renewal permit, to conduct business as a wholesale distributor, importer~~(r)~~, or exporter, the applicant shall pay a fee of \$~~75.~~ 145.00.

~~(c)~~ (c) For each initial and renewal permit, to conduct business as a retail distributor the applicant shall pay a fee of \$~~75.~~ 145.00.

(d) For each duplicate permit, the permittee shall submit a written request and shall pay a fee of \$~~10.~~ 20.00."  
[Eff APR 15 2000 ~~(F)~~ ] (Auth: HRS §§329-31, 353C-2)  
(Imp: HRS §329-67)

6. Section 23-201-5, Hawaii Administrative Rules, is amended to read as follows:

"§23-201-5 Persons required to obtain a permit but exempt from fee. ~~(a)~~ (a) The director shall exempt from payment~~(a)~~ of the fee for registration or re-registration ~~(e)~~ any official or~~(agency of)~~ agency of the U.S. Army, Navy, Marine Corps, Air Force, ~~(r)~~ Coast Guard, ~~(Veteran's Administration)~~ Department of Veterans Affairs or Public Health Service ~~(who are)~~ authorized to procure or purchase regulated chemicals for official use.

~~(b)~~ (b) Any official, employee, or other civil officer or agency of the United States, State or any political subdivision or agency thereof, who is authorized to purchase regulated ~~(chemical)~~ chemicals, to obtain such substances from official stocks, to dispense, to conduct research, instructional activities, or chemical analyses with such substances, or any combination thereof, in the course of their official duties or employment.

~~(c)~~ (c) Any person who is exempt from the permit registration fee ~~(and)~~ may apply to re-register not earlier than sixty days prior to the expiration date of the permit. A fee of \$~~25.~~ 50.00 shall be paid for processing of a permit after the expiration date on the permit.

(d) In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analyses, laboratories must obtain annually a registration to conduct chemical analyses. Such laboratories shall be exempted from payment[-] of any fee for registration." [Eff APR 15 2000 [±]] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

7. Section 23-201-7, Hawaii Administrative Rules, is amended to read as follows:

"§23-201-7 Time and method of registration.

~~[-a-]~~ (a) Registration and re-registration fees shall be paid at the time when the application for registration or re-registration is submitted for filing. Payment shall be made in the form of a personal, certified or cashier's check or money order made payable to the ~~[narcotics]~~ narcotics enforcement division, department of public safety. Payment made ~~[in]~~ in the form of stamps, foreign currency, or third party endorsed checks will not<sup>[4]</sup> be accepted. No prorated or full refund will be issued once the certificate is processed. In the event that the application is not accepted for filing or is denied, the payment shall be refunded to the applicant.

~~[-b-]~~ (b) Any person who is required to obtain a permit and who has not obtained a permit from the department may apply for a permit at any time. No person required to obtain a permit shall engage in any transactions for which the permit is required, until the application for permit is granted and a permit is issued by the department to such person. All regulated chemical permit applications shall be processed by the department within sixty days after receipt of the completed application, including all requested documentation. In the absence of a national disaster, state emergency or union strike which would prevent the department from reviewing the permit application, any application pending more than sixty days after receipt of the completed application shall be deemed granted.

~~[-c-]~~ (c) Each permit shall expire annually as noted on the permit. Any permittee may apply for renewal not earlier than sixty days prior to the expiration date of their permit. An additional fee of \$~~[25]~~ 50.00 shall be paid for renewal after the expiration date on the permit.

~~[-d-]~~ (d) Failure to obtain a permit from the

department will prohibit the ~~[applicant from]~~ applicant from engaging in any activity utilizing regulated chemicals designated in section 329-61, Hawaii Revised Statutes.

~~[(e)]~~ (e) The administrator may require an applicant to submit such documents or written statements of fact relevant to the application as he deems necessary to determine whether the application should be granted. The failure of the applicant to provide ~~[such]~~ such documents or statements within thirty days after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the administrator in granting or denying the permit application.

~~[(f)]~~ (f) The failure <sup>(^)</sup>to renew the permit on a timely basis, or failure to pay the applicable fees, including by making ~~[or]~~ payment with a check that is dishonored upon first ~~[deposit]~~ deposit, shall cause the permit to be automatically forfeited."

[Eff APR 15 2000 [±]] (Auth: HRS §§329-31, 353C-2)  
(Imp: HRS §329-67)

8. Section 23-201-8, Hawaii Administrative Rules, is amended to read as follows:

"§23-201-8 Modification, transfer, and termination of permits. ~~[(a)]~~ (a) Any person may apply to modify his permit registration to authorize the handling of additional regulated chemicals by filing a new permit application. In the event of a change of a name or address, the permittee shall submit a letter to the department of public safety, narcotics enforcement division. The letter shall contain the new name or address and the effective date. Such notification shall be within thirty days of such fact. No fee shall be required to be paid for the modification.

~~[(b)]~~ (b) Failure to report a change of address will invalidate the permit and require re-registration and the imposition of the \$~~[25]~~ 50.00 late fee.

~~[(c)]~~ (c) No permit issued to a person shall be assigned or otherwise transferred to any other person.

(d) A permit issued to a person will terminate if and when the person dies, ceases legal existence, or discontinues business. The person or the person's representative, shall within thirty days, return the permit to the department." [Eff APR 15 2000] (Auth:

HRS §§329-31, 353C-2) (Imp: HRS §329-67)

9. Material, except source notes, to be repealed is bracketed and stricken. New statutory material is underscored.


10. Additions to update source notes to reflect these amendments are not underscored.

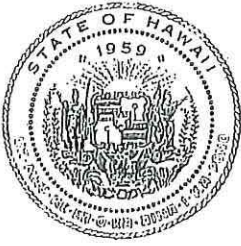
11. These amendments to chapters 23-200 and 23-201, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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 \_\_\_\_\_, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
Director of Public Safety

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General



## SMALL BUSINESS REGULATORY REVIEW BOARD

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Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St., 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594

### MEMORANDUM

David Y. Ige  
*Governor*

Luis P. Salaveria  
*Director, DBEDT*

#### Members

Anthony Borge  
*Chair*  
*Oahu*

Harris Nakamoto  
*Vice Chair*  
*Oahu*

Barbara Bennett  
*2<sup>nd</sup> Vice Chair*  
*Kauai*

Kyoko Y. Kimura  
*Mani*

Phillip Kasper  
*Mau*

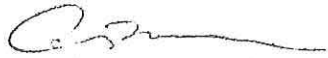
Robert Cundiff  
*Oahu*

Nancy Atmospera-Walch  
*Oahu*

Garth Yamanaka  
*Hawaii*

Director, DBEDT  
*Voting Ex Officio*

TO: Keith Kamita, Administrator  
Narcotics Enforcement Division  
Department of Public Safety

FROM: Anthony Borge, Chair   
Small Business Regulatory Review Board

DATE: July 17, 2015

SUBJECT: Proposed Amendments to Hawaii Administrative Rules,  
Chapter 23 - Title 200, "Regulations of Controlled Substances"  
and Chapter 201, "Regulation Chemicals for the Manufacture of  
Controlled Substances"

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The Small Business Regulatory Review Board (SBRRB) provides recommendations to State and County agencies on proposed rules and proposed rule amendments pursuant to Chapter 201M, Hawaii Revised Statutes.

Thank you for attending the SBRRB's July 15, 2015 board meeting and discussing with the members the amendments to the above-captioned Hawaii Administrative Rules. Upon review, the SBRRB members unanimously agreed that the rules proceed to public hearing.

Thank you for keeping the SBRRB members apprised of the regulatory activity at the Department of Public Safety.

c: Governor David Y. Ige  
Garth Yamanaka, Acting SBRRB Discussion Leader

### **III. Old Business**

**D.** Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, Chapter 231, **Administration of Taxes**, promulgated by DoTax, as follows:

1. Amendments to Section 3-14.17, **Revocation of Licenses Because of Abandonment**
2. Proposed New Section 3-14.26, **Registration of Representatives**
3. Amendments to Section 9.9-03, **Taxpayers Subject to EFT**

**SMALL BUSINESS STATEMENT "AFTER" PUBLIC HEARING  
TO THE**

**SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-231

**Chapter Name:** Administration of Taxes

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** November 1, 2017

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

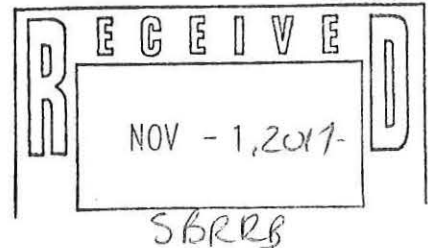
**General Description of Proposed Rules:**

The proposed rules amend chapter 231, Hawaii Administrative Rules (HAR), by amending section 18-231-3-14.17, subsections (d) and (e), to allow the Department to revoke certain business tax licenses for abandonment by publishing notice of intent to revoke the licenses on the Department's website for a period of 45 days prior to the revocation.

Taxpayers may secure General Excise, Transient Accommodations, or Rental Motor Vehicle, Tour Vehicle, and Car-Sharing Vehicle Tax licenses under chapters 237, 237D, and 251, HRS, respectively. Taxpayers must secure these licenses to engage in business and to file and pay their appropriate taxes. If a taxpayer ceases doing one of these types of business, it may cancel its license. However, some taxpayers cease doing business and never file to cancel their business tax license, resulting in an abandoned tax license.

Under current rules, the Department may only revoke an abandoned license by either mailing a notice of intent to revoke the license to the taxpayer, or by publishing the intent to revoke the license in the newspaper for two consecutive weeks.

The Department has hundreds of thousands of abandoned licenses and mailing notices or publishing notices in the newspaper is expensive and time consuming. These proposed rules





would allow the Department to revoke abandoned business tax licenses in a timely and cost-effective manner.

**Rule Description:**     New     Repeal     Amendment     Compilation

**I. Please explain how the agency involved small business in the development of the proposed rules.**

The Department invited public comment at the public hearing, but did not directly involve small business in the development of the proposed rules.

**II. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:**

1. A description of how opinions or comments from affected small businesses were solicited.

The Department invited the general public, including small businesses, to provide comments on the proposed rules in its notice of public hearing published on the Department's website and in statewide newspapers September 7, 2017.

2. A summary of the public's and small businesses' comments.

The Department received one item of testimony: comments from the Tax Foundation of Hawaii. The comments raised concerns that the proposed rules violate the Due Process Clause of the U.S. Constitution.

3. A summary of the agency's response to those comments.

The Department prefers to rely on the Department of the Attorney General's approval of these proposed rules as to form and respectfully disagrees with the Tax Foundation's concerns with the legality of the rules. The Department therefore elected to adopt the proposed rules as-is and will be sending them to the Governor for final approval.

4. The number of persons who:
  - (i) Attended the public hearing: 2

Small Business Statement After Hearing  
Department of Taxation  
Proposed HAR §18-231  
November 1, 2017  
Page 3 of 3

- (ii) Testified at the hearing: 1
- (iii) Submitted written comments: 1

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

No.

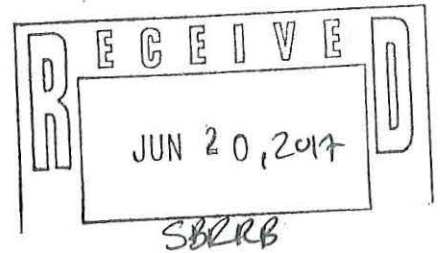
DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

SUMMARY

1. §18-231-3-14.17 is amended.



§18-231-3-14.17 Revocation of licenses because of abandonment. \*\*\*

(d) Before the director may revoke a license because of abandonment, the director shall give notice of intention to revoke the license by publishing the notice for a period of at least forty-five days on the department of taxation's website.

(e) If a person whose license is revoked:

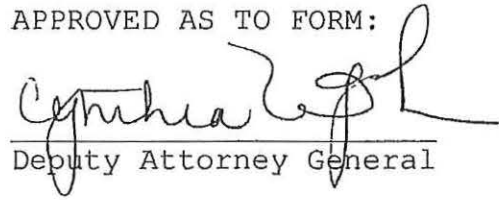
- (1) Disputes that the license has been abandoned, or
- (2) Claims that the department may not revoke the license because of a reason stated in section 237-9(c), 237D-4(g), or 251-3(c), HRS, or for any other valid reason,

the licensee shall petition the director in writing setting forth reasons why revocation should not occur, no later than ninety days after the publication of the notice described in subsection (d).

\*\*\*\*

[Eff 6/18/94; am ] (Auth: HRS §§231-3(9), 237-9(b), 237D-4(e), 251-3(b)) (Imp: HRS §§231-3(14), 237-9, 237D-4, 251-3)

APPROVED AS TO FORM:

  
Deputy Attorney General

DATE: June 9, 2017

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DEPARTMENT OF TAXATION; Standard format amendment to §18-231-3-14.17 for pre-hearing approval pursuant to Hawaii Administrative Directive 09-01.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

1. Section 18-231-3-14.17, Hawaii Administrative Rules, is amended by amending subsections (d) and (e) to read as follows:

"(d) Before the director may revoke a license because of abandonment, the director shall[+]

~~(1) Mail a notice of intention to revoke the license to the licensee at its last known address appearing in the records of the department (unless the department has been notified by the U.S. Postal Service that the address is invalid and there is no forwarding address for the taxpayer), and then~~

~~(2) Give notice of intention to revoke the license by publishing the notice once in each of two successive weeks (two publications) in a newspaper of general circulation published in the State.] give notice of intention to revoke the license by publishing the notice for a period of at least forty-five days on the department of taxation's website.~~

(e) If a person whose license is revoked:

(1) Disputes that the license has been abandoned, or

(2) Claims that the department may not revoke the license because of a reason stated in section 237-9(c), ~~[237D-4(e),]~~ 237D-4(g), or 251-3(c), HRS, or for any other valid reason,

the licensee shall petition the director in writing setting forth reasons why revocation should not occur, no later than ninety days after the ~~[second]~~

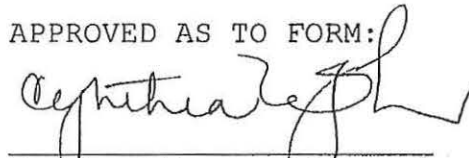
publication of the notice described in subsection  
[~~(d)~~-(2)] (d)." [Eff 6/18/94; am ] (Auth:  
HRS §§231-3(9), 237-9(b), 237D-4(e), 251-3(b)) (Imp:  
HRS §§231-3(14), 237-9, 237D-4, 251-3)

2. Material to be repealed is bracketed and  
stricken. New material is underscored.

3. These amendments to chapter 18-231, 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 October 9, 1981, and  
filed with the Office of the Lieutenant Governor.

APPROVED AS TO FORM:



Deputy Attorney General

**SMALL BUSINESS STATEMENT "AFTER" PUBLIC HEARING  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-231

**Chapter Name:** Administration of Taxes

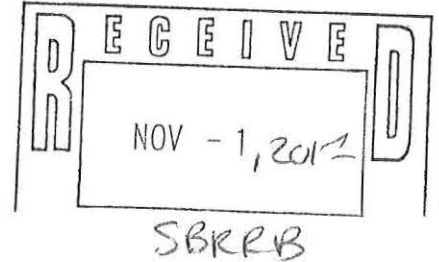
**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** November 1, 2017

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)



**General Description of Proposed Rules:**

The proposed rules amend chapter 231, Hawaii Administrative Rules (HAR), by adding a new section 18-231-3-14.26. The new rule allows the Department to require any person who represents a taxpayer in front of the Department to register with the Department.

**Rule Description:**     New     Repeal     Amendment     Compilation

**I. Please explain how the agency involved small business in the development of the proposed rules.**

The Department invited public comment at the public hearing, but did not directly involve small business in the development of the proposed rules.

**II. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:**

1. A description of how opinions or comments from affected small businesses were solicited.



The Department invited the general public, including small businesses, to provide comments on the proposed rules in its notice of public hearing published on the Department's website and in statewide newspapers September 7, 2017.

2. A summary of the public's and small businesses' comments.

The Department received one item of testimony: comments from the Tax Foundation of Hawaii. The comments raise concerns about possible future regulatory problems but are otherwise supportive.

3. A summary of the agency's response to those comments.

The Department moved to adopt the rules as-is. The Department will be sending them to the Governor for final approval.

4. The number of persons who:
  - (i) Attended the public hearing: 2
  - (ii) Testified at the hearing: 1
  - (iii) Submitted written comments: 1

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

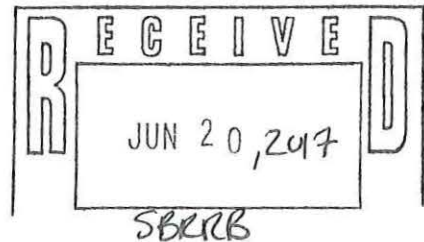
No.

DEPARTMENT OF TAXATION  
Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

SUMMARY

1. New §18-231-3-14.26 is added.

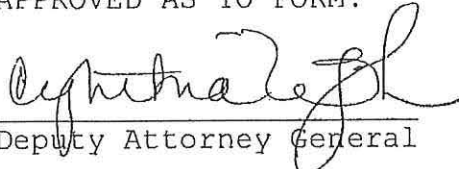


**§18-231-3-14.26 Registration of representatives.**

The department may require all persons who represent a taxpayer in any capacity before the department to register in the manner prescribed by the department.

[Eff ] (Auth: HRS §§231-3(9)) (Imp: HRS §§231-3(14))

APPROVED AS TO FORM:

  
Deputy Attorney General

DATE: June 6, 2017

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DEPARTMENT OF TAXATION; Standard format addition of new §18-231-3-14.26 for pre-hearing approval pursuant to Hawaii Administrative Directive 09-01.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-231  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

1. Chapter 18-231, Hawaii Administrative Rules, is amended by adding a new section to read as follows:


"§18-231-3-14.26 Registration of representatives.  
The department may require all persons who represent a  
taxpayer in any capacity before the department to  
register in the manner prescribed by the department."  
[Eff \_\_\_\_\_ ] (Auth: HRS §§231-3(9)) (Imp: HRS  
§§231-3(14))

2. New material is underscored.

3. These amendments to chapter 18-231, 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 October 9, 1981, and filed with the Office of the Lieutenant Governor.

APPROVED AS TO FORM:

  
Deputy Attorney General

**SMALL BUSINESS STATEMENT "AFTER" PUBLIC HEARING  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-231

**Chapter Name:** Administration of Taxes

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** November 1, 2017

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

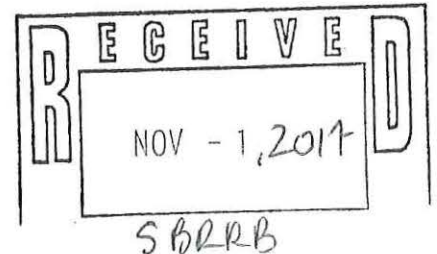
**General Description of Proposed Rules:**

The proposed rules amend chapter 231, Hawaii Administrative Rules (HAR), by amending section 18-231-9.9-03 to require a participant in the EFT program to make all payments, including those based on an annual return, for a given tax type electronically.

Under section 231-9.9, HRS, the Department is authorized to require any taxpayer whose tax liability for the year exceeds \$100,000 or whose withholding tax obligation for the year exceeds \$40,000 to electronically file and pay its taxes. The Department notifies taxpayers that they are required to participate in this program to electronically pay (the "EFT Program") and thereafter taxpayers are required to pay electronically. Failure by an EFT Program participant to pay electronically results in a penalty of 2% of the amount of tax owed.

Under existing rules, EFT Program participants are required to submit payments due on their periodic tax returns electronically, but any payments made as part of an annual reconciliation return are not required to be made electronically. The proposed rules would require that payments made as part of the annual reconciliation return also be made electronically.

**Rule Description:**     New     Repeal     Amendment     Compilation



**I. Please explain how the agency involved small business in the development of the proposed rules.**

The Department invited public comment at the public hearing, but did not directly involve small business in the development of the proposed rules.

**II. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:**

1. A description of how opinions or comments from affected small businesses were solicited.

The Department invited the general public, including small businesses, to provide comments on the proposed rules in its notice of public hearing published on the Department's website and in statewide newspapers September 7, 2017.

2. A summary of the public's and small businesses' comments.

The Department received one item of testimony: comments from the Tax Foundation of Hawaii that were generally supportive of the proposed rules.

3. A summary of the agency's response to those comments.

The Department elected to adopt the proposed rules as-is and will be sending them to the Governor for final approval.

4. The number of persons who:
  - (i) Attended the public hearing: 2
  - (ii) Testified at the hearing: 1
  - (iii) Submitted written comments: 1

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

No.

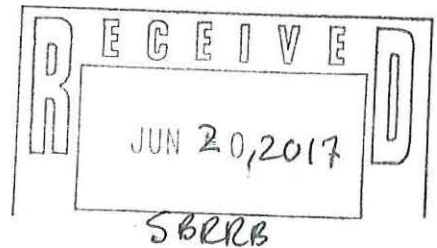
DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

SUMMARY

1. §18-231-9.9-03 is amended.





§18-231-9.9-03 Taxpayers subject to EFT program.

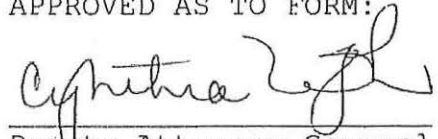
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(c) The department shall contact any taxpayer selected for the EFT program at its address on file with the department. Once selected for the EFT program with respect to a tax type, the taxpayer shall transmit all payments for that tax type by EFT.

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[Eff 12/16/95; am ] (Auth: HRS  
§231-3(9)) (Imp: HRS §231-9.9)

APPROVED AS TO FORM:

  
Deputy Attorney General

DATE: June 7, 2017

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DEPARTMENT OF TAXATION; Standard format amendment to §18-231-9.9-03 for pre-hearing approval pursuant to Hawaii Administrative Directive 09-01.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

1. Section 18-231-9.9-03, Hawaii Administrative Rules, is amended by amending subsection (c) to read as follows:

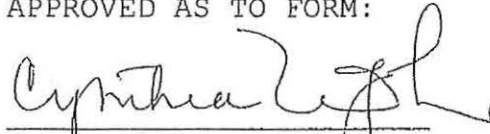
"(c) The department shall contact any taxpayer selected for the EFT program at its address on file with the department. Once selected for the EFT program with respect to a tax type, the taxpayer shall transmit all [~~periodic~~] payments for that tax type by EFT. [~~Annual reconciliation returns for that tax type shall be filed, and any required remittance shall be made, in the same manner as if the taxpayer were not in the EFT program.~~]" [Eff 12/16/95; am ]  
(Auth: HRS §231-3(9)) (Imp: HRS §§231-9.9)

2. Material to be repealed is bracketed and stricken. New material is underscored.

3. These amendments to chapter 18-231, 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 October 9, 1981, and filed with the Office of the Lieutenant Governor.

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Deputy Attorney General

## **V. Legislative Matters**

A. Update on the Board's Proposed Bill for the 2018 Legislative Session, "Relating to the Small Business Regulatory Review Board"

\_\_\_\_.B. NO.\_\_\_\_

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## A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

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

1           SECTION 1. Section 201M-5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) There shall be established within the department of  
4 business, economic development, and tourism, for administrative  
5 purposes, a small business regulatory review board to review any  
6 proposed new or amended rule. If the board determines that a  
7 proposed rule will not have a significant economic impact on a  
8 substantial number of small businesses, the board shall submit a  
9 statement to that effect to the agency that sets forth the  
10 reason for the board's decision. If the board determines that  
11 the proposed rule will have a significant economic impact on a  
12 substantial number of small businesses, the board may submit to  
13 the agency suggested changes in the proposed rule to minimize  
14 the economic impact of the proposed rule, or may recommend the  
15 withdrawal of the proposed rule. The board may also consider  
16 any request from small business owners for review of any rule  
17 proposed, amended, or adopted by a state agency and to make  
18 recommendations to the agency or the legislature regarding the

\_\_\_\_.B. NO.\_\_\_\_

**Report Title:**

Small Business Regulatory Review Board

**Description:**

Clarifies the intent of the Small Business Regulatory Review Board's powers when reviewing state and county administrative rules that impact small business.

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

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

PURPOSE: To clarify the powers of the Small Business Regulatory Review Board by adding that the Board may consider any request from small business owners for review of a rule that is "proposed" and "amended" as well as adopted by a state agency, and to change "ordinances" to "rules" when making recommendations to the county council or the mayor for appropriate action.

MEANS: Amend section 201M-5(a), Hawaii Revised Statutes.

JUSTIFICATION: To clarify the intent of the Small Business Regulatory Review Board's powers when reviewing state and county administrative rules that impact small business.

Impact on the public: Ensures the stability of the Small Business Regulatory Review Board by clarifying its powers under the Regulatory Flexibility Act.

Impact on the department and other agencies: Minimal.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED 142.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.



## **VI. Administrative Matters**

A. Assignment of Board Members for  
“Discussion Leader Assignments” for County  
and State Agencies’ Administrative Rule  
Review





**Discussion Leader: Kyoko Kimura**  
**Back-up Discussion Leader: NA**

**9. Department of Commerce & Consumer Affairs..... <http://cca.hawaii.gov>**

Address: Catherine Awakuni Colon, Director      Phone: (808) 586-2850  
          335 Merchant Street                              Fax: (808) 586-2856  
          Honolulu, HI 96813

**Discussion Leader: Nancy Atmospera-Walch**  
**Back-up Discussion Leader: NA**

**10. Department of Defense..... <http://dod.hawaii.gov>**

Address: Brigadier General Arthur "Joe" Logan      Phone: (808) 733-4246  
          Office of the Adjutant General              Fax: (808) 733-4499  
          3949 Diamond Head Road  
          Honolulu, HI 96816-4495

**Discussion Leader: Garth Yamanaka**  
**Back-up Discussion Leader: NA**

**11. Department of Education..... <http://hawaiipublicschools.org>**

Address: Kristina Kishimoto, Superintendent      Phone: (808) 586-3313  
          Board of Education                              Fax: (808) 586-3314  
          P.O. Box 2360  
          Honolulu, HI 96804

**Discussion Leader: Robert Cundiff**  
**Back-up Discussion Leader: NA**

**12. Department of Hawaiian Home Lands..... <http://dhhl.hawaii.gov>**

Address: Jobie Masagatani, Chair      Phone: (808) 620-9501  
          P.O. Box 1879                                      Fax: (808) 620-9529  
          Honolulu, HI 96805



**Discussion Leader: Mark Ritchie**  
**Back-up Discussion Leader: NA**

**17. Department of Land and Natural Resources..... <http://dlnr.hawaii.gov>**

E-mail:

Address: Suzanne Case, Chair  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, HI 96813

Phone: (808) 587-0401  
Fax: (808) 587-0390

**Discussion Leader: Robert Cundiff**  
**Back-up Discussion Leader: NA**

**18. Department of Public Safety..... <http://dps.hawaii.gov>**

Address: Nolan Espinda, Director  
919 Ala Moana Blvd. Room 400  
Honolulu, Hawaii 96814

Phone: (808) 587-1350  
Fax: (808) 587-1421

**Discussion Leader: Garth Yamanaka**  
**Back-up Discussion Leader: NA**

**19. Department of Taxation..... <http://tax.Hawaii.gov>**

Address: Maria Zielinski, Director  
P.O. Box 259  
Honolulu, HI 96809-0259

Phone: (808) 587-1540  
Fax: (808) 587-1560

**Discussion Leader: Kyoko Kimura**  
**Back-up Discussion Leader: NA**

**20. Department of Transportation..... <http://hidot.hawaii.gov>**

Address: Jade Butay, Director  
AliiAIMoku Building  
869 Punchbowl Street  
Honolulu. HI 96813

Phone: (808) 587-2150  
Fax: (808) 587-2167

**Discussion Leader: Nancy Atmospera-Walch**  
**Back-up Discussion Leader: NA**

21. University of Hawaii..... <http://www.hawaii.edu>

Address: David Lassner, President	Phone: (808) 956-9704
Address: Randolph G. Moore, Chair, Board of Regents	Phone: (808) 956-8213
Bachman Hall	Fax: (808) 956-5156
2444 Dole Street	
Honolulu, HI 96822	

## **VI. Administrative Matters**

B. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

*No Handouts*