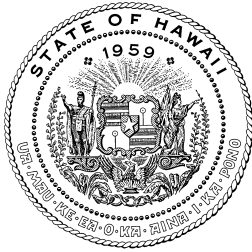


**Small Business Regulatory Review Board Meeting**

**September 17, 2020**

**10:00 a.m.**



## SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 586-2419

### AGENDA

**Thursday, September 17, 2020 ★ 10:00 a.m.**

**David Y. Ige**  
*Governor*

**Michael McCartney**  
*DBEDT Director*

#### Members

Robert Cundiff  
*Chairperson*  
*O'ahu*

Mary Albitz  
*Vice Chairperson*  
*Maui*

Garth Yamanaka  
*2nd Vice Chairperson*  
*Hawai'i*

Harris Nakamoto  
*O'ahu*

Dr. Nancy Atmospera-  
Walch  
*O'ahu*

William Lydgate  
*Kaua'i*

James (Kimo) Lee  
*Hawai'i*

Jonathan Shick  
*O'ahu*

Taryn Rodighiero  
*Kaua'i*

Director, DBEDT  
*Voting Ex Officio*

As authorized under the Governor's August 20, 2020, Twelfth Proclamation Related to the COVID-19 Emergency, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

<https://zoom.us/j/96355826320>

Copies of the Board Packet will be available on-line for review at: <https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2020>.

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

Members of the public may submit written testimony via e-mail to: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov). Please include the word "Testimony" and the subject matter following the address line. All written testimony should be **received no later than 4:30 p.m., Wednesday, September 16, 2020.**

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

**I. Call to Order**

**II. Approval of August 20, 2020 Meeting Minutes**

**III. New Business – Before Public Hearing**

- A. Re-discussion and Action on Amendments to Hawaii Administrative Rules (HAR) Title 12 Subtitle 8 Hawaii Occupational Safety and Health Division, Part 11 **Elevators and Related Systems Chapter 229 General, Administrative, and Legal Provisions**, promulgated by Department of Labor and Industrial Relations – **Discussion Leader – Mary Albitz**

**B. Discussion and Action on Proposed New and Amendments to HAR Title 17, as follows, promulgated by Department of Human Services – Discussion Leader – Harris Nakamoto**

1. Repeal of Chapter 798.2 **Child Care Services** and Approval of Chapter 789.3 **Child Care Payments**;
2. Approval of Chapter 800 **Requirements for Listing of Exempt Center-Based Providers**; and
3. Approval of Chapter 801 **Background Checks**

**IV. Administrative Matters**

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

**V. Next Meeting:** Thursday, October 15, 2020 at 10:00 a.m.

**VI. Adjournment**

## **II. Approval of August 20, 2020 Meeting Minutes**

## Small Business Regulatory Review Board

---

### MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - **DRAFT** August 20, 2020

I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:05 a.m., with a quorum present, which was open to the public.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2<sup>nd</sup> Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walsh
- William Lydgate
- James (Kimo) Lee
- Jonathan Shick
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

None

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF JULY 16, 2020 MINUTES**

Vice Chair Albitz made a motion to accept the July 16, 2020 meeting minutes, as presented. Mr. Lydgate seconded the motion, and the Board members unanimously agreed.

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

- A. Discussion and Action on the Proposed Amendments and the Small Business Statement After Public Hearing of HAR Title 19 Chapter 17, Rules and Regulations Governing Recreational Stops, promulgated by Department of Department of Parks and Recreation – City and County of Honolulu

Chair Cundiff introduced Ms. Michelle Nekota, Director of the City and County of Honolulu’s Department of Parks and Recreation. He disclosed that because he currently serves as a board member on Parks and Recreation, he was recusing himself to eliminate any potential conflicts of interest to this Board’s action.

Discussion leader Mr. Shick asked Ms. Nekota to review the rule changes. She stated that there was only one change made as a result of testimonies received at the November 20, 2019 public hearing; the amendment brings back a 15-minute grace period for recreational stops. She added that there are five permits issued per park district if there is a need to stay

more than 15 minutes; the permits are valid Monday through Friday from 6:30 a.m. to 6:30 p.m.

In addition to advertising the public hearing notice in the local newspaper, communication through the neighborhood board meetings were also performed. Although it was not initially realized how small businesses would be impacted, at the first public hearing, several small businesses suggested the reinstatement of the 15-minute grace to allow clients to stretch their legs, use the facilities, take pictures, etc.

Mr. Ritchie made a motion to move the proposed amendments to the Mayor for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS** – Before Public Hearing

##### **A. Discussion and Action on Proposed Amendments to Title 19, Chapter 108, High Occupancy Vehicle Lanes, promulgated by Department of Transportation (DOT)**

Ms. Laura Manuel from DOT's Highways Division explained that the amendments include electrical vehicles (EVs) in the Zipper Lane as DOT supports the continued exception for EVs to use HOV lanes. Act 168 allows EVs to use a high occupancy vehicle (HOV) lane regardless of the number of persons in the vehicle.

Second Vice Chair Yamanaka clarified that the amendment would be adding a definition of electric vehicle and allow EVs to utilize the Zipper lane as well as any HOV lane. Chair Cundiff suggested that the amendment could possibly affect small business if they use EVs; Ms. Manuel agreed.

Mr. Lee 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 Amendments to Title 12, Subtitle 8 Hawaii Occupational Safety and Health (HIOSH) Division, Part 11 Elevators and Related Systems, Chapter 229 General, Administrative, and Legal Provisions, promulgated by Department of Labor and Industrial Relations (DLIR)**

Vice President and discussion leader Albitz Introduced Mr. Norman Ahu, DLIR's HIOSH Administrator. He explained the specific changes and history of the rules. The rules and codes apply to any entity, including small businesses, that own or are responsible for elevators or related systems. The changes will initially impact elevator contractors, construction contractors of buildings using elevators and related systems, and building owners. The rules include increased fees for inspections and safety tests, which will also affect building owners, tenants and all businesses responsible for elevators or related equipment.

Most of the fees were originally set with the passage of Act 102, Session Laws of Hawaii, 2012. The statutory language set the fees but allows for the DLIR Director to adopt rules pursuant to Chapter 91 to amend the fees. It was the Legislature's intent to provide the flexibility for the Director to change fees to ensure the self-sufficiency of the Boiler & Elevator Branch (Branch).

The last fee increase was effective on January 1, 2019, were in varying amounts, and reflected an average increase of 7.5%. The Branch funding was converted to a self-sufficiency special fund in 2012, whereby its operations are only supported by revenues from the fees it charges. However, since 2012, the increased fees have not accounted for the Branch's full cost to operate and provide its statutory inspection services.

The Branch is currently in dire financial straits due to the cumulative operating deficits. The fee increase is therefore an initial step to help cover full operating costs to ensure its self-sufficiency. In reviewing the Branch's operating costs, the current payroll was identified along with all needed positions that were vacant due to the lack of funds. The funds were then averaged and normalized non-payroll costs including monthly inspection travel to the neighbor islands and IT support fees. The projected test year's full operating costs were then compared to the average revenue of 2018, 2019, and 2020 to identify the revenue shortfall; the shortfall as a percentage of revenue was applied to all fees across the board.

In addition, the collective bargaining and fringe rate costs have increased substantially since Act 107 created the special fund for the Branch as special funds are required to pay the fringe costs of salaries. The fringe rate was 41.54% in fiscal Year 2012-13, and for fiscal year 2018-19 the rate was 50% to 60.08%, an increase of 25% to 45%.

It was noted that the Branch is already experiencing monthly operating net losses and may soon have to take extreme cost-cutting measures that may include staff reductions. It is hoped that this increase will generate approximately \$250,000 annually to help remedy the free-falling situation for this self-sustaining operation. It was also noted that a stakeholder meeting was held on July 21, 2020, where approximately 35 stakeholders, consisting of elevator service companies, consultants, and owner associations, were invited to review a PowerPoint presentation on the reasons for the fee increase.

Mr. Blair Suzuki, Operations Manager of Otis Elevator, does not believe that proper due diligence was done on behalf of the state to ensure that a fee hike is the only solution as many of HIOSH's suggestions did not result in any improvements. He believed that a further study or audit is necessary to evaluate how the branch is running, what steps should be taken to improve the inefficiencies given the current resources, and how it will be managed.

Mr. Suzuki also suggested that more stakeholder outreach is needed as the issues will not be fixed with merely a rate hike. Further, there is no connection as to how the permitting process will be improved such as ensuring that stakeholders will receive permits faster or that elevators will be made safer. Thus, he does not support the rate hike other than the fact to say it is to make whole a division that is not currently operating efficiently.

Regarding Mr. Lydgate's question to whether the business cost is going to be passed onto the customer or whether the costs will impede upon profits, Mr. Suzuki responded that it will affect everyone across the board, including small businesses. Buildings must pay the state for their annual permits which are not received in timely manner, businesses must pay for inspections due to periodic testing every three to five years, alterations and instillations must be performed, etc.

In regards to Second Vice Chair Yamanaka's concern as to a third-party's inspection work and why it is not viewed as a solution rather than raising fees, Mr. Ahu responded that raising fees is a relief alternative and it is a statutory requirement to have state certified inspectors and inspections. He again reiterated that any changes must be brought to the Legislature.

Chair Cundiff believed that small businesses would not be opposed to fee increases if they understood that the increase would affect efficiency of DLIR operations as it would, in the long-term, result in lower costs. However, a fee increase would likely not solve systematic problems. In any case, there also appears to be a disconnect between HIOSH/DLIR and the stakeholders.

Although it was suggested that a third party be used to perform the inspections, Mr. Ahu noted that this would entail need to be presented to the Legislature. The statute currently states only an inspector employed by HIOSH/DLIR, meeting certain qualifications, can conduct inspections. Further, HIOSH/DLIR would need to oversee this process to ensure that the third parties are doing it correctly and efficiently.

Chair Cundiff recommended that a phase-in increase be instituted rather than the 17% increase and questioned if there was an alternative as to what the small business will receive with the increase. Mr. Ahu responded that the proposed increase does not include many other factors such as HGEA contract pay increases as well as the elevator supervisor position that is vacant.

Chair Cundiff commended Mr. Ahu in reaching out to the stakeholders prior to the SBRRB meeting and for looking at the statute changes, which are not a short-term solution but a long-term solution. However, he added that HIOSH needs to get a better understanding as to what the stakeholder concerns are and how to address them before going to public hearing.

Regarding what other options are available and how this Board can support the small businesses, Mr. Suzuki stated that the state should e-mail all customers that apply for annual permits and inform them of the rate increase so more input can be provided. Further, the state must show the stakeholders what they are getting for the rate increase; such as whether the increase will result in stakeholders receiving permits in a quicker and/or more efficient manner, etc. He added that it appears too soon to have increased fees as the only available option.

Mr. Lydgate made a motion to defer the proposed rule recommendation until the September 17, 2020 Board meeting for DLIR to meet with small business stakeholders to discuss concerns and suggestions for resolution. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

## **V. ADMINISTRATIVE MATTERS**

### **A. Discussion and Action on Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS**

No updates were discussed.



**VI. NEXT MEETING** - Thursday, September 17, 2020 at 10:00 a.m.

**VII. ADJOURNMENT** – Mr. Ritchie made a motion to adjourn the meeting and Ms. Rodighiero seconded the motion; the meeting adjourned at 12:20 p.m.

DRAFT

### **III. New Business – Before Public Hearing**

#### **A. Re-discussion and Action on Amendments to Hawaii Administrative Rules (HAR) Title 12 Subtitle 8 Hawaii Occupational Safety and Health Division, Part 11 Elevators and Related Systems Chapter 229 General, Administrative, and Legal Provisions, promulgated by Department of Labor and Industrial Relations**

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

Date: 8/10/2020

Department or Agency: Labor & Industrial Relations

Administrative Rule Title and Chapter: 12-229

Chapter Name: General, Administrative and Legal Provisions

Contact Person/Title: Bill Kunstman, Asst. to the Director

E-mail: william.g.kunstman@hawaii.gov Phone: 808-586-8845

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

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

Yes  No

If "Yes," provide details: See attached.

I. Rule Description:

New  Repeal  Amendment  Compilation

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

Yes  No

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

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

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

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

Yes  No

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

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

Yes  No

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

\* \* \*

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

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

See attached.

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

See attached.

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

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

See attached.

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

See attached.

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

See attached.

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

See attached.

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

As noted above, the Branch is already experiencing monthly operating net losses and may soon have to take extreme cost cutting measures which may include further staff reduction. It is hoped that this filing will generate approximately \$250,000 annually to help remedy the free-falling situation for this self-sustaining operation.

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

The Branch has tried to reduce the impact on small business by taking a very conservative but risky approach of excluding certain costs. The following costs were not included: (1) elevator supervisor and OT costs; (2) collective bargaining pay increases; (3) full repayment of seed loan; (4) uncollectible / bad debt; (5) vacation payouts for retiring staff and sick leave impacts, and (6) full impact of IT costs.

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

There is no availability or practicability of less restrictive alternatives for the fee increases is necessary for public safety.

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

DLIR intends to consider the following creative, innovative ideas to help small businesses: (1) changing the annual inspection to every two (2) years instead of every year; (2) strengthen collection statutes; (3) complete transition to IT electronic processing.

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

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

See attached.

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

There are no provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards.

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

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

\* \* \*

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

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

**A. HRS §927, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.**

The proposed changes are essentially an increase in fees to reflect the accumulated increased costs mainly associated with collective bargaining and fringe rate. The cumulative increase in collective bargaining costs from FY2012-2019 for Bargaining Units 3 & 4 is 20.6% while the fringe rate has increased from 41.54% to 60.08% (see attached exhibits).

Also see attached pdf PowerPoint presentation.

**B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes No (If Yes, please provide webpage address and when and where rules may be viewed in person).**

Draft rules in Ramseyer format are available at:  
<https://labor.hawaii.gov/hiosh/proposed-rules/>

The rules are also available at HIOSH: 830 Punchbowl Street #425.

**(Please keep the proposed rules on this webpage until after the SBRRB meeting.)**

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

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

The Elevator Rules and codes adopted therein apply to any entity, including small businesses, which own or are responsible for elevators or related systems. The initial impact of the proposed rules will be to elevator contractors, construction contractors of buildings using elevators and related systems, and building owners. The proposed rules include increased fees for inspections and safety tests. The increased fees will affect building owners, tenants and all businesses responsible for elevators or related equipment.

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

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

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

Most of the fees were originally set with the passage of Act 102, Session Laws of Hawaii, 2012. The statutory language set the fees, but allowed the director to adopt rules pursuant to chapter 91 to amend the fees. The Legislature's intent was to provide the flexibility for the Director to change fees to ensure the self-sufficiency of the Boiler & Elevator Branch (Branch).

The last Rules fee increase became effective on January 1, 2019, and were

in varying amounts, and reflected an average increase of 7.5%.

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

Please see attached chart illustrating the current and proposed amounts of the fees as well as the percentage increase. The proposal is to increase all fees across the board by 17%, except for amusement rides (no increase) and revisits (approximately 17%).

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

The Branch funding was converted to a self-sufficiency special fund in 2012, whereby the Branch operations are only supported by revenues from the fees it charges (essentially liken to a 'small business'). Every fee increase filing since 2012 has never accounted for the Branch's full cost to operate and provide its statutory inspection services.

The Branch is currently in dire straits financially due to the cumulative operating deficits. This is the Branch's initial step to cover full operating costs to ensure the self-sufficiency of the Boiler & Elevator Branch.

**d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).**

To identify the Branch full operating costs, DLIR identified current payroll and added back in all needed vacancies that were left vacant due to lack of funds; averaged and normalized non-payroll costs including monthly inspection travel to the neighbor islands and IT support fees. The projected test year's full operating costs was then compared to the average revenue of 2018, 2019, and 2020 to identify the revenue shortfall. The shortfall as a percent of revenue was applied to all fees across the board.

The collective bargaining and fringe rate costs have increased substantially since Act 107 (SLH, 2012) created the special fund for the Branch. Special funds are required to pay the fringe costs of salaries. The fringe rate was 41.54% in Fiscal Year 2012-13, for Fiscal year 2018-19 the rate is 50% to 60.08%: an increase of 25% to 45%.

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

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

DLIR held a Stakeholder TEAMS meeting on July 21, 2020 where approximately 35 stakeholders consisting of elevator service companies, consultants, and owner associations were invited. A PowerPoint presentation on reasons for the fee increase was presented. (See attached PowerPoint hardcopy to this submittal)



Stakeholders discussion notes:

- (Bert Yorita – Schindler Elevator) How will increase be applied to fees?
  - Response: The 17% increase will be applied across the board to all fees.
- (Blair Suzuki – Otis Elevator) What are the next steps for this rule change, and is third party inspection still being considered?
  - Response: The next steps: SBRRB review, SBRRB approval for public hearing, public hearing, SBRRB review / determine to or not to proceed to Governor
  - Response: Third party inspection is still an option B&E is interested in since we already have it for the boiler unit
- (Blair Suzuki – Otis Elevator) Elevator owners would pay the higher fees, but would want to be able to suggest operational efficiency improvements to B&E. Otis has submitted some improvement suggestions to B&E, but they appear to have fallen on deaf ears. Stakeholders should be able to work with B&E to provide efficiency suggestions.
  - Response: Apologize for slow response, but there is very limited management for the elevator inspection unit. (No technical elevator supervisor for years until late 2016. Then person resigned December 2018. There is still no technical supervisor to date. Also, B&E manager on long term leave.) Only HIOSH Administrator trying to oversee B&E branch.  
Totally agree that B&E and stakeholders should work together on the elevator inspection services.
- (Blair Suzuki – Otis Elevator) Will stakeholders get to provide input to SBRRB meeting.
  - Response: Yes. DLIR will notify stakeholders when this filing is on the SBRRB agenda.
- That was the end of Stakeholder TEAMS meeting.

**RECEIVED**

*By SBRRB at 9:56 am, Aug 10, 2020*

Department of Labor and Industrial  
Relations Hawaii Occupational Safety  
and Health Division  
Boiler and Elevator Inspection Branch

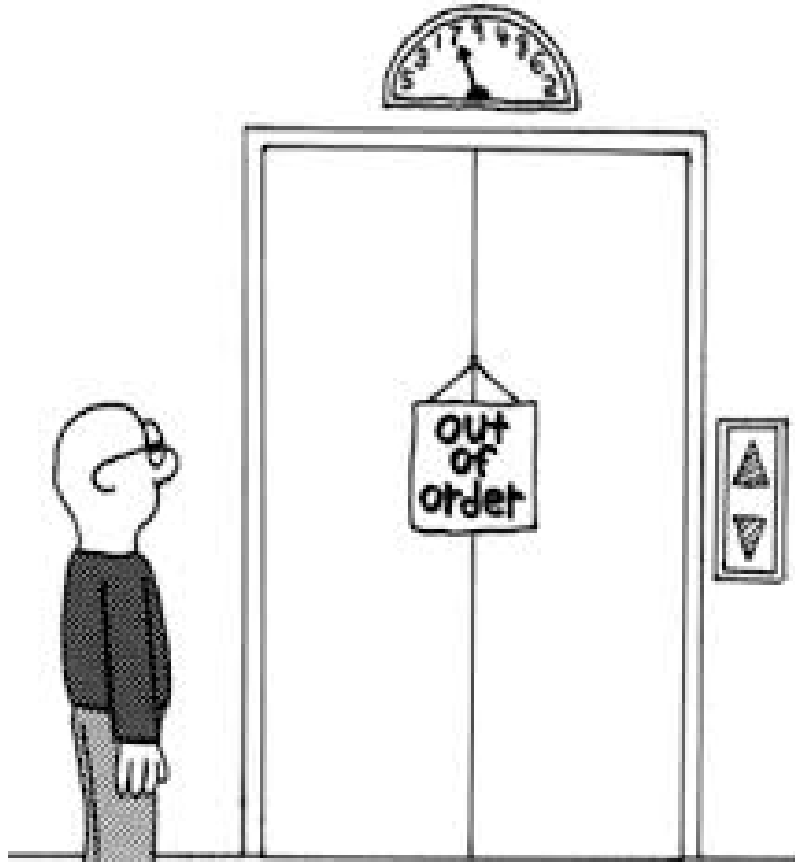
# Elevator Inspection Stakeholder Presentation

## FY2020 Proposed Fee Increase

### “Make Whole”

Definition: Restore to a sound, healthy, favorable condition.

Note: No standards to be updated in this filing.



**January 24, 2018**  
**Audit of the Los Angeles Department of**  
**Building & Safety Elevator Inspection**  
**Program**

**Finding No. 5:** LADBS has not completed a fee study or updated its elevator inspection fees since 2008.

“According to the Chief Administrative Officer’s (CAO) Financial Policies . . . ‘inspection fees should be set to support the full costs of operations for which the fees are charged, including all operating (direct and indirect) and capital costs . . . .”

**Recommendation 5.1:**

Complete the elevator inspection fee study and periodically monitor inspection fees to ensure they support the full costs of operations.

**Department of Labor and Industrial  
Relations (DLIR)  
Boiler and Elevator Safety Inspection  
Branch (B&E)**

**Boiler Updated Fees to Cover  
Costs**

**Effective Date: January 1, 2020**

The DLIR B&E branch's Boiler unit has just completed a thorough review of its rules, standards, and full costs which resulted in their recently approved increased fees schedule.

This current effort is for the DLIR B&E branch's Elevator unit to follow suit.

# Introduction

In 1980, the State Legislature deemed it critical and necessary to establish safety inspections for elevators.

## *THE LAW FOR ELEVATOR INSPECTIONS:*

### *Hawaii Revised Statutes HRS Section 397-2:*

*The legislature finds that the Hawaii occupational safety and health law does not adequately provide for the safe operation and use of boilers, pressure systems, amusement rides, and elevators and kindred equipment. The purpose of this law is to assure the safe operation and use of such apparatus in Hawaii. [L 1980, c 19, pt of §1]*

# Introduction

In 2012, the State Legislature converted the Boiler and Elevator source of funds from State General Funds to the current special Boiler and Elevator revolving fund.

*The boiler & elevator branch was made to be SELF-SUSTAINING BY THIS CONVERSION. Their operations must pay its own way via the fees and charges it assesses (similar to a small business entity).*

Included in the 2012 funding conversion, the Legislature provided “seed” start up loan with funds of \$1million to help the now SELF-SUSTAINING branch get started. This \$1 million loan was to be paid back to the state in 10 years.

# Make Whole Fee Increase

- ▶ In 2012 when B&E was converted to SELF-SUSTAINING status, the proposed elevator inspection fees were developed based on estimated activity and expense levels to support projected total operating cost of the entity.
- ▶ Subsequent elevator inspection fee adjustments DID NOT ASSESS whether the resulting total revenues from the adjustment would COVER ACTUAL OPERATING COSTS.
- ▶ Since 2012, B&E operations has been financially dependent on initial “seed” start up funds and collecting on past due accounts. Normal daily operations have proven not to support the initial revenue projections and cost coverage.
- ▶ The \$1 million seed start-up loan amount has depleted down to about \$385,000 in May 2019 and then down to about \$275,000 as of May 2020.
- ▶ At a negative net income monthly burn rate of about \$40,000 the remaining balance would only support another 6 or 7 months of operation.



# Operational Impact Due to Deteriorating Financials

- ▶ Vacant Elevator Inspection positions are not being filled as the incumbent departs the operations due in part to deteriorating net income. Current vacancies include:
  - ❖ Secretary
  - ❖ Elevator Inspection Supervisor
  - ❖ Elevator inspector #1
  - ❖ Elevator inspector #2
  - ❖ Elevator inspector #3
- ▶ Trips to neighbor islands for inspections must be scrutinized due to the added cost of travel.
- ▶ Non-payroll operating expenses including office supplies, COVID personal protective equipment, old equipment replacements, etc. must be kept at a minimum or eliminated.

# Expense and Revenue Projection Approach

- ▶ Identified current payroll expenses for existing elevator inspections staff.
- ▶ Added in payroll for elevator inspector vacancy and pro rated payroll for branch secretary. Excluded elevator inspection supervisor to minimize expense increase due to high salary and fringe, and difficulty in recruiting such a supervisor.
- ▶ Identified average non-payroll expenses for 2018 and 2019 pre-COVID years.

# Expense and Revenue Projection Approach . . .Cont'd

- ▶ Adjusted average non-payroll expenses to a normalized annual operating level.
- ▶ Identified actual elevator inspection revenue generated in 2018 and 2019. Annualized the COVID 2020 year revenue generated.
- ▶ Identified average revenue generated for 2018, 2019, and 2020. Included COVID 2020 year to reflect a “new normal” scenario that will likely be the more accurate condition going forward with more safety distancing and restrictions.

Department of Labor and Industrial Relations			
Occupational Safety and Health Division			
Boiler and Elevator Inspection Branch		Filing for Elevator Inspection Fee Increase.	
Projected Elevator Test Year Expenses			
			<b>Combined Boiler &amp; Elevator</b>
<b>Payroll Expenses</b>			
Salaries			\$ 1,459,884
Overtime, Tempo Assignments			\$ 14,599
Fringe			\$ 832,134
<b>Subtotal</b>			<b>\$2,306,617</b>
<b>Non-Payroll Expenses</b>			
	YR2018	YR2019	
Advertising	0	1204	\$ 3,000 Rule publication for public hearings
Dues & Subscriptions	2635	2283	\$ 2,500 Boiler and elevator national membership and regulation rule updates
Equipment Rental	3166	5287	\$ 5,000 Copier machine (projection based on actuals)
Office Rental	0	19262	\$ 22,800 \$1900 x 12mos
Office Supplies	4868	4827	\$ 4,850
Postage	0	0	\$ 500 Billing, correspondence, etc.
Printing	1768	124	\$ 650 Envelopes, forms, etc.
Repair and Maintenance	397	0	\$ 500 Test equipment, tools, etc.
Services on fee - Legal AG	11083	15035	\$ 13,100 Rules update filings, contests, interpretations, etc.
Services on fee - Computer HIC			\$ 40,000 Commission 10% by HIC for maintenance and collections EPS (projection based on actuals.)
Services on fee - Computer JOL			\$ 1,500 Annual fee for permit module
Telephone / communications	4615	5157	\$ 5,500 Office telephone system
Travel	\$113,576	135127	\$ 124,400 No boiler or elevator inspectors on NI, Kauai, Maui, Big Island; estimate 72 trips @ \$1500 per trip
Miscellaneous -Leg repayment	100000	0	\$ 50,000 Repay remaining \$300,000 to legislature
Miscellaneous -?	4916	5670	
<b>Subtotal</b>			<b>\$ 274,300</b>
<b>Total</b>			<b>\$2,580,917</b>

**Department of Labor and Industrial Relations  
Occupational Safety and Health Division  
Filing for Elevator Inspection Fee Increase.**

**Projected Test Year Expenses**

**Elevator Only**

**Payroll Expenses**

Salaries		\$ 1,014,147	
Overtime, Tempo Assignments			
Fringe		\$ 578,064	57%
<b>Payroll Exp Subtotal</b>		<b>\$1,592,211</b>	

**Less Elev Sup  
Less OT, TA**

**Non-Payroll Expenses**

**Combined**

Advertising	\$ 3,000	\$ 1,500	50%E	Rule publication for public hearings
Dues & Subscriptions	\$ 2,500	\$ 833	33%E	Boiler and elevator national membership and regulation rule updates
Equipment Rental	\$ 5,000	\$ 3,750.00	75%E	Copier machine
Office Rental	\$ 22,800	\$ 17,100.00	75%E	\$1900 x 12mos
Office Supplies	\$ 4,850	\$ 3,637.50	75%E	
Postage	\$ 500	\$ 375.00	75%E	Billing, correspondence, etc.
Printing	\$ 650	\$ 487.50	75%E	Envelopes, forms, etc.
Repair and Maintenance	\$ 500	\$ 375.00	75%E	Test equipment, tools, etc.
Services on fee - Legal AG	\$ 13,100	\$ 6,550.0	50%E	Rules update filings, contests, interpretations, etc.
Services on fee - Computer HIC	\$ 40,000	\$ 40,000	100%	Commission 10% by HIC for maintenance and projections based on actuals.)
	\$ 1,500	\$ -		
Telephone / communications	\$ 5,500	\$ 4,125.00	75%E	Office telephone system
Travel	\$ 124,400	\$ 108,000	72 trips	No boiler or elevator inspectors on NI, Kauai, Maui, Big Island; estimate 72 trips @ \$1500 per trip
Miscellaneous -Leg repayment	\$ 50,000	\$ 25,000	50%E	Repay remaining \$300,000 to legislature
<b>Other Exp Subtotal</b>	<b>\$ 274,300</b>	<b>\$ 211,733</b>		

**Total**

**\$1,803,944**

<b>Department of Labor and Industrial Relations</b>					
<b>Occupational Safety and Health Division</b>					
<b>Filing for Elevator Inspection Fee Increase.</b>					
<b><u>Projected Test Year</u></b>					
<b>Projected Revenues Based on Actuals</b>					
	2018 FY	2019 FY	2020 FY	3-yr Average	<b>TEST YEAR</b>
	\$1,663,815	\$1,598,398	\$1,386,468	\$1,549,560	<b>\$ 1,549,560</b>
<b>Projected Expenses Based on Actuals / Adjustments to Normal</b>					
	<b>Payroll and Non-Payroll Expenses</b>				<b>\$ 1,803,944</b>
<b>Projected "Make Whole" Shortage</b>					<b>\$(254,384)</b>
<b>Percent "Make Whole" Shortage to Projected Revenues</b>					<b>-0.1641651</b>
					<b>0.17 rounded</b>
					<b>17%</b>
<b>Projected "Make Whole" Revenues</b>					
	<b>\$ 1,549,560</b>	<b>X</b>	<b>1.17</b>	<b>\$ 1,812,986</b>	
	Projected Current Revenues			Projected Increased Revenues	

# Rate Adjustment Method

- ▶ Identified the “Make Whole” shortage of total expenses not covered by projected average revenues.
- ▶ Applied “Make Whole” shortage percentage factor across the board to all fees.

# Across The Board Application Rationale

- ▶ Unable to specifically identify each application of all the various fees over the thousands of different inspections, re-inspections, and any other miscellaneous situations.
- ▶ The presumption is that in the long run the mixture and frequencies related to the application of the various fees should be similar as a whole.



# Across The Board Application Rationale

## Cont'd

- ▶ On this basis, fees that are applied most of the time and fees that are almost never applied will continue that pattern over the years.
- ▶ The revenues generated should likewise reflect the same pattern of fee applications over the years.
- ▶ As such, an across the board percentage increase to the fees should produce the same percentage increase to the revenues generated.

# Caveats Not Factored Into Calculations

## (Very Conservative Increase)

- ▶ No elevator inspections supervisor or OT was included
- ▶ Several expected retirements will result in new inspectors with low learning curves; less productivity for awhile.
- ▶ Vacation cash payout not factored in for retirees' remaining unused earned vacation hours.
- ▶ Uncollectible accounts receivables run at about 6 to 11% was not factored in calculation.

# Caveats Not Factored Into Calculations Cont'd

## (Very Conservative Increase)

- ▶ Elevator inspectors are in a transition period of moving from paper processing to paper-less new computer system called Elevator Permit System (EPS). Learning curves vary among inspectors.
- ▶ Only nominal EPS computer commission costs included. Computer commission costs will increase as more inspections are processed through the system.
- ▶ No current HGEA collective bargaining contract pay increases included.
- ▶ Repayment of State seed money understated

# Reasonable Increase

- ▶ Payroll Expense portion of total expenses: Approximately 90%
- ▶ Payroll Expense Increased from 2012 to 2019
  - ▶ Approximately 21%
- ▶ Payroll Fringe Loading Increase from 2012 to 2019
  - ▶ Approximately 25% to 45%
- ▶ Proposed Fee Increase
  - ▶ Approximately 17%

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division  
Boiler and Elevator Inspection Branch

Elevator Stakeholder Presentation  
FY2020 Proposed Fee Increase  
“Make Whole”

## **Future Proposed Elevator Inspection Improvements**

- I. Recruit for elevator inspectors to replace retirees.
- II. Change the elevator annual inspection interval to every two (2) years under certain conditions.
- III. Strengthen collection statutes – AG Collections
- IV. Help B&E with correct billing address to improve billing process and avoid penalty
- V. Continue transition to electronic computer inspections to reduce manual processing
- VI. Help B&E recruit an Elevator Inspection Supervisor.

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The text is centered on a white background that occupies the left and middle portions of the frame.

Mahalo

for your

time and consideration

Elevator Stakeholder Presentation  
FY2020 Proposed Fee Increase  
“Make Whole”

## POST PRESENTATION DISCUSSION

Stakeholders discussion notes:

- (Bert Yorita – Schindler Elevator) How will increase be applied to fees?
  - Response: The 17% increase will be applied across the board to all fees.
- (Blair Suzuki – Otis Elevator) What are the next steps for this rule change, and is third party inspection still being considered?
  - Response: The next steps: SBRRB review, SBRRB approval for public hearing, public hearing, SBRRB review / determine to or not to proceed to Governor
  - Response: Third party inspection is still an option B&E is interested in since we already have it for the boiler unit
- (Blair Suzuki – Otis Elevator) Elevator owners would pay the higher fees, but would want to be able to suggest operational efficiency improvements to B&E. Otis has submitted some improvement suggestions to B&E, but they appear to have fallen on deaf ears. Stakeholders should be able to work with B&E to provide efficiency suggestions.
  - Response: Apologize for slow response, but there is very limited management for the elevator inspection unit. (No technical elevator supervisor for years until late 2016. Then person resigned December 2018. There is still no technical supervisor to date. Also, B&E manager on long term leave.) Only HIOSH Administrator trying to oversee B&E branch.
  - Totally agree that B&E and stakeholders should work together on the elevator inspection services.
- (Blair Suzuki – Otis Elevator) Will stakeholders get to provide input to SBRRB meeting.
  - Response: Yes. DLIR will notify stakeholders when this filing is on the SBRRB agenda.

That was the end of Stakeholder TEAMS meeting.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendment and Compilation of Chapter 12-229  
Hawaii Administrative Rules

( )

1. Chapter 12-229, Hawaii Administrative Rules, entitled "General, Administrative, and Legal Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 229

GENERAL, ADMINISTRATIVE, AND LEGAL PROVISIONS

- §12-229-1 Scope and application
- §12-229-2 Definitions
- §12-229-3 Repealed
- §12-229-3.1 Codes incorporated and adopted by reference
- §12-229-4 Repealed
- §12-229-4.1 Installation and alteration permits



§12-229-5	Repealed
§12-229-5.1	Permits to operate
§12-229-6	Repealed
§12-229-6.1	Fees
§12-229-7	Repealed
§12-229-7.1	Inspection and tests
§12-229-8	Repealed
§12-229-8.1	Rights and enforcement
§12-229-9	Repealed
§12-229-9.1	Complaints
§12-229-10	Repealed
§12-229-10.1	Reporting of accidents
§12-229-11	Repealed
§12-229-11.1	Investigations
§12-229-12	Repealed
§12-229-12.1	Violations and penalties
§12-229-13	Repealed
§12-229-13.1	Review and appeal
§12-229-14	Repealed
§12-229-14.1	Trade secrets
§12-229-15	Repealed
§12-229-15.1	Notification of transfer and location
§12-229-16	Repealed
§12-229-16.1	Variances
§12-229-17	Records

Historical Note: Chapter 12-229 is based substantially on chapter 12-241, Hawaii Administrative Rules. [Eff 7/6/98; R 6/19/00]

**§12-229-1 Scope and Application.** This part contains general and administrative rules and legal provisions which apply to this part. This part applies to all elevators, escalators, moving walks, dumbwaiters, material lifts, lifts for the mobility impaired, personnel hoists, and amusement rides in the State, with the following exceptions:

- (1) Equipment or apparatus installed in private

- residences provided the equipment or apparatus is not accessible to the public or to other occupants in the building;
- (2) Coin or token operated amusement rides considered or known in the amusement trade as kiddie rides;
  - (3) Material hoists used to raise or lower materials during construction, alteration or demolition. (within the scope of ANSI A10.5); and
  - (4) Equipment or apparatus installed in buildings or structures wholly owned and operated by the United States government. [Eff 6/19/00; am and comp 6/30/14; comp 11/10/16; am and comp 2/15/19; comp ] (Auth: HRS §394-4) (Imp: HRS §397-4)

**§12-229-2 Definitions.** As used in this part:

"Alteration" means any change to equipment, including parts, components, or subsystems other than maintenance, repair, or replacement.

"Amusement ride" means a mechanically or electrically operated device designed to carry passengers in various modes and used for entertainment and amusement.

"ANSI" means the American National Standards Institute.

"ANSI/American Society of Safety Engineers A10.4" means ANSI/ASSE, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, as adopted and incorporated by reference in section 12-229-3.1.

"Appeals board" means the labor and industrial relations appeals board, department of labor and industrial relations.

"Approved" means approved by the department.

"Appurtenance" means a device installed on and used in the normal operation of an elevator, escalator, or kindred equipment.

"ASME" means American Society of Mechanical Engineers.

"ASME A17.1" means ASME A17.1, Safety Code for Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.3" means ASME A17.3, Safety Code for Existing Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.6" means ASME A17.6, Standard for Elevator Suspension, Compensation and Governor Systems, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A18.1" means ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts, as adopted and incorporated by reference in section 12-229-3.1.

"ASTM" means American Society for Testing and Materials.

"ASTM-F24" means ASTM-F24 1997 standard on amusement rides and devices.

"Attorney general" means the attorney general of the State of Hawaii or any of the attorney general's deputies.

"Authority Having Jurisdiction" or "AHJ", means the director of labor and industrial relations or the director's designee.

"Authorized inspection agency" means the department of labor and industrial relations, elevator inspection section.

"Building code" means the currently adopted, applicable county code in the revised ordinances of the applicable county, or the code adopted by the State of Hawaii for state buildings.

"Certificate of competency" means a certificate issued to a person who has passed the examination prescribed by the director.

"Contractor" means any person, firm, or corporation installing, repairing, or servicing any amusement ride, elevator, or kindred equipment or structure inspected pursuant to chapter 397, HRS.

"Department" means the department of labor and industrial relations, State of Hawaii.

"Director" means the director of the department

of labor and industrial relations or the director's designee.

"Discrepancy" means the non-conformance to codes, standards, rules, or regulations required by this part.

"Division" means the Hawaii occupational safety and health, department of labor and industrial relations, State of Hawaii.

"Elevator" means a hoisting and lowering mechanism equipped with a car that moves within guides and serves two or more fixed landings, and is classified by elevator types as described in ASME A17.1, as adopted and incorporated by reference in section 12-229-3.1.

"Elevators and related systems" means elevators and kindred equipment and amusement rides.

"Existing installation" means any device or equipment where the application for the installation was properly filed with the department before the effective date of this chapter.

"HAW" means the registration number assigned to an elevator and kindred equipment or amusement ride by the AHJ.

"Hawaii Revised Statutes" or "HRS" means laws enacted by the Hawaii state legislature.

"IBC" means the International Building Code, as adopted and incorporated by reference in section 12-229-3.1.

"Installation" means a complete elevator or kindred equipment, including its hoistway, hoistway enclosures and related construction, and all machinery and equipment necessary for its operation.

"Installation or alteration permit" means a document, which may be electronic, issued by the department authorizing the installation or alteration of an elevator or kindred equipment, or the department approval of a new amusement ride.

"Kindred equipment" means escalators, moving walks, dumbwaiters, permanently installed material lifts, platform lifts, inclined lifts, stage lifts, stairway chairlifts, personnel hoists, and any other similar mechanized equipment used to convey people in

places other than a public right-of-way, but does not include amusement rides.

"May" means not mandatory.

"New installation" means any device or equipment that is not an existing installation or an existing installation that is being relocated.

"NFPA" means the National Fire Protection Association.

"NFPA 1, UFC" means the NFPA 1, Uniform Fire Code, as adopted and incorporated by reference in section 12-229-3.1.

"NFPA 70" means NFPA 70, National Electrical Code, as adopted and incorporated by reference in section 12-229-3.1.

"Operating permit" means a permit issued by the department authorizing the operation of an elevator, kindred equipment, or amusement ride.

"Order" means a command to perform a mandatory act issued by the department.

"Overtime" means hours outside a regular eight-hour working day.

"Owner" means any person, firm, or corporation with legal title to any amusement ride, and elevator and kindred equipment inspected pursuant to chapter 397, HRS.

"Permit to operate" means a document, which may be electronic, issued by the department authorizing the operation of an elevator, kindred equipment, or an amusement ride.

"Qualified elevator inspector" means an elevator inspector employed by the department holding a valid certificate of competency issued by the department and a Qualified Elevator Inspector certification that meets the criteria of the American Society of Mechanical Engineers and the standards for the qualification of elevator inspectors of the American National Standards Institute. The certificate of competency is valid only while the inspector is employed by the department.

"Regular operating permit" means an operating permit that is not indicated as temporary.

"Shall" means mandatory.

"Unsafe" means potential exposure to a recognized hazard.

"Violation" means the failure to comply with any citation, notice, or order of the department, or rule or standard promulgated under chapter 397, HRS. [Eff 6/19/00; am and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp ] (Auth: HRS §§397-4, 397-6) (Imp: HRS §§397-4, 397-6)

**§12-229-3 Repealed.** [R 6/30/14]

**§12-229-3.1 Codes incorporated and adopted by reference.** The following codes are incorporated and adopted by reference and made a part of this chapter and shall apply to elevators, kindred equipment, and amusement rides in this part, unless otherwise modified by the rules pertaining to elevators, kindred equipment, and amusement rides:

- (1) ANSI/ASSE A10.4-2007, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, [~~as copyrighted and~~ published in 2007 by American National Standards Institute, Inc. [~~7-25 West 43<sup>rd</sup> Street, New York, NY 10036~~]; ASME A17.1-2010/CSA-B44-10, Safety Code for Elevators and Escalators, [~~as copyrighted and~~ published in 2010 by the American Society of Mechanical Engineers [~~7-Three Park Avenue, New York, NY 10016-5990~~]; ASME A17.3-2011, Safety Code for Existing Elevators and Escalators, [~~as copyrighted and~~ published in 2011 by the American Society of Mechanical Engineers [~~7-Three Park Avenue, New York, NY 10016-5990~~];
- (2) ASME A17.5-2011, Elevator and Escalator Electrical Equipment, [~~as copyrighted and~~ published in 2011 by the American Society of Mechanical Engineers [~~7-Three Park Avenue,~~

- ~~New York, NY 10016-5990];~~
- (3) ASME A17.6-2010, Standard for Elevator Suspension, Compensation and Governor Systems, [~~as copyrighted and~~] published in 2010 by the American Society of Mechanical Engineers [~~, Three Park Avenue, New York, NY 10016-5990];~~
  - (4) ASME A18.1-2011, Safety Standard for Platform Lifts and Stairway Chairlifts, [~~as copyrighted and~~] published in 2011 by the American Society of Mechanical Engineers [~~, Three Park Avenue, New York, NY 10016-5990];~~
  - (5) International Building Code, 2012 edition, [~~as copyrighted and~~] published in 2012 by the International Code Council, Incorporated [~~, 500 New Jersey Avenue, 6<sup>th</sup> Floor, Washington, DC 20001];~~
  - (6) ICC A117.1-2009, Accessible and Usable Buildings and Facilities, [~~as copyrighted and~~] published in 2010 by the International Code Council, Incorporated [~~, 500 New Jersey Avenue, NW, 6<sup>th</sup> Floor, Washington, DC 20001];~~
  - (7) NFPA 1, Uniform Fire Code, 2009 Edition, [~~as copyrighted and~~] published in 2009 by the National Fire Protection Association [~~, 1 Batterymarch Park, Quincy, MA 02269-7471];~~
  - (8) NFPA 72, National Fire Alarm and Signaling Code, 2010 edition, [~~as copyrighted and~~] published in 2010 by the National Fire Protection Association [~~, 1 Batterymarch Park, Quincy, MA 02269-7471];~~
  - (9) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 edition, [~~as copyrighted and~~] published in 2010 by the National Fire Protection Association [~~, 1 Batterymarch Park, Quincy, MA 02269-7471];~~ and
  - (10) NFPA 70, National Electrical Code, 2011 edition, as published in 2011 by the National Fire Protection Association [~~, 1 Batterymarch Park, Quincy, MA 02269-7471].~~ [Eff and comp 6/30/14; comp 11/10/16; am and

comp 2/15/19; am and comp ]  
(Auth: HRS §397-4) (Imp: HRS §397-4)

**§12-229-4 Repealed.** [R 6/30/14]

**§12-229-4.1 Installation and alteration permits.**

(a) No person shall install, construct, reconstruct, relocate, or make an alteration to any elevator, kindred equipment, or amusement ride subject to this part without first obtaining an installation or alteration permit from the department.

The owner shall be responsible for contracting the work with a licensed elevator contractor, and shall ensure that the contractor obtains all permits and inspections required by this part. The contractor shall be responsible for the safe operation of equipment during the installation, alteration, or relocation, until a permit to operate has been issued by the department. An amusement ride owner shall register the new apparatus or an alteration by submitting an application for review and registration.

An application on a form provided by the department shall be submitted and approved prior to commencement of work. The application shall include:

- (1) Applicant's name (elevator contractor licensed to perform the work), business address and license number, expiration date of the license, name and contact information of the licensed mechanic or supervisor in charge of the work;
- (2) Building name and complete address, including island and zip code, of the installation or alteration;
- (3) The name and complete address of the legal owner of the elevator, kindred equipment, or amusement ride;
- (4) The anticipated start date of the installation or alteration and the



- anticipated completion date;
- (5) The type of equipment to be installed or altered, manufacturer of the equipment, maximum rise and number of floors;
  - (6) The plans and specification for installation or alteration of elevators and kindred equipment together with the building details that are pertinent to the installation;
  - (7) Copies of engineering data, tests, and laboratory reports, and any other pertinent information deemed necessary by the department;
  - (8) For amusement rides, the application to review, approve, and register the new apparatus shall be submitted on a form authorized by the department and shall include manufacturers' drawings, and engineering and test data; and
  - (9) Any other information indicated as required by the application.

(b) Applications to install, alter, or register must be accompanied by the payment of the appropriate installation or alteration processing fee for each conveyance subject to this part as per the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter.

- (1) Refunds of the initial installation or alteration processing fee minus the department's cost to review the application thus far may be refunded upon written or electronic request to the department. A refund of the initial installation or alteration processing fee may be granted upon satisfactory showing that the withdrawal or amendment of the application was due to circumstances beyond the control

of the applicant; and

- (2) No refunds will be issued for expired permits.

(c) Only a person who is licensed to engage in the business of installing or repairing elevators and kindred equipment by the contractors license board of the Hawaii department of commerce and consumer affairs may apply for an installation permit or alteration permit, except the application to install a personnel hoist may be made by a licensed construction contractor and the application to register an amusement ride may be made by the owner.

(d) All alteration work on elevators and kindred equipment requires an alteration permit prior to the work being performed. Alteration work includes:

- (1) All alteration to elevators and kindred equipment as described in ASME A17.1, section 8.7;
- (2) Any alterations that requires the equipment or conveyance to be tested by the department prior to being returned to service, including:
  - (A) The replacement or repair of any part or parts that would require recalibration or testing per ASME A17.1, section 8.7; or
  - (B) Work performed on components or equipment affecting or necessary for fire safety (e.g., cab interiors, systems associated with fire recall, etc.); and
- (3) Any alteration, renovation, or change to the original design of the car's interior.

(e) The application shall be deemed approved if not acted on by the department within thirty calendar days following the receipt of the completed application. The maximum period of time for the department to act on an application for installation or alteration established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike that would prevent

the applicant or the department from fulfilling application review requirements until the time the emergency conditions improve or are reasonably under control.

(f) Installation or alteration permits issued by the department shall be posted in a conspicuous place on the jobsite near the elevator, kindred equipment, or amusement ride prior to the start of any work being done. They shall remain posted until the department has witnessed all acceptance tests and issued an operating permit for the elevator or kindred equipment.

(g) Installation or alteration permits shall expire within one year of the issuance date if the installation or alteration work described on the application has not yet commenced. Otherwise, the permit is valid for a period of three years.

(h) All new elevators and kindred equipment shall have the Hawaii registration number (HAW) assigned by the department painted on or permanently attached to both the car top crosshead and the controller. The owner is responsible for having the HAW number painted on or attached to the device or equipment, and ensuring that the number remains legible. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; am and comp ]  
(Auth: §397-4) (Imp: HRS §397-4)

**§12-229-5 Repealed.** [R 6/30/14]

**§12-229-5.1 Permits to operate.** (a) The department shall issue a "permit to operate" for any elevator, kindred equipment, or amusement ride where the inspection and tests required by the department show that the equipment has been designed and installed in accordance with the requirements of chapter 397, HRS, and its related rules, and are in compliance with this part. It shall be a violation for

any person, firm, association, partnership, or corporation to operate an elevator, kindred equipment, or amusement ride regulated by this part unless a permit for the operation has been issued by the department and the permit remains in effect.

(b) A permit to operate an elevator or related systems shall be issued only after a qualified inspector has determined that the equipment, device or apparatus meets all applicable requirements of this part. A permit to operate elevators or related systems shall be valid per the schedules in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, unless revoked sooner, and may be renewed only upon satisfactory completion of an inspection by a qualified inspector. A valid permit may be extended for cause by the department if so requested in writing by the owner or contractor prior to the expiration date.

(c) The owner, or the owner's duly appointed agent, shall be responsible for:

- (1) The safe operation and proper maintenance of elevators and related systems after the installation or alteration has been approved and an initial permit to operate has been issued;
- (2) Conducting all periodic or maintenance tests required by this part;
- (3) Arranging for inspection of closed buildings and not readily accessible elevators and related systems by qualified inspectors. Elevators and kindred equipment not inspected as a result of the owner's failure to provide convenient access shall be considered removed from service and shall comply with section 12-229-7.1(b)(4); and
- (4) Requesting and scheduling with the department all safety tests in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of

this chapter.

(d) The permit to operate shall indicate the type of equipment for which it is issued. In the case of elevators and kindred equipment, the permit shall state whether it is passenger or freight, and the rated load and speed for the elevator, dumbwaiter, escalator, or moving walk. For new or altered elevators, after the effective date of these rules, a copy of the permit to operate shall be posted conspicuously in the car of the elevator, and on or near the dumbwaiter, escalator, moving walk, or other kindred equipment.

(e) The department may immediately revoke any permit to operate for any equipment required to be inspected by this chapter that is found to be in an unsafe condition; or when an owner or contractor fails to comply with a department order to correct specific defects or hazards and continues to use or operate the equipment, device, or apparatus without abating the hazards or defects. The department shall reissue a permit to operate when a subsequent inspection by a qualified inspector finds that the hazardous condition has been corrected or when the department receives documentation that the noncompliant item has been abated.

(f) Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, establishes the required maximum intervals for the periodic reinspection and renewal of the permits to operate. The department may require that specific equipment be re-inspected more frequently if conditions found during an inspection require closer or more frequent monitoring to ensure its safe operation.

(g) The department may provide for the issuance of a temporary permit to operate while any noncomplying elevator or kindred equipment is being brought into full compliance with chapter 397, HRS.

(h) The owner or contractor may petition the department for additional time to correct any discrepancy or violation by submitting a request in

writing by no later than the correction due date or the expiration date of the temporary permit, whichever is applicable, and shall include:

- (1) Specific additional time needed;
- (2) Efforts made to date to effect correction; and
- (3) Any interim steps or actions taken to ensure the safe operation of the equipment, device or apparatus.

(i) No elevator, kindred equipment, or amusement ride that is required to be inspected pursuant to chapter 397, HRS, shall be operated except as necessary to install, repair, or test the elevator, kindred equipment, or amusement ride unless a permit to operate has been issued by the department and remains valid. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp ]  
 (Auth: §397-4) (Imp: HRS §397-4)

**§12-229-6 Repealed.** [R 6/30/14]

**§12-229-6.1 Fees.** (a) Departmental inspection fees. The department shall collect from the owner or contractor, the fee listed in the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter, for each inspection made by a qualified inspector. The following shall apply to departmental inspection fees:

- (1) The fees for scheduled inspection delayed or canceled by the requester, shall be charged to the requester in accordance with the scheduled fee for the type of inspection

- ~~[scheduled;]~~ scheduled, however, if the notice of cancellation or delay of the scheduled inspection is provided at least forty-eight hours prior to the scheduled date and time, not counting weekends and state holidays, no additional fee will be charged. A delayed inspection includes situations where the equipment is not ready for the inspection or the requester is not ready to conduct the required tests within one hour of the scheduled date and time;
- (2) Where an inspection must be re-scheduled due to untimely notification of delay or cancellation, the appropriate inspection fee must be paid prior to the re-scheduling of the inspection;
  - (3) Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of ~~[\$325]~~ \$400 per day for up to two hours and ~~[\$650]~~ \$800 per day for more than two hours. Fees for overtime hours shall be ~~[\$650]~~ \$800 per day for up two hours and ~~[\$1,300]~~ \$1,600 per day for more than two hours;
  - (4) When a special or dedicated inspection is made at the request of the owner, contractor, or vendor, the sum of expenses incurred shall be charged in addition to the inspection fee;
  - (5) Whenever the requester of an inspection fails to pay the fees required pursuant to this section within sixty days after notification, the requester shall pay, in addition to the fees required, a penalty equal to fifty percent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification. For online inspection

requests, fees must be paid at the time of the request, except for additional fees for special, dedicated, return, or overtime inspections for which the amount owed could not be determined in advance. In such cases, the requester shall be invoiced by the department;

- (6) Departmental reports of inspections for which expenses must be added to the basic fee shall be accompanied by an itemized account of the inspections made and the expenses incurred;
- (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered on floor in determining installation permit fees; and The department shall charge and collect the fee listed in Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter, for each category 3 or 5, or internal escalator inspection, witnessed by qualified inspectors of the department during regular working hours. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of [~~\$325~~] \$400 per day for up to two hours and [~~\$650~~] \$800 per day for more than two hours. Fees for overtime hours shall be [~~\$650~~] \$800 per day for up to two hours and [~~\$1,300~~] \$1,600 per day for more than two hours.

(b) Departmental installation and alteration permit and test fees. The following shall apply to installation, alteration, and test fees:

- (1) The department, before accepting an application for installing, constructing, re-constructing, or relocating an elevator or a related system, shall charge and



collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter;

- (2) The department, before accepting an application for an alteration, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter. For online applications, fees must be paid electronically at the time of the application. Any transaction failure shall void the application;
- (3) For each instance requiring an installation or alteration permit fee, the department shall provide the final installation drawing review, inspection and witnessing of the initial acceptance test on the installation, any resulting permit to operate, and on additional follow-up inspection per permit, and the follow-up inspection shall be at the convenience of the department;
- (4) Fees in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter, or the fee in effect on the application submittal date shall be charged and collected for all applications for installation or alteration permits;
- (5) For each instance requiring a building plan review, the department shall charge a fee in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of

this chapter and located at the end of this chapter;

- (6) For additional follow-up inspections for final acceptance, the fee shall be [~~\$325~~] \$400 per day for up to two hours and [~~\$650~~] \$800 per day for more than two hours if during the normal workday. Fees for overtime hours shall be [~~\$650~~] \$800 per day for up to two hours and [~~\$1,300~~] \$1,600 per day for more than two hours; and
- (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
- (c) Amusement rides, fees. The following shall apply to amusement ride fees:
  - (1) The fee for an inspection of an amusement ride shall be \$200;
  - (2) Inspections, for which a fee is to be charged, shall include, but are not limited to:
    - (A) A reinspection of a ride at a site to allow it to operate at that site after the ride was found at an earlier inspection to be unsafe;
    - (B) An inspection made at a site after being unable to complete an earlier inspection at that site due to delay within the control of the requester;
    - (C) A permit to operate; and
    - (D) Scheduled inspections delayed or canceled by the requester where notification was provided to the department less than forty-eight hours prior to the scheduled inspection date and time (not including weekends and state holidays);
  - (3) When an unscheduled inspection is made at the request of the owner or contractor, the sum of expenses incurred shall be charged in addition to the inspection fee;

- (4) For additional follow-up inspections for final acceptance, the fee shall be [~~\$300~~] \$400 per day for up to two hours and [~~\$600~~] \$800 per day for more than two hours if during the normal workday. Fees for overtime hours shall be [~~\$600~~] \$800 per day for up to two hours and [~~\$1,200~~] \$1,600 per day for more than two hours; and
- (5) Whenever the requester fails to pay the fees required under this section within sixty days after notification, the requester shall pay in addition to the fees required, a penalty equal to fifty percent of the fee. For the purpose of this section, the date of the invoice shall be considered the date of notification. For online inspection requests, fees must be paid at the time of the request, except for additional fees for unscheduled, return, or overtime inspections, which will be invoiced to the requester. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; am and comp ] (Auth: §397-4) (Imp: HRS §397-5)

**§12-229-7 Repealed.** [R 6/30/14]

**§12-229-7.1 Inspections and tests.** (a) The department shall inspect to ensure compliance with chapter 397, HRS, any activity related to the erection, construction, alteration, demolition, or maintenance of buildings, structure, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and other construction projects or facilities containing elevators or kindred equipment.

(b) Elevators and kindred equipment. The following shall apply to inspections and tests:

- (1) All permit renewal inspections and witnessing of tests of elevators or kindred equipment as required under this chapter shall be performed by qualified inspectors employed by the department;
- (2) Where notifications of discrepancies, recommendations, or requirements are made, these notations shall refer to the applicable code, rule, or standard;
- (3) Elevator or kindred equipment regulated under this part shall be inspected and tested in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter;
  - (A) Internal inspection of escalators and moving walks shall be performed at intervals of thirty-six months;
  - (B) Personnel hoists shall be load tested at intervals of three months;
  - (C) The category 3 test shall be performed on all holed and holeless hydraulic elevator systems. The interval may be extended at the discretion of the department for those hydraulic elevator installations such as holeless hydraulic elevators in which all components are readily accessible for visual inspection; and
  - (D) The period between inspections may be extended by the department for cause. A written application by the owner must be received by the department prior to the expiration date for review;
- (4) Any elevator or kindred equipment that is out of service and not continuously maintained for a period exceeding one year or has not been inspected in accordance with paragraph (3) shall be taken out of service by the owner by complying with the

following:

- (A) Car and counterweight (if any) shall be landed at the bottom of the hoistway and hoisting ropes shall be disconnected at both ends. For hydraulic driven elevators and hydraulic driven kindred equipment, the car shall be lowered to the bottom of the hoistway, oil line disconnected with partial or total oil supply line removal, and oil removed from the tank reservoir;
  - (B) All electric power shall be removed by disconnected and removing the power feeders; and
  - (C) All hoistway entrances or escalator entrances and exits shall be permanently blocked or barricaded to prevent inadvertent entry. The owner or the owner's agent shall submit a certification that the unit has been properly taken out of service as indicated in this paragraph, on a form provided by the department. Prior to placing the elevator or kindred equipment back in service, the department shall be notified and an inspection [~~made; and~~] made.
- (5) While conducting tests and inspections required by section 12-229-5.1 for acceptance of new elevators for load testing of elevators, a positive means of communication, such as a walkie-talkie system, between the various testing and witnessing personnel shall be furnished by the elevator maintenance company performing the test or inspection.
- (c) Amusement rides. The following shall apply to amusement rides:
- (1) The department shall inspect and witness load tests, in accordance with ASTM-F24 and chapter 12-250 at least semi-annually, for

- all amusement rides at a carnival, circus, fair, amusement park, or other public venue, for protecting the safety of the public;
- (2) After the initial inspection, each amusement ride shall be inspected as often as necessary to ensure safe operation but not less than twice annually at intervals of not less than five months nor greater than seven months;
  - (3) If the department finds, upon inspection, that an amusement ride is in a safe operating condition and meets with the requirements of this chapter and chapter 12-250, the department shall affix to the ride in a prominent location a permit to operate bearing upon its face the date of the inspection and the permit expiration date; and
  - (4) No ride shall be operated unless it has affixed to it a current permit to operate.  
 [Eff and comp 6/30/14; am and comp 11/10/16;  
 am and comp 2/15/19;  
 am and comp \_\_\_\_\_ ] (Auth: §397-4)  
 (Imp: HRS §397-4)

**§12-229-8 Repealed.** [R 6/30/14]

**§12-229-8.1 Rights and enforcement.** (a)

Rights.

- (1) Authorized representatives of the director may enter without delay during regular working hours and at other reasonable times, any place, establishment, or premises in which are located amusement rides, or elevators and kindred equipment requiring inspection pursuant to chapter 397, HRS;
- (2) The department may question any employer, owner, operator, agent, or employee in

- investigation, enforcement, and inspection activities covered by this chapter; and
- (3) Any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall not be liable for or made a party to any civil action growing out of administration and enforcement of chapter 397, HRS.
- (b) Enforcement.
- (1) Whenever the right of entry to a place to inspect an amusement ride, elevator, or kindred equipment required by this chapter to be inspected is refused to an authorized representative of the director, the department may apply to the circuit court where the equipment is located for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court;
  - (2) Whenever the department finds that the construction of or the operation of any amusement ride, or elevator and kindred equipment required to be inspected under this part is not safe, or that any practice, means, method, operation, or process employed or used is unsafe or is not in conformance with the standards and codes adopted pursuant to chapter 91, HRS, the department shall issue an order to render the construction or operation safe or in conformance with chapter 397, HRS, or its standards and codes and deliver the same to the contractor or owner. Each order shall be in writing and may be delivered by mail, electronically, or in person. The department may in the order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to ensure compliance

with the purposes and provisions of chapter 397, HRS. An order to bring the operation of elevator or kindred equipment into compliance may require the owner to submit a plan of compliance that addresses interim corrective plans to ensure public and worker safety as well as the schedule for the correction of the non-conforming element. A plan of compliance shall not exceed five years for residential buildings or three years for all other buildings. The owner or contractor shall obey and observe all orders issued by the department or be subject to appropriate civil penalties;

- (3) Whenever, in the opinion of the department, the condition of or the operation of amusement rides, or elevators and kindred equipment required to be inspected by chapter 397, HRS, or any practice, means, method, operation, or process employer or used, is unsafe, or is not properly guarded, or is dangerously placed, its use may be prohibited by the department. An order to that effect shall be posted prominently on the equipment or near the place or condition referred to in the order. The order shall be removed when a determination has been made by an authorized representative of the department that the amusement rides, or elevators and kindred equipment are safe and the required safeguards or safety devices are provided;
- (4) Pursuant to section 397-4(d)(4), HRS, when an imminent hazard exists, the department may apply for a restraining order from a circuit court to effect enforcement restraining the use or operation until the use or operation is made safe;
- (5) Pursuant to section 397-4(d)(5), HRS, the director, or an authorized representative, shall have the same powers as are possessed by the court respecting administering of



- oaths, compelling attendance of witnesses, producing documentary evidence, and examining witnesses or causing them to be examined, and may take depositions and certify to official acts;
- (6) Where a condition or practice involving any amusement ride, or elevator and kindred equipment required to be inspected by chapter 397, HRS, could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:
- (A) Immediately take steps to obtain abatement by informing the owner, contractor, and all person in harm's way of the hazard by meeting, posted notice, or otherwise;
  - (B) Take steps to immediately obtain abatement through direct control or elimination of the hazard if, after reasonable search, the owner, contractor, or their representative is not available;
  - (C) Take steps to obtain immediate abatement when the nature and imminence of the danger or hazard does not permit a search for the owner or contractor; and
  - (D) Where appropriate, initiate necessary legal proceedings to require abatement by the owner or [~~contractor; and~~] contractor.
- (7) The department may prosecute, defend, and maintain actions in the name of the department for the enforcement of the provisions of chapter 397, HRS, including the enforcement of any order issued by it, the appeal of an administrative or court decision, and other actions necessary to enforce chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; am and comp 2/15/19;

am and comp ] (Auth: HRS  
§397-4) (Imp: HRS §§397-4, 397-6, 397-8)

**§12-229-9 Repealed.** [R 6/30/14]

**§12-229-9.1 Complaints.** (a) Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(b) Names of all complainants and witnesses shall be held in confidence by the department, unless prior permission has been given by the complainants or witnesses to release his or her names, or unless it has been determined by the state attorney general that disclosure is necessary for the enforcement and review under this chapter. [Eff and comp 6/30/14; comp 11/10/16; com 2/15/19; comp ] (Auth: HRS §397-4) (Imp: HRS §397-7)

**§12-229-10 Repealed.** [R 6/30/14]

**§12-229-10.1 Reporting of accidents.** (a) Whenever an accident occurs involving either an amusement ride, or an elevator and kindred equipment, the owner shall promptly notify the division within eight hours by telephone at (808)586-9141. For reporting purposes, "accident" is defined as an occurrence resulting in significant damage to an elevator and kindred equipment and amusement device, including when it is rendered inoperative or any occurrence resulting in physical injury to a person or persons.

An accident report shall be submitted to the

department within two calendar days after the owner has completed the accident investigation, and shall include the following information:

- (1) The date and time of the accident;
- (2) Hawaii registration number (HAW number) of the amusement ride, elevator, or kindred equipment involved;
- (3) Name and address of the victim or victims;
- (4) A brief description of the accident, including the nature and scope of the injuries;
- (5) Whether the amusement ride, elevator, or kindred equipment sustained any damage rendering it inoperative for any period of time;
- (6) Names and contact information of any witnesses interviewed;
- (7) A brief description of any inspections or tests conducted of the equipment to determine probable causation and who conducted them;
- (8) The investigators' conclusions as to the cause of the accident; and
- (9) The name and contact information of the investigator. For purposes of this section, the owner may contract another to perform the actual accident investigation, however, the owner is responsible for the report and its timely submittal to the department. If the accident investigation cannot be completed within three months of the date of the incident, the owner shall submit the incomplete report to the department with information as to when the investigation is expected to be completed. The final report shall be submitted as soon as the investigation is completed.

(b) Whenever an accident occurs which results in loss of life, the owner shall promptly notify the division by telephone at (808)586-9141, or messenger, within eight hours, and neither the amusement ride, or elevator and kindred equipment, or any of their parts,

shall be removed or disturbed before permission has been given by the department except for the purpose of saving human life or limiting consequential damage.

(c) Additional reports, in writing or otherwise, may be required by the director. [Eff and comp 6/30/14; am and comp 11/10/16; comp 2/15/19; comp ] (Auth: HRS §397-4) (Imp: HRS §397-4)

**§12-229-11 Repealed.** [R 6/30/14]

**§12-229-11.1 Investigations.** The department may investigate accidents reported under section 12-229-10.1 involving amusement rides, and elevators and kindred equipment inspected under this chapter and may issue orders and recommendations with respect to the elimination and control of the causal factors. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp ] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6)

**§12-229-12 Repealed.** [R 6/30/14]

**§12-229-12.1 Violations and penalties.** (a) The director may assess all civil penalties provided in this section, giving due consideration to the gravity of the violation, the good faith of the owner or contractor, and the history of previous violations.

(b) Violations. The following shall apply to violations:

- (1) Any owner or contractor who violates chapter 397, HRS, or any safety standards and codes adopted pursuant to chapter 91, HRS, or who violates or fails to comply with any order

made under or by virtue of chapter 397, HRS, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by chapter 397, HRS, its standards, or codes, shall be assessed a civil penalty of not more than \$10,000 for each such violation;

- (2) Any owner who allows the installation, construction, reconstruction, relocation, or alteration of any elevator or kindred equipment prior to obtaining an installation or alteration permit as required by section 12-229-5.1 shall be assessed a civil penalty of not more than \$10,000. The penalty may be reduced by a maximum of ten percent for history of past violations;
  - (3) Owners who fail to report an accident as required by section 12-229-10.1 shall be assessed a civil penalty of not more than \$5,000 per instance. Consideration may be given for good faith and history of violations;
  - (4) Owners who fail to maintain or provide records or reports to the department as required by this part shall be assessed a civil penalty of not more than \$5,000 per record not maintained or provided;
  - (5) Repeated violations shall be assessed a civil penalty of not more than \$10,000. Consideration may be given for gravity only;
  - (6) Owners who fail to take an elevator or kindred equipment out of service as specified in section 12-229-7.1(b)(4) shall be assessed a civil penalty of not more than \$10,000; and
  - (7) Each day a violation continues shall constitute a separate violation except during an abatement period.
- (c) Discrepancies and penalties. The following shall apply to discrepancies and penalties:
- (1) Any conditions found not in conformance with

applicable standard or codes adopted pursuant to chapter 397, HRS, shall be regarded as discrepancies and shall be made known to the owner or contractor by letter or written order to correct or both. All discrepancies shall be satisfactorily resolved as soon as possible. When, in the opinion of the department, a discrepancy constitutes a potentially serious hazard, the department may prohibit the use of the equipment until the condition is abated. Failure to abate unsafe conditions or failure to correct discrepancies within the time prescribed shall be a violation subject to the civil penalties prescribed in this section;

- (2) Assessing penalties.
- (A) Consideration shall be given to the gravity of the violation. For a violative condition that could not or probably would not result in serious harm to life the penalty may be reduced by forty percent;
  - (B) Consideration shall be given to the good faith of the owner or contractor. For immediate correction or for attempts to make correction or abate hazards that have been thwarted by conditions beyond the control of the owner or contractor, the penalty may be reduced by forty percent; and
  - (C) Consideration shall be given for the history of previous violations. For no previous violations by the owner or contractor, the penalty may be reduced by ten percent.

(d) Anyone who knowingly makes a false statement on any document required by chapter 397, HRS, upon conviction, shall be punished by a fine of not more than \$10,000 or imprisonment or both. Any evidence suggesting that a false statement may have been made shall be immediately referred to the

director, who shall consult with the state attorney general for purposes of initiating appropriate action. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp ] (Auth: HRS §397-4) (Imp: HRS §397-8)

**§12-229-13 Repealed.** [R 6/30/14]

**§12-229-13.1 Review and appeal.** (a) Any order or citation of the director shall be final and conclusive against an owner or contractor, unless an appeal is made in writing, clearly stating what items are being contested. The notice of contest must be addressed to the director and received or, if mailed, postmarked by no later than the twentieth calendar day following receipt of the order or citation.

(b) The director or the director's designee may hold a formal hearing, which shall result in a decision and order by the director. Any party who disagrees with the director's decision may appeal in writing to the director within twenty calendar days of receipt of the decision and order. The director shall promptly notify the labor and industrial relations appeals board of the notice of the contest. Where a prior formal hearing is held at the department level, the labor and industrial relations appeals board shall conduct a case review using only the record.

(c) An owner or contractor may petition the director for modification of the abatement requirements in an order, as provided in section 397-9, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp ] (Auth: HRS §397-4) (Imp: HRS §397-9)

**§12-229-14 Repealed.** [R 6/30/14]

**12-229-14.1 Trade secrets.** Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director for purposes of carrying out chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp ] (Auth: HRS §397-4) (Imp: HRS §397-11)

**§12-229-15 Repealed.** [R 6/30/14]

**§12-229-15.1 Notifications of transfer and location.** (a) The seller of any elevator or kindred equipment regulated by this part shall notify the department in writing using a form provided by the department within thirty calendar days of the sale giving the HAW number, location name, location address of the equipment, and the name and address of the purchaser.

(b) The owner of any elevator or kindred equipment who gives, scraps, demolishes, or removes the device shall report the transaction and the name and address of the new owner, if any, within thirty calendar days of the transaction to the department using the form provided by the department. [Eff and comp 6/30/14; am and comp 11/10/16; comp 2/15/19; comp ] (Auth: HRS §397-4) (Imp: HRS §397-4)

**§12-229-16 Repealed.** [R 6/30/14]

**§12-229-16.1 Variances.** (a) In cases of



practical difficulties, undue hardships, or new developments, an owner may apply for a variance from any elevator safety standard. The application must be in writing, clearly stating the standard from which a variance is sought, the conditions, means, practices, methods, operations, or processes proposed to be used, together with drawings, specifications, and other supporting data. The director may issue an order for a variance if what is proposed will provide a substantially equivalent level of safety to that provided by the standard.

(b) All variances granted pursuant to this chapter shall have only a future effect. The director may decline to entertain an application for variance on a subject or issue for which a discrepancy letter or citation has been issued to the owner or contractor involved and the discrepancy or violation has not yet been satisfactorily corrected or resolved.

(c) Before granting the variance, the director shall publish a notice in a paper of general circulation or post notice on the department's website notifying all potentially affected parties of the director's intent to grant the variance. The notice shall provide a period of thirty calendar days to object to the granting of the variance, after which time the variance shall become final if no objections are filed or a hearing is requested. The cost of the publication shall be borne by the petitioning party. Every notice shall specify the alternative to the safety standard being considered.

(d) Any party objecting to the granting of the variance must notify the director in writing within the thirty-day period, stating the reasons why the variance should not be granted and the resultant specific impact on public safety. The objecting party's reasons for objection may also be based on grounds other than impact on public safety such as feasibility of compliance or lack of undue hardship to the petitioner. The objecting party may also elect to provide the reasons for the objection at a hearing.

(e) The hearing requested by the objecting party shall be held no later than forty-five days

after the thirty-day period stated in the public notice as follows:

- (1) The objecting party or parties and the variance applicant shall be provided notice of the date, time, and place of the hearing at least fourteen calendar days before the scheduled hearing;
- (2) Each party shall be prepared to provide evidence supporting the party's case, including a brief oral statement summarizing such evidence;
- (3) The director shall provide a written determination to all parties;
- (4) If the director determines that the evidence does not support denial of the variance request, no further notice is required; and
- (5) If the director determines that the evidence supports a denial of the variance request, a notice shall be published in a newspaper of general circulation stating the reasons why the variance is not granted.

(f) If the variance application does not include all relevant information as indicated in subsection (a), the director may deny the application. The denial shall be submitted in writing to the applicant within thirty calendar days. A notice of denial shall include a brief statement of the grounds for the denial. A denial of an application shall be without prejudice to the filing of another application.

(g) Requests for reconsideration on denied variance requests. The variance applicant whose variance request was denied may file a petition for reconsideration of the denial with the director. The petition must be filed in writing within twenty calendar days of the denial notice and should include all pertinent facts regarding why the variance should be granted.

- (1) The director may review the record on the case along with any additional information provided by the applicant or conduct further inquiries on the matter; and

- (2) Any party objecting to the director's decision shall use the review and appeal process as provided for in section 12-229-13.1. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp ] (Auth: HRS §397-4)  
(Imp: HRS §397-4)

**§12-229-17 Records.** Records shall be maintained by the elevator inspection branch of the department of labor and industrial relations for the purpose of preserving reports of inspections, witnessing of test and accident investigations, correspondence, prints, and memoranda for all objects inspected pursuant to this chapter. These records shall be maintained for a period of not less than five years for amusement rides, elevators, and kindred equipment." [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp ] (Auth: HRS §397-4) (Imp: HRS §397-4)

**EXHIBIT A  
ELEVATOR AND KINDRED EQUIPMENT INSTALLATION AND  
ALTERATION FEES**

**October 1, 2020**

**Alterations<sup>1</sup>:**

Involving only the replacement of a single (1) major component (such as a car door operator, valve, a jack or a cylinder)	\$234
Involving only cosmetic changes (such as car interior modernizations)	\$410
Involving two or more major components and/or subsystems:	
1-3 Floors	\$738
4-9 Floors	\$796
10-19 Floors	\$866
20-29 Floors	\$925
30-39 Floors	\$995
40 or more Floors	\$1,112

**New Installations<sup>2</sup>:**

Dumbwaiter or material lift	\$615
Escalator, moving walk, or moving ramp	\$615
Platform lifts or stairway chairlifts	\$615
Elevator:	
1-3 Floors	\$738
4-9 Floors	\$796
10-19 Floors	\$866
20-29 Floors	\$925
30-39 Floors	\$995
40 or More Floors	\$1,112
Personnel hoists	\$527
Temporary use permits (construction car)	\$527

**Additional Inspections:**

Normal workday, up to two hours	\$400/day
Normal workday, more than two hours	\$800/day
Overtime hours, up to two hours	\$800/day
Overtime hours, more than two hours	\$1,600/day

**Building Plan Reviews**

\$234

<sup>1</sup> Where alterations to four or more units at the same location are identical, the fee for each additional alteration permit (beyond the initial four) shall be reduced by fifty percent. The applications shall be submitted at the same time to qualify for the fee reduction.

<sup>2</sup> For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining installation or alteration permit fees.

**EXHIBIT B**  
**ELEVATOR AND KINDRED EQUIPMENT INSPECTION FEES**

October 1, 2020

---

**Permit and Renewal Inspection Fees<sup>1</sup>:**

Dumbwaiter or material lift	\$176
Escalator, moving walk, or moving ramp	\$264
Platform Lift or Stairway Chairlift	\$264
Hydraulic Elevator - Holed	\$322
Hydraulic Elevator - Holeless	\$322
Hydraulic Elevator - Roped Holeless	\$381
Traction Elevators:	
1-3 Floors	\$293
4-9 Floors	\$322
10-19 Floors	\$351
20-29 Floors	\$410
30-39 Floors	\$498
40 or more Floors	\$585
Personnel Hoist	\$351
Temporary Use Permit (Construction Car)	\$351

**Safety, Load, or Internal Test (Witness Fees):**

Category 3 Test	\$381
Category 3 Test with Safety Overspeed Valve	\$439
Category 3/5 Test for Roped Hydraulic	\$498
Category 5 Test	\$498
Category 5 with Counterweight Test	\$615
Escalator, Internal	\$498

<sup>1</sup> For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining permit renewal inspection fees.

Permit renewal and witness [fess] fees are per inspection, which may constitute one day or part of the day. If the inspector is required to return on another day or at another time on the same day, additional fees shall be assessed at the rate of [\$325] \$400 per day for up to two hours and [\$650] \$800 per day for more than two hours. Fees for overtime hours shall be [\$650] \$800 per day for up to two hours and [\$1,300] \$1,600 per day for more than two hours.

**EXHIBIT C**  
**INSPECTION AND TEST INTERVALS (IN MONTHS)**

January 1, 2017

<b>Equipment Type</b>	<b>Permit Renewal</b>	<b>Category 3</b>	<b>Category 5</b>
Electrical Elevators	12	N/A	60
Hydraulic Elevators	12	36	N/A
Escalators and Moving Walks <sup>[1]</sup>	12	36	N/A
Dumbwaiters	12	36	60
Material Lifts	12	36	60
Platform Lifts and Stairway Chairlifts	12	N/A	N/A
Inclined Elevators	12	36	60
Screw-Column Elevators	12	36	60
Roof-top Elevators	12	36	60
Limited-use/Limited-Application Elevators	3	36	60
Construction Cars	3	36	60
Personnel Hoists <sup>[2]</sup>	3	N/A	N/A
Amusement Rides	6	N/A	N/A

<sup>1</sup> Internal inspections of escalators and moving walks shall be performed at intervals of 36 months.

<sup>2</sup> Personnel hoists shall be load tested at intervals of 3 months.

Where an equipment is listed under both Category 3 of 36 months and Category 5 of 60 months, the appropriate testing interval is dependent on whether the lifting mechanism is rope or hydraulic or a combination of rope and hydraulic.

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

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

4. These amendments to and compilation of chapter 12-229, 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.

---

ANNE E. PERREIRA-EUSTAQUIO  
Acting Director of Labor  
and Industrial Relations

APPROVED AS TO FORM:

---

Deputy Attorney General

### **III. New Business – Before Public Hearing**

#### **B. Discussion and Action on Amendments to Hawaii Administrative Rules Title 17, promulgated by Department of Human Services**

##### **1. Chapter 798.2 Child Care Services and 798.3 Child Care Payments**



DAVID Y. IGE  
GOVERNOR



PANKAJ BHANOT  
DIRECTOR

CATHY BETTS  
DEPUTY DIRECTOR

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

BESSD 20.C0502

May 19, 2020

**MEMORANDUM:**

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

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

FROM: *by* PANKAJ BHANOT *CB*  
DIRECTOR

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED REPEAL OF CHAPTER 17-798.2 AND  
ADOPTION OF CHAPTER 17-798.3 HAWAII ADMINISTRATIVE RULES, RELATING  
TO CHILD CARE PAYMENTS

In accordance with Administrative Directive No. 18-02, we have completed revisions and are submitting for your review and approval as to form the proposed repeal of Chapter 17-798.2 and adoption to Chapter 17-798.3 relating to Child Care Payments. A copy of the Notice of Public Hearing is also enclosed for your approval as to form, and a copy of the impact statement is included for your information.

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

Enclosures

APPROVED AS TO FORM:

*James Walther*  
Deputy Attorney General

*7/10/20*  
Date

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

Date: \_\_\_\_\_

Department or Agency: \_\_\_\_\_

Administrative Rule Title and Chapter: \_\_\_\_\_

Chapter Name: \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_

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

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

Yes  No

If "Yes," provide details: \_\_\_\_\_

I. Rule Description:

New  Repeal  Amendment  Compilation

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

Yes  No

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

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

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

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

Yes  No

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

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

Yes  No

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

\* \* \*

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

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.
  
  
  
  
  
  
  
  
  
  
2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

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

- a. Amount of the current fee or fine and the last time it was increased.
  
  
  
  
  
  - b. Amount of the proposed fee or fine and the percentage increase.
  
  
  
  
  
  - c. Reason for the new or increased fee or fine.
  
  
  
  
  
  - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
- 
- 
- 
- 
- 
- 
- 
- 
- 
- 
3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

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

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

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

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

\* \* \*

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

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

Pre-Public Hearing Small Business Impact Statement  
To The Small Business Regulatory Review Board  
Child Care Payments  
(Attachment 1)

1. The exempt provider shall meet the requirements under Hawaii Revised Statutes (HRS) section 346-152, to be eligible to provide child care for a child whose family receives a child care subsidy from the Department. The exempt home-based provider shall comply by:
  - a. Completing State and FBI fingerprinting clearances,
  - b. Satisfactorily completing a minimum of eight (8) hours of training within one year of completion of the initial training and annually thereafter,
2. The exempt provider may experience a loss in revenue of approximately:
  - a. \$13.25\* (\*current fingerprinting fee) per individual requiring fingerprinting as stated in 1.a;  
\$80.80\* per individual requiring the annual health and safety training as stated in 1.b. (\*8 hours of training X \$10.10/hours state minimum wage);
  - b. \$20 - \$40 for an ABC multi-purpose type fire extinguisher in the child care area;
  - c. \$15 - \$60 for a smoke detector in the child care area;
  - d. \$10 - \$15 for a first aid kit
  - e. \$117 per individual requiring first aid and/or child cardio-pulmonary resuscitation (CPR) certification standards are equivalent to the American Red Cross or American Heart Association standards
3. The Hawaii Criminal Justice Data Center (HCJDC) is the state agency that will process the fingerprinting fees statewide for all individuals requiring State and FBI fingerprinting.
4. Exempt providers have the option to choose any type of training topics the Department has identified that issues a certificate and is appropriate to child care and to the ages of children served. No-cost trainings which meet the health and safety training requirements are offered by DHS contract agencies, People Attentive to Children (PATCH) and Learning to Grow (LTG).
5. The proposed rules align with the Child Care Development Block Grant (CCDBG) Act of 2014 which includes provisions to protect the health and safety of children in child care.
6. Exempt providers may complete annual health and safety training by signing up for no-cost training classes offered by DHS contract agencies, (PATCH) and Learning to Grow.
7. The Department held several informational sessions during 2018 and 2019, with child care stakeholders and held discussions at the quarterly Child Care Advisory Committee meetings during 2017 throughout 2018 to review and discuss the proposed rules. There were no concerns that were brought up in any of the informational sessions or quarterly Child Care Advisory Committee meetings.
8. None

DEPARTMENT OF HUMAN SERVICES

Repeal of Chapter 17-798.2  
Hawaii Administrative Rules


May 19, 2020

1. Chapter 17-798.2, Hawaii Administrative Rules, entitled "Child Care Services" is repealed.

2. The repeal of chapter 17-798.2 shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on May 19, 2020 and filed with the Office of the Lieutenant Governor.



 PANKAJ BHANOT  
Director  
Department of Human Services

APPROVED AS TO FORM:



Deputy Attorney General

2. The adoption of chapter 17-798.3, 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 May 19, 2020 and filed with the Office of the Lieutenant Governor.



---

PANKAJ BHANOT  
Director of Human Services

APPROVED AS TO FORM:

---

Deputy Attorney General



DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-798.3

Hawaii Administrative Rules

May 19, 2020

1. Chapter 17-798.3, Hawaii Administrative Rules, entitled "Child Care Payments" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 798.3

CHILD CARE PAYMENTS

Subchapter 1 General Provisions

§17-798.3-1 Purpose  
§17-798.3-2 Definitions

798.3-1

§17-798.3-3	Confidentiality
§17-798.3-4	Geographical location
§17-798.3-5	Scope
§17-798.3-6	Application process
§17-798.3-7	Priority applications
§17-798.3-8	Notice of application disposition
§17-798.3-9	Eligibility requirements
§17-798.3-10	Income considered in eligibility determination
§17-798.3-11	Excluded monthly income
§17-798.3-12	Child care rates
§17-798.3-13	Child care payments
§17-798.3-14	Method of computing family unit's co-payment
§17-798.3-15	Method of computing the need for care
§17-798.3-16	Method of computing the child care payment
§17-798.3-17	Mandatory reporting
§17-798.3-18	Re-determination of eligibility and payment amount
§17-798.3-19	Denial, reduction, suspension, or termination of child care
§17-798.3-20	Notice of adverse action
§17-798.3-21	Administrative appeal requests
§17-798.3-22	Underpayments and overpayments
§17-798.3-23	Termination for insufficient funds
§17-798.3-24	Waitlist
§§17-798.3-25 to 17-798.3-34	(Reserved)

## Subchapter 2 Transitional Child Care Payments

§17-798.3-35	Purpose
§17-798.3-36	Eligibility requirements
§§17-798.3-37 to 17-798.3-49	(Reserved)

## Subchapter 3 General Requirements for Exempt Providers

§17-798.3-50 Purpose  
§17-798.3-51 General requirements  
§§17-798.3-52 to 17-798.3-59 (Reserved)

Subchapter 4 Health Requirements For Exempt  
Providers

§17-798.3-60 Purpose  
§17-798.3-61 Drinking water provisions  
§17-798.3-62 Handwashing  
§17-798.3-63 Toilet and handwashing facilities  
§17-798.3-64 Handling of diapers or training  
underpants  
§17-798.3-65 Food preparation and protection  
§17-798.3-66 Evidence of child's health  
§17-798.3-67 Children who become ill  
§17-798.3-67.01 Administration of medication.  
§17-798.3-68 Provider's health standards  
§17-798.3-69 Personal health habits of provider and  
staff  
§§17-798.3-70 to 17-798.3-79 (Reserved)

Subchapter 5 Safety Requirements For Exempt  
Providers

§17-798.3-80 Purpose  
§17-798.3-81 Supervision  
§17-798.3-82 Managing children's behavior  
§17-798.3-83 Maximum number of children  
§17-798.3-84 Disaster plan for emergencies  
§17-798.3-85 Sleeping areas for children in care  
§17-798.3-86 Environmental hazards  
§17-798.3-87 Emergency care provisions  
§17-798.3-88 Transportation provisions  
§17-798.3-89 Background check for exempt providers

Historical Note: Chapter 17-798.3 is based substantially upon chapter 17-798.2, Child Care Services [Eff 03/08/08; am 01/22/10; am and comp 12/31/17; R ]

SUBCHAPTER 1

GENERAL PROVISIONS

**§17-798.3-1 Purpose.** The purpose of this subchapter is to establish the rules governing the administration and implementation of the child care block grant authorized under 42 U.S.C. §9858 and 42 U.S.C. §618. This subchapter includes eligibility requirements, benefit amount, and method of determining child care payments for the department's federal child care subsidy program. [Eff ]  
(Auth: HRS §346-14) (Imp: HRS §346-14, 45 C.F.R. §98.1)

**§17-798.3-2 Definitions.** As used in this chapter:

"Accredited" means a group child care center, group child care home, or family child care home, that is certified by the National Association for the Education of Young Children (NAEYC), the National Early Childhood Program Accreditation (NECPA), or the National Association for Family Child Care (NAFCC) to meet accreditation standards.

"Activity" means employment, education, or vocational or employment training.

"Adequate notice" means a written notice that includes:

- (1) A statement of the action the agency has taken or intends to take;
- (2) The reason for the intended action;

- (3) The specific departmental rules supporting the intended action;
- (4) The name and telephone number of the person in the department to contact for additional information;
- (5) The family unit's right to request an informal review, an administrative appeal, or both; and
- (6) Information on the availability of free legal representation, if applicable.

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

"Application" means the action by which an individual indicates on a form prescribed by the department a request to receive child care payments.

"Attending" means enrolled and participating in a job training or educational program as defined by the institution, agency, or business that sponsors the program.

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

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

"Benefit month" means the calendar month for which the caretaker is eligible for a child care payment.

"Budget month" means the calendar month(s) from which the child care expense, hours of approved activity and child care need, and income of the family unit are used to compute the payment amount that the family unit shall receive in the payment month.

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

"Caretaker" means an adult, or an emancipated minor, who resides with and is responsible for the care of a child, and who is a birth, hanai, foster, or adoptive parent, guardian, permanent custodian, step-parent, or relative who is related to the child by blood, marriage, or adoption, or a person authorized by the caretaker through a power of attorney valid for a period not to exceed twelve months. The caretaker designation may remain even when the caretaker is temporarily absent from the home as long as the caretaker continues to maintain responsibility for the care, education, and financial support of the child. This includes a foster parent who may not be providing financial support to the child but may be receiving support for the child from a private or public agency. This also includes minor teen parents who are birth parents to the child but cannot apply for child care payments themselves and must have an adult apply on their behalf.

"Child" means any person who has not reached the age of eighteen years, excluding emancipated minors.

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

"Child care facility" means the same as under section 346-151, Hawaii Revised Statutes (HRS).

"Child protective services" means social services provided by the department pursuant to chapter 17-1610, to children who reside with their family unit and are:

- (1) confirmed to have been abused or neglected,  
or
- (2) confirmed to have been threatened with abuse  
or neglect.

"Citizen or national of the United States of America" means a citizen of the United States and shall include:

- (1) The fifty states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands; and
- (2) Nationals from American Samoa and Swain's Island.

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

"Co-payment" means the family unit's share of the child care expense which is the difference between the maximum payment amount allowed for the type and amount of care up to the department's child care payment rate maximum, and the amount the family unit is determined to be eligible for by the department.

"Corrective payment" means a payment issued by the department in an amount equal to the difference between what a caretaker is entitled to receive by regulation and the amount they actually received.

"Department" means the department of human services or its designee.

"Educational program" means a curriculum that has been established by an institution, agency, or business for the purpose of the development of skills or academic study necessary for an identified occupation.

"Eligibility period" means a period established by the department, not less than 12 months, during which the household may be eligible for child care payments if it meets all of the eligibility requirements.

"Employed" means the caretaker is engaged in a legal activity in exchange for wages or salary for which the appropriate tax withholding and reporting are made.

"Essential person" means a needy person designated by the caretaker to be included in the TANF household that receives a public-funded financial assistance payment, who is ineligible in the person's own right for TANF, who is designated by the caretaker as being essential to the caretaker's well-being, and

who performs a service that would not otherwise be performed or that would otherwise have to be purchased if the person did not live in the TANF household.

"Exempt after-school care" means child care provided by a before and after-school care facility legally-exempt in accordance with chapter 17-800, after the end of the regular school day during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary, middle, or secondary schools.

"Exempt before-school care" means child care provided by a before and after-school care facility legally-exempt in accordance with chapter 17-800, after the end of the regular school day during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary, middle, or secondary schools.

"Exempt provider" means a person or facility providing legally-exempt child care, in accordance with section 346-152, HRS. It also includes all adult household members when child care is provided in a private residence that is not the child's residence, all staff employed at a child care facility, any volunteers or substitutes who provide care for children for ten hours or more per week, and any other individuals who have unsupervised access to children in care.

- "Experiencing homelessness" means the following:
- (1) Lack a fixed, regular, and adequate nighttime residence;
  - (2) Are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason, are living in motels, hotels, or camping grounds due to the lack of alternative adequate accommodations, are in emergency or transitional shelters, are abandoned in hospitals;
  - (3) Have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;



- (4) Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train station, or similar settings; or
- (5) Are migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965).

"Extended filing period" means the additional ten days that households are allowed to submit required information or missing verification to justify continued child care eligibility. See section 17-798.3-18(a) (1) (C).

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

"Family unit" means the caretakers and their minor children who reside together in the same household and whose needs and income are considered in determining eligibility for, and the amount of, child care payment.

"Federal fiscal year" means a period beginning October 1 and ending September 30.

"Federal Poverty Guidelines" or "FPG" means the poverty guidelines for Hawaii that are established in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2) and cited in the Child Care and Development Fund Plan for State of Hawaii that is approved by the Administration for Children and Families, U.S. Department of Health and Human Services, pursuant to C.F.R. §§98.14 to 98.18.

"First-to-Work" or "FTW" means the work programs administered by the department for recipients of TANF.

"Full-time care" means child care provided for eighty-seven hours and more per month, except for before-school and after-school care.

"Gross income" means all non-excluded earned and unearned income as specified in this chapter.

"Group child care center" means a facility, other than a private home, at which care is provided, as defined in section 346-151, HRS. The term may include

nurseries; preschools; parent cooperatives; drop-in child care centers; before-school and after-school programs; holiday, intersession and summer care for eligible school age children; or other similar care settings that are established to provide group care to a child for any part of a twenty-four hour day and is license-exempt or licensed by the department. For the purposes of this chapter, group child care center shall also include "infant and toddler center" in which child care is provided to children ages six weeks to thirty-six months of age in a group child care center care or group child care home and is licensed under chapter 17-895.

"Group child care home" means a facility which may be an extended or modified private home, at which care is provided to seven to twelve children, as defined in section 346-151, HRS.

"Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than the natural parents at the time of the child's birth or early childhood. The child is given outright and the natural parents renounce all claims to the child. The natural parents cannot reclaim the child except for the death or serious injury of the hanai parents

"Hawaiian-medium center-based care" means any group child care center, as defined in section 346-151, HRS, with programs taught solely in the Hawaiian language that promote fluency in the Hawaiian language and is licensed by the department in accordance with section 346-162, HRS.

"Home-based child care" means department-registered family child care home providers, and legally-exempt care providers, including care by relatives, in any private residence.

"In-home care" means child care provided only to the eligible children in the family unit by an exempt provider in the home of the eligible children who require care in the absence of their caretakers due to a qualifying child care reason.

"Infant" means a child six weeks old up to and including twelve months old.

"Intersession care" means child care provided at breaks during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary, middle, or secondary schools, including summer care and holidays.

"Job training" or "vocational or employment training" means an organized training program (including community college and university education) established by an institution, agency, or business for the purpose of the development of skills or academic study necessary for an identified occupation.

"Legally-exempt care" or "exempt care" means child care which is exempt from licensure or registration by the department under section 346-152, HRS.

"Limited English proficiency" or "LEP" means limited ability in speaking, reading, writing, or understanding the English language by a person whose native language is a language other than English or by a person who lives in a family or community environment where a language other than English is the dominant language.

"Minor" means a person under eighteen years old.

"Monthly gross income limit" means eighty-five per cent of the State Median Income for a family of the same size.

"Net value" means the value of the assets after subtracting all liabilities.

"Non-recurring lump sum" means income that is not normally repeated or a cumulative amount received or available to be received by an individual. Educational loans, grants or scholarships shall not be considered as non-recurring lump sums.

"Overpayment" means the amount of payments issued to a caretaker for a benefit month that is in excess of the amount which the caretaker is eligible to receive. It also includes payments that are not used for their intended purpose.

"Part-time care" means child care provided for less than eighty-seven hours per month, except for

before-school and after-school care when it is provided for less than 45 hours per month.

"Payment month" means the calendar month in which the child care payment is issued.

"Physical or mental incapacity" means a physical or mental condition that prevents a child from doing self-care, as determined by a State-licensed physician or psychologist.

"Physician" means an individual licensed by the State for the practice of medicine.

"Power of attorney" means a legal instrument authorizing another to act as one's agent or attorney-in-fact.

"Preschool" means a department-licensed group child care center or group child care home that provides services for children ages two years to six years old.

"Primary residence" means the single residence designated as the child's home.

"Prospective budgeting" means computation of the child care payment based on the worker's best estimate of the child care expense, child care need, and caretakers' activity hours and gross income that will exist in a calendar month. The best estimate shall be based on the worker's reasonable projection of future circumstances based on the family unit's past and current month's circumstances.

"Provider" means any individual eighteen years and older, caregiver, facility, agency, or organization, including exempt center-based providers, and their adult employees, including volunteers and substitutes, who provide direct care, supervision, and guidance to children apart from and in the absence of the child's caretaker for part of a twenty-four hour day. Providers are regulated by the department to provide child care or are legally exempt from child care licensure or registration by the department under §346-152, HRS.

"Relative" means related by blood, marriage, adoption, or hanai.

"Report month" means the calendar month that the simplified report form is due.

"Reside with" means an eligible child living in a home or family setting with the child's eligible caretaker.

"Responsible household member" means a reliable adult, included in the household, who can provide accurate information about the household's circumstances.

"Restored benefits" means the child care benefit issued to a caretaker whenever benefits for a prior period are not issued because of an error by the department.

"School age" means the chronological age of a child who is eligible to enroll in elementary, middle, or secondary schools.

"Self-employed" means an individual:

- (1) Is not subject to discharge from his or her job by another person;
- (2) Reports income to the Internal Revenue Service and the State as a self-employed person;
- (3) Meets social security requirements as a self-employed person and pays employer's and employee's share of social security taxes; and
- (4) Is not considered an employee of an agency or organization.

The individual must also generate income equivalent to twenty hours per week multiplied by 4.3333 weeks multiplied by State minimum wage at the time of eligibility and redetermination as having an eligible employment activity as self-employed.

"Simplified reporting" means the reporting requirement for caretakers who receive child care payments to provide information in the report month to determine continued eligibility as specified in section 17-798.3-18, and report changes as specified in section 17-798.3-17 that occur during the eligibility period.

"Simplified report form" means the report that a caretaker is required to complete for eligibility re-determination.

"State fiscal year" means a period beginning July 1 and ending June 30.

"State Median Income" means the official guidelines issued yearly in the Federal Register by the Secretary of Health and Human Services, Administration for Children and Families under the authority of 42 U.S.C. §8621, the Omnibus Budget Reconciliation Act of 1981. States are given discretion by the United States Department of Health and Human Services (DHHS) to utilize a median income from any particular year, if not from the current year, as long as the states indicate in their Child Care Development Fund (CCDF) State Plan the year used and the dates on which eligibility limits became or will become effective.

"Temporarily absent" means a period of up to ninety days when the caretaker is not residing in the home with the child as a result of employment or job training commitments.

"Temporary Assistance for Needy Families" or "TANF" means the federal and state financial assistance and non-assistance programs administered by the department under 42 U.S.C. §§601-619 and section 346-14, HRS.

"Temporary change in activity" means a period of less than three months when the caretaker ceases to participate in any of the allowable activities specified under section 17-798.3-9(b) (3).

"Timely notice" means when the department mails a notice of adverse action at least ten calendar days prior to the effective date of the action.

"Toddler" means a child over twelve months old up to and including twenty-four months old.

"Transitional child care" means a program designed to provide child care payments for eligible families that terminated TANF financial assistance or non-assistance payments sponsored by the department to enable them to maintain self-sufficiency.

"Underpayment" means the amount of payments issued to a caretaker for a benefit month that is less than the amount which the caretaker was eligible to receive.

"Very low income" means gross income less than one hundred percent of the Federal Poverty Guidelines. [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-151)

**§17-798.3-3 Confidentiality.** Requirements for confidentiality shall be as provided in chapter 17-601. [Eff ] (Auth: HRS §§346-10 and 346-14; 45 C.F.R. §205.50) (Imp: HRS §346-10; 45 C.F.R. §§205.50, 1391.3)

**§17-798.3-4 Geographical location.** All department-administered child care programs outlined in this chapter may be made available to eligible clients on a statewide basis. [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**§17-798.3-5 Scope.** (a) Child care payments shall be for child care services that include, but are not limited to:

- (1) Supervision to assure the child's safety, comfort, and health;
- (2) Personal care as appropriate to the child's age and developmental maturity;
- (3) Activities appropriate to the child's age, developmental stage, and degree of physical or mental ability;
- (4) Health and nutritional services; and
- (5) Provision of child care by providers as defined in section 17-798.3-2.

(b) Child care payments shall not be allowed for educational services including, but not limited to:

- (1) Services provided to a child enrolled in or eligible for public education in kindergarten to twelfth grade during the regular school day, unless the child is out of school due to illness;
  - (2) Services for which a child receives academic credit toward graduation;
  - (3) Any instructional services that supplants or duplicates the academic program of any public or private school which is established for the purpose of compliance with the school attendance law of Hawaii; or
  - (4) Services that provide specialized training or skill development to children, as indicated in section 346-152(a)(5), HRS.
- (c) Child care payments shall only be used for services described in subsection (a). [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**§17-798.3-6 Application process.** (a) A request for child care payments shall be submitted on an application form prescribed by the department when required by a specific departmental program.

(b) The form shall be dated and signed by the caretaker under penalty of law that all the information needed to establish eligibility for child care payments, as stated on the form, is true and correct; provided that for child care payments needed for the care of a child of a minor parent, except for emancipated minors, the adult caretaker for the minor parent shall apply for child care payments.

(c) The caretaker shall submit copies of documents for verification of the information provided to establish eligibility of the program; provided that caretakers who are experiencing homelessness shall be subject to section 17-798.3-9(d)(4)(C).

(d) Only one caretaker shall be allowed to apply for child care payments when children reside in different households because of joint or shared custody.



(e) The date of application shall be the date the signed and dated application form is received by the department.

(f) The caretaker shall participate in a child care application interview to establish eligibility of the family unit for payments. The program staff shall arrange the interview as soon as possible but no later than thirty days after receipt of the signed and dated application form and supporting documentary evidence.

(g) The date of eligibility for child care payments shall be one of the following:

- (1) The date of application, provided that the interview has been completed and the eligibility requirements in section 17-798.3-9 are met from the date of application;
- (2) The date the child care payments are scheduled to begin within thirty days after the eligibility conditions in section 17-798.3-9 are met; or
- (3) The date of the authorized activity or program component in the FTW programs. [Eff  
] (Auth: HRS §346-14)  
(Imp: HRS §346-14)

**§17-798.3-7 Priority applications.** (a) As appropriate for the respective subchapters, when multiple applications are received simultaneously, the criteria for the priority applications shall be in the following order from the highest priority to lowest:

- (1) Child protective services reasons as referenced in section 17-798.3-9(a)(5);
- (2) Transitional child care as referenced in section 17-798.3-36;
- (3) Receiving TANF benefits and at risk of loss of any activity under section 17-798.3-9(b)(3);
- (4) Very low income family units that are:
  - (A) At risk of job termination because of child care related problems;

§17-798.3-7

- (B) Employed and homeless;
  - (C) Employed and have LEP; or
  - (D) Not employed but have a written offer of employment that is scheduled to start within two weeks; and
- (5) Other family units that are employed, enrolled in and attending an educational program, or are in job, vocational, or employment training.

(b) Family units with the least amount of monthly income for the corresponding family unit size shall be given first consideration in the groups identified in paragraphs (2), (3), (4), and (5) in this section. [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14; 45 C.F.R. §§98.20 and 98.44)

**§17-798.3-8 Notice of application disposition.**

(a) The department shall provide written notice to caretakers about the status of their applications for child care payments.

(b) The caretaker shall be sent a written notice that contains a statement of the action taken, the reasons for the action, the specific rules supporting the action, and the right to appeal the action of the department through established administrative appeals procedures. [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**§17-798.3-9 Eligibility requirements. (a)**

Depending upon availability of funds, all children eligible for child care payments shall reside with the eligible caretaker and be:

- (1) A citizen or national of the United States of America;
- (2) A qualified alien, as defined under this chapter. The caretaker shall furnish documentation of the alien status of any

child declared to be a qualified alien. A child who is a qualified alien is not eligible for child care assistance for a period of five years beginning on the date of the child's entry into the United States with qualified alien status. Exception: The five-year prohibition from receiving assistance does not apply to a qualified alien who is:

- (A) Admitted to the United States as a refugee;
  - (B) Granted asylum;
  - (C) Lawfully admitted for permanent residence;
  - (D) An alien whose deportation is being withheld; and
  - (E) A Cuban Haitian entrant under the Refugee Education Assistance Act of 1980; described at 8 U.S.C. Section 1613; and
- (3) Under age thirteen years; or
  - (4) Thirteen through seventeen years of age with a physical or mental incapacity that prevents the child from doing self-care; or
  - (5) Receiving child protective services for family supervision, and the need for child care is specified in the family unit's or child's case plan as ordered by the court.
- (b) A caretaker shall be eligible for child care payments, provided the caretaker:
- (1) Has a monthly gross income verified through documentation that does not exceed eighty-five percent of the State Median Income, as established in the current federally approved Child Care Development Fund State Plan, for a family of the same size, using the Income Eligibility Limits as established in Exhibit II, dated January 2, 2020, attached at the end of this chapter, except for:
    - (A) Caretakers who are foster parents (or resource caregivers) licensed or

- certified by the department, or an organization under the authority of the department, who need child care for a foster child in their care; or
- (B) Family units receiving child protective services for family supervision and the need for child care is specified in the family unit's or child's case plan as ordered by the court;
- (2) Has net value of assets that total less than \$1,000,000 for the household, including net value of real property, as certified by the caretaker, excluding:
- (A) Any equity value in the real property which is the usual residence of the household; and
  - (B) Any equity for one vehicle; and
- (3) Meets one of the following conditions:
- (A) Is engaged in employment in exchange for wages, salary, income, or in-kind income;
  - (B) Has a written offer of employment that is scheduled to start within two weeks and employment commences as scheduled;
  - (C) Meets the definition of self-employed and generates the minimum income level in accordance with section 17-798.3-2;
  - (D) Is enrolled in and attends an educational program or job training, vocational, or employment training. This includes the break time between classes for the day, for up to four hours per day;
  - (E) Is participating in the FTW program or a treatment program as required by section 17-656.1-10, except for a participant in the Food Stamp Employment and Training program, and the FTW participant is involved in the required activities written in the FTW employment or individualized service plan;

- (F) Is receiving child protective services for family supervision and the need for child care is specified in the family unit's case plan as ordered by the court;
  - (G) Is in a two-parent family unit where one of the caretakers is in an activity specified under section 17-798.3-9(b) (3) and the other caretaker is determined to have a disability which prevents the caretaker from providing care for their own child. Proof of permanent disability and inability to provide care of the caretaker's own eligible child shall be verified by the written report of a State-licensed physician, psychologist, or psychiatrist. The written report shall be submitted every twelve months;
  - (H) Is an emancipated minor caretaker under age eighteen years who meets any eligibility condition cited in section 17-798.3-9(b) (3) (A) through (G), and retains custody of his or her own child; or
  - (I) Is a minor parent of a child and both minor parent and child are residing in the home of an adult caretaker, the adult caretaker shall apply on behalf of the minor parent and the minor parent is participating in any activity under section 17-798.3-9(b) (3) (A) through (G);
- (4) Is a resident of the State; and
  - (5) Establishes a reasonable relationship between the time during which each caretaker participates in an activity as specified under section 17-798.3-9(b) (3) and the time during which child care is needed.
- (c) A child care provider:
    - (1) Shall meet the following conditions in order for child care

- payments to be authorized:
- (A) Be a child care provider licensed by or registered with the department; or
  - (B) Be an exempt provider listed with the department, providing group child care in accordance with section 17-800; or
  - (C) Be providing home-based child care, including in-home care, and is complying with the health and safety requirements as established in subchapters 3, 4 and 5; and
- (2) Shall submit a written statement to the department that shall attest to:
- (A) The provider's willingness to provide care;
  - (B) The provider's willingness to allow a caretaker unlimited access to the caretaker's child, including written records concerning the caretaker's child, during normal hours of provider operation or whenever children are in the care of the provider;
  - (C) Rate that will be charged;
  - (D) Mailing address, child care facility address and telephone number;
  - (E) Assurance that the child care facility's premises is safe from hazards.
- (3) Shall not be one of the following:
- (A) Parents, biological or legal;
  - (B) Step-parents living in the household;
  - (C) Guardians or permanent custodians;
  - (D) Members of the family unit that receives government assistance, including essential persons;
  - (E) Providers who are not in compliance with State or county regulatory requirements;
  - (F) Individuals under the age of eighteen years;
  - (G) Individuals determined by the department to pose a risk to the health

- and safety of the child;
  - (G) A sibling of the child needing care who resides in the same home as the child;  
or
  - (I) A caretaker.
- (d) The department shall:
- (1) Verify that the child and caretaker meet the eligibility requirements as described in this chapter;
  - (2) Verify the identity of the caretaker through readily available documentary evidence including, but not limited to:
    - (A) Birth certificate;
    - (B) Passport;
    - (C) Church record of birth or baptism;
    - (D) School or employment records or identification;
    - (E) Motor vehicle operator's license;
    - (F) An official document that shows the individual's photograph;
  - (3) Establish that the child care provider selected by the caretaker is following the provisions of section 17-798.3-9(c);
  - (4) Allow, at the department's option, for presumptively eligible payments when:
    - (A) An exempt provider selected by the caretaker meets the requirements of 17-798.3-51(c)(1) through (7)(A); provided that payments shall end upon failure to complete the monitoring inspection visit pursuant to section 17-798.3-51(c)(8), the start of an investigation by the department pursuant to 17-798.3-51(e), or failure to comply with the requirements under subchapters 3, 4 and 5, or chapter 17-801, and such payments shall not be considered an overpayment under section 17-798.3-22(b); or
    - (B) Foster children who do not have documentation to support verification of section 17-798.3-9(a), pending

receipt of the documentation within two months from application date; provided that payments shall end after two months and the caretaker failed to comply with this subparagraph, and payments shall not be considered an overpayment under section 17-798.3-22(b); or

- (C) Children experiencing homelessness who do not have the documentation to support verification of sections 17-798.3-9(a) and (b), pending receipt of the documentation within two months from application date; provided that payments shall end after two months and the caretaker failed to comply with this subparagraph, and payments shall not be considered an overpayment under section 17-798.3-22(b).
- (5) Authorize the initial and subsequent monthly child care payments based on sections 17-798.3-9, 17-798.3-10, 17-798.3-12, 17-798.3-13, 17-798.3-14, 17-798.3-15, 17-798.3-16, 17-798.3-17, 17-798.3-18, 17-798.3-19, 17-798.3-20, 17-798.3-22, 17-798.3-23, and 17-798.3-36, subchapters 3, 4, and 5, and chapter 17-801;
- (6) Review eligibility no less than every twelve months or whenever changes that affect eligibility are reported in accordance with section 17-798.3-17; and
- (7) Track and monitor appropriateness and utilization of child care and payments.  
[Eff \_\_\_\_\_ ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5, 45 C.F.R. §§98.20, 98.30, 98.31 and 98.41)

**§17-798.3-10 Income considered in eligibility determination.** (a) Monthly gross income of each



individual counted in the family unit shall be used to determine income eligibility of the family unit, except for individuals identified in subparagraphs 17-798.3-9(b) (1) (A) and (B), by using one of the following:

- (1) The average of the prior two months gross income for existing employment;
- (2) The monthly gross income received in the prior month for existing employment;
- (3) The monthly gross income that is anticipated to be received from prospective or new employment.
  - (A) Weekly gross income anticipated to be received shall be converted to a monthly gross income by multiplying the weekly income by 4.3333.
  - (B) Bi-weekly gross income anticipated to be received shall be converted to monthly income by multiplying the bi-weekly income by 2.1667.
  - (C) Semi-monthly income anticipated to be received shall be converted to monthly income by multiplying the semi-monthly income by 2; or
- (4) Gross income from the caretaker's business or self-employment, such as selling real estate, or engaging in fishing and farming, which provide irregular income over a period of six months, may be averaged to determine the monthly income for the budget month; or
- (b) Monthly gross income means monthly sums of income received from sources such as but not limited to:
  - (1) Gross income (before deductions are made for items such as, but not limited to, taxes, union dues, bonds, and pensions) from:
    - (A) Wages;
    - (B) Salary;
    - (C) Armed forces pay, excluding basic

- housing allowance;
  - (D) Commissions;
  - (E) Tips;
  - (F) Piece-rate payments; or
  - (G) Cash bonuses earned;
- (2) Social security pensions and survivors' benefits (prior to deductions for medical insurance) including:
- (A) Railroad retirement insurance checks from the U.S. government; and
  - (B) Permanent disability insurance payments made by the Social Security Administration;
- (3) Unemployment insurance benefits such as:
- (A) Compensation received from government unemployment insurance agencies or private insurance companies during periods of unemployment; and
  - (B) Any strike benefits received from union funds;
- (4) Worker's compensation benefits and temporary disability insurance benefits:
- (A) Worker's compensation benefits include compensation received from private or public insurance companies for injuries incurred at work;
  - (B) Temporary disability insurance benefits include compensation received from private or public insurance companies for short-term disabilities resulting from off-the-job sickness or injury; and
  - (C) The cost of the insurance shall have been paid by the employer and not by the employee, and the benefits are made to individuals who continue to be considered employees of the company;
- (5) Pensions and annuities, including pensions or retirement benefits paid to a retired person or the person's survivors by a former employer or by a union, either directly or by an insurance company;

- (6) Veteran's pensions and other benefits, which include:
  - (A) Money paid periodically by the Veteran's Administration to:
    - (i) Survivors of deceased veterans; or
    - (ii) Disabled members of the armed forces;
  - (B) Subsistence allowances paid to veterans for:
    - (i) Education; or
    - (ii) On-the-job training; and
  - (C) Refunds paid to former members of the armed forces as GI insurance premiums;
- (7) An allotment of a member of the armed forces;
- (8) Alimony;
- (9) Child support, including support or maintenance for or on behalf of a son or daughter who is over eighteen years of age;
- (10) Public assistance payments from another state prior to any reduction of the monthly assistance payment due to overpayment recovery;
- (11) Hawaii public assistance payments prior to any reduction of the monthly assistance payment due to overpayment recovery in accordance with chapter 17-683;
- (12) Adoption assistance payments;
- (13) Dividends from stockholdings or memberships in associations;
- (14) Periodic interest on savings or bonds;
- (15) Income from estates or trust funds;
- (16) Income from rental of property after business expenses;
- (17) Royalties;
- (18) Income received from self-employed activities:
  - (A) To be considered self-employed, the individual shall meet the definition of self-employed as established under this chapter and generate the required income at the time of eligibility and

in each subsequent month. This must be considered first as monthly earned income when determining eligibility for child care payments as a self-employed person.

- (B) Income received from non-farm self-employed activities means the gross receipts minus expenses for an individual's own business, professional enterprise, or partnerships.
  - (i) Gross receipts shall include the value of all goods sold and services rendered.
  - (ii) Expenses shall include the costs of goods purchased, rent, heat, light, power, wages and salaries paid, business taxes, and other similar costs.
  - (iii) The value of salable merchandise consumed by the proprietors of retail stores shall be included as part of net income.
  - (iv) Items such as depreciation, personal, business and entertainment expenses, transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, and state or federal taxes paid shall not be deducted as business expenses. Personal expenses such as lunches and transportation to and from work shall not be deducted as business expenses.
- (C) Income received from farm self-employed activities means the gross receipts minus operating expenses from the operation of a farm by a person on the person's own account, as an owner, renter, or sharecropper.
  - (i) Gross receipts shall include the

- value of all products sold, government crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items;
- (ii) Operating expenses shall include the cost of feed, fertilizer, seed, and other farming supplies, cash wages paid to farmhands, cash rent, interest on farm mortgages, farm building repairs, farm taxes (not state and federal income taxes), and other similar expenses;
  - (iii) The value of fuel, foods, or other farm products used for family living shall not be included as part of net income;
  - (iv) Items such as depreciation, personal, business and entertainment expenses, transportation, or state and federal taxes paid shall not be deducted as business expenses. Personal expenses such as lunches and transportation to and from work shall not be deducted as business expenses;
- (19) Free rent converted to a cost compensation when it is exchanged for an activity instead of wages or salary. The department shall determine this by multiplying the State minimum wage multiplied by forty hours a week multiplied by 4.3333 weeks. When work is less than forty hours a week, use the actual number of hours worked in the month multiplied by State minimum wage. [Eff  
] (Auth: HRS §346-14) (Imp:  
HRS §346-14)

**§17-798.3-11 Excluded monthly income.** The following types of income received in any given month shall be excluded from consideration in determining income eligibility for child care payments:

- (1) Money received from the sale of property such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling the property, in which case, the net proceeds would be counted as self-employed activity income;
- (2) Withdrawals of bank deposits;
- (3) Loans;
- (4) Gifts, including in-kind gifts such as free room and board, when the gift is not a form of compensation in lieu of wages or salary;
- (5) Monies received in the form of a nonrecurring lump sum payment including, but not limited to, the following:
  - (A) Income tax refunds, rebates, or credits;
  - (B) Retroactive lump sum social security, SSI, public assistance, or unemployment compensation benefits;
  - (C) Retroactive annual adjustment payments in the veteran administration's (VA) disability pensions;
  - (D) Lump sum inheritances or insurance payments;
- (6) Refunds of security deposits on rental property or utilities;
- (7) Capital gains;
- (8) Earnings of minor children who are members of the household and are students at least half-time shall be excluded even during temporary interruptions in school attendance due to semester or vacation breaks, provided the minors' enrollment will resume following the break;
- (9) Loans, grants, and scholarships obtained and used under conditions that prohibit use for

- current living expenses;
- (10) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education;
  - (11) Home produce utilized for home consumption;
  - (12) The value of an allotment under the Food Stamp Act of 1977, as amended, 7 U.S.C. §2017;
  - (13) The value of USDA donated or surplus foods;
  - (14) The value of supplemental food assistance under the Child Nutrition Act of 1966, 42 U.S.C. §§1771-1789, and the special food service program for children under the National School Lunch Act, as amended, 42 U.S.C. §§1751-1769;
  - (15) Benefits received from the special supplemental food program for women, infants, and children (WIC), 42 U.S.C. §1771;
  - (16) Allowances and payments to participants in programs, other than on-the-job training, under the Workforce Investment Act (WIA) of 1998, 20 U.S.C. §9201;
  - (17) The earned income of individuals participating in on-the-job training programs under the Work Investment Act (WIA) of 1998, 20 U.S.C. §9201, who are between 18 and 19 years of age and under the parental control of another household member;
  - (18) Earned income tax credit (EITC) payments received either as a lump sum or recurring payments under section 3507 of the Internal Revenue Code of 1986;
  - (19) Financial assistance provided by a program funded in whole or in part under title IV of the Higher Education Act in accordance with Pub. L. No. 99-498;
  - (20) Payments or allowances made under any federal, state, or local laws for the purpose of energy assistance;

- (21) Assistance or relief payments received as a result of a disaster or emergency as declared by the federal, state, or county government;
- (22) Payments made from the Agent Orange Settlement Fund or any other fund established in connection with settling liability claims concerning the chemical Agent Orange, Pub. L. No. 101-201;
- (23) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4636;
- (24) Payments received under the Radiation Exposure Compensation Act, Pub. L. No. 101-426, to compensate individuals for injuries or deaths resulting from the exposure to radiation from nuclear testing or uranium mining;
- (25) Payments to individuals participating in the Senior Community Service Employment Program (SCSEP) funded under title V of the Older Americans Act of 1965, 42 U.S.C. §3001; Pub. L. No. 100-175;
- (26) Payments to volunteers derived from the volunteer's participation in the following programs authorized by the Domestic Volunteer Service Act of 1973, 42 U.S.C. §§5011, 4951-4958:
  - (A) Foster grandparent program;
  - (B) Senior companion program; and
  - (C) Volunteers in service to America (VISTA) and AmeriCorps programs;
- (27) Military re-enlistment bonus;
- (28) Foster board payments;
- (29) Permanency assistance or guardianship assistance payments;
- (30) Any other payments made in accordance with state and federal laws that preclude the payments from being counted as income.  
[Eff \_\_\_\_\_ ] (Auth: HRS §346-14)  
(Imp: HRS §346-14)



**§17-798.3-12 Child care rates.** (a) Child care rates shall be established based on:

- (1) Types of care:
  - (A) Registered family child care;
  - (B) Registered family child care infant toddler care;
  - (C) Accredited registered family child care;
  - (D) Accredited registered family child care infant toddler care;
  - (E) Legally exempt relative, non-relative, and center-based care;
  - (F) Legally exempt relative and non-relative infant toddler care;
  - (G) Licensed group child care center and group child care home;
  - (H) Accredited group child care center;
  - (I) Hawaiian medium center-based care;
  - (J) Licensed infant toddler center;
  - (K) Licensed school-age care, including before-school care or after-school care;
  - (L) Licensed school-age care for intercession, summer care, or breaks during the school year;
  - (M) Legally exempt before and after school care; and
- (2) Need for care, as established under section 17-798.3-15:
  - (A) Full-time care; or
  - (B) Part-time care.

(b) The rates are established in Exhibit I, dated January 2, 2020, attached at the end of this chapter. [Eff \_\_\_\_\_] (Auth: HRS §346-14) (Imp: §346-14; 45 C.F.R. §98.42)

**§17-798.3-13 Child care payments.** (a) The amount issued by the department may not exceed the

maximum monthly department allowance, except when the caretaker cannot continue to use the child care provider due to an action by the department, and the caretaker paid for child care but the provider is unwilling to refund the amount to the caretaker.

(b) Child care payments include:

- (1) A one-time only payment in a state fiscal year for registration fees, which may also include supply and activity fees, required by the facility, not to exceed \$125.00; and
- (2) Monthly cost of child care per child, as paid, but not to exceed the child care rates specified in section 17-798.3-12. For the exception in section 17-798.3-13(a), a second payment up to the maximum full-time rate specified in section 17-798.3-12 for the new provider shall be allowed; and
- (3) Only one child care provider per eligible child needing child care payments shall be authorized by the department for each eligible child, even if the caretaker uses more than one child care provider for any eligible child. The caretaker shall determine which child care provider shall be utilized for child care payments authorized under this chapter, provided that the child care provider meets the requirements under this chapter.

(c) The department shall issue to and receive from the caretaker a signed and completed designated form for each child care provider chosen by the caretaker, to verify the cost of child care for the eligible child needing child care payment, the name and address of the provider, and provider information to establish that the child care provider meets the requirements as specified in section 17-798.3-9(c), and subchapters 3, 4, and 5 for an exempt provider.

(d) A family unit's child care expense may be partially paid by another public-funded source, except for payment made under chapter 17-799 or 42 U.S.C. §9858.

(e) Child care payments may be provided through monies issued one month at a time and paid to the caretaker; provided that a caretaker may choose to have the child care payment forwarded by the department as a direct deposit from the caretaker's account to the child care provider's direct payment account recorded with the department. [Eff

] (Auth: HRS §§346-14, 346-63) (Imp: HRS §§346-14, 346-63; 45 C.F.R. §§98.41, 98.42 and 98.43)

**§17-798.3-14 Method of computing family unit's co-payment.** The following steps shall be used to compute the family unit's co-payment:

- (1) Determine the monthly gross income for the family unit;
- (2) Identify the family unit size;
- (3) Determine the family unit's co-payment tier based on the co-payment tier established in Exhibit II, dated January 2, 2020, attached at the end of this chapter; and
- (4) Multiply the family unit's co-payment tier by the monthly gross income for the family unit. [Eff ] (Auth: HRS §§346-14, 346-63) (Imp: HRS §§346-14, 346-63; 45 C.F.R. §§98.41, 98.42 and 98.43)

**§17-798.3-15 Method of computing the need for care.** The following shall be used to compute the need for care for each eligible child in the family unit needing child care payments:

- (1) Counting the hours the caretaker is engaged in the allowable activity except for:
  - (A) Individuals identified in section 17-798.3-9(b)(3)(F), the child care need

- shall be based on the number of hours of child care specified in the court-ordered service plan; or
- (B) When in the case of a family unit, with two caretakers, both caretakers' activity hours shall be the same overlapping hours; and
- (2) The hours of care that the eligible child needing child care payment is attending the child care facility; and
  - (3) Comparing the hours of child care needed determined by paragraphs (1) and (2), and choosing the lesser amount. [Eff (Auth: HRS §§346-14, 346-63) (Imp: HRS §§346-14, 346-63; 45 C.F.R. §§98.41, 98.42 and 98.43) ]

**§17-798.3-16 Method of computing the child care payment.** (a) The following shall be used to compute the child care payment:

- (1) The caretaker's relationship to the child who resides with the caretaker, and the age of the child who needs care;
  - (2) The child care provider;
  - (3) The need for care as established under section 17-798.3-15; and
  - (4) The cost of child care and the child care rate determined under section 17-798.3-12 for the type of child care selected and authorized for each eligible child needing child care payment, and choosing the lesser amount.
- (b) Subtracting the family unit's co-payment calculated under section 17-798.3-14 from the amount determined in subsection (a), provided that:
- (1) A portion of the family unit's co-payment shall be waived when an eligible child needing child care payment is attending an accredited group child care center, a

- Hawaiian-medium center-based facility, a licensed infant and toddler child care center, licensed group child care center, or licensed group child care home;
- (2) The portion waived pursuant to paragraph (1) shall not exceed the child care cost or up to one hundred United States dollars, whichever is less, per child that is attending an accredited group child care center, a Hawaiian-medium center-based facility, a licensed infant and toddler child care center, licensed group child care center, or licensed group child care home; and
  - (3) When the computed child care payment amounts for eligible children needing child care payments and who are not attending child care facilities described in paragraph (1) are less than the remaining balance of the family unit co-payment, the department shall not collect any unrecovered co-payment amount.

(c) The caretaker shall be responsible for any child care costs in excess of the child care payment computed under this section.

(d) The caretaker shall be responsible to pay the family unit's co-payment share of the child care cost directly to the provider.

(e) The department shall project the family unit's eligibility and monthly payments prospectively for the eligibility period.

- (1) The initial payment shall be calculated from the date of eligibility to the end of the month, which may be for less than a full month, and shall be considered the first month of the eligibility period.
- (2) When changes are reported during the eligibility period, the monthly payments shall be prospectively calculated for the remainder of the eligibility period. (Eff  
] (Auth: HRS §346-14) (Imp:  
HRS §346-14; 45 C.F.R. §98.20)

**§17-798.3-17 Mandatory reporting.** (a) A caretaker who is a recipient of child care payments shall report changes to the department within ten calendar days of the change for the following:

- (1) Monthly gross income and the source of the household income exceeds eighty-five percent of the State Median Income for a family unit of the same size, except for:
  - (A) Department-licensed foster parents with approved activities that need child care; or
  - (B) Family units as specified under section 17-798.3-9(b) (3) (F).
- (2) Address changes, including:
  - (A) Place of residence; and
  - (B) Mailing address;
- (3) Household composition changes;
- (4) Marital status changes;
- (5) Ending, changing, or starting services with a child care provider;
- (6) Changes to provider's contact telephone number or address where care is being provided;
- (7) When there is a new adult household member at the home-based child care exempt provider;
- (8) Changes in the cost of care;
- (9) Changes in the child care type;
- (10) Loss of activity:
  - (A) Except for family units as specified under section 17-798.3-9(b) (3) (F); or
  - (B) When a caretaker reports a temporary change in activity, the department shall allow up to three months for the caretaker to resume participating in an activity allowable under section 17-798.3-9(b) (3). A temporary change in activity shall include:
    - (i) Any time-limited absence from work

for an employed caretaker due to such reasons as the need to care for a family member or an illness. Verification of the need for temporary care of an immediate family member or an illness of an employed caretaker and duration of care, shall be verified by the written report of a State-licensed physician, psychologist, or psychiatrist.

- (ii) Any interruption in work for a seasonal worker who is not working;
  - (iii) Any student holiday or break for a caretaker participating in a training or educational program;
  - (iv) Any reduction in work, training, or education hours, as long as the caretaker is still working or attending a training or educational program; or
  - (v) Any other cessation of work or attendance at a training or educational program that does not exceed three months;
- (C) If a caretaker does not resume an activity allowable under section 17-798.3-9(b) (3) within three months from the date of the loss of the prior allowable activity(ies), child care payments shall be terminated in accordance with section 17-798.3-19;
- (11) Closure of the child protective services family supervision case for family units as specified under section 17-798.3-9(b) (3) (F).
- (b) Changes may be reported in writing, in person, or by telephone, and shall be supported by verifying documentation.
- (c) When changes are reported pursuant to this section, the department shall take action on the reported changes and calculate payments for the

balance of the eligibility period, after timely and adequate notice, as follows:

- (1) Changes that are reported within ten calendar days of the occurrence shall be implemented in the first month following the month in which the change was reported;
- (2) Changes that are reported after ten calendar days of the occurrence, that result in a higher payment, shall be implemented in the second month following the month in which the change was reported;
- (3) Changes that are reported that result in a lower payment, due to a lower cost of care or selection of a child care type that has a lower maximum payment rate, shall be implemented in the first month following the month in which the change was reported, and the department shall recover any overpayments from the date of the occurrence; and
- (4) Changes that are reported as referenced in subsection (a) related to the child care provider selected by the caretaker, shall be implemented by adjusting the child care payments when the child care provider is determined to meet the conditions of section 17-798.3-9(c) and subchapters 3, 4, and 5, in accordance with section 17-798.3-9(d).  
[Eff \_\_\_\_\_ ] (Auth: HRS §346-14)  
(Imp: HRS §346-14)

**§17-798.3-18 Re-determination of eligibility and payment amount.** (a) Eligibility and payment amounts shall be reviewed at the end of every eligibility period.

- (1) The family unit shall submit a completed simplified report form including the verifying documentation required to determine the continued eligibility of the caretaker, child and provider.



- (A) The completed simplified report form must be received by the department by the due date printed on the simplified report form.
- (B) A simplified report form shall be considered incomplete when:
  - (i) It is not initialed and signed by the caretaker,
  - (ii) It omits information and documentation including, but not limited to, pay stubs, employment, training or education schedule, and child care receipts, that are necessary for the department to determine the family unit's eligibility, or to compute the family unit's child care payment amount; or
  - (iii) In situations where the caretaker is experiencing homelessness and is unable to provide verification for eligibility requirements other than sections 17-798.3-9(d) and 17-798.3-9(c), the caretaker may be presumptively eligible for child care payments for a period of two months while the caretaker secures the verification for the eligibility requirements, provided that the caretaker submits self-certification meeting the requirements for 17-798.3-9(b)(1) through (5). The verification submitted within the two months shall demonstrate eligibility requirements for 17-798.3-9(b)(1) through (5) from month of re-determination or start of child care, whichever is later.
- (C) If the caretaker fails to submit a simplified report form by the due date

noted on the simplified report form, or submits an incomplete form, the department shall provide a timely and adequate notice in accordance with section 17-798.3-20 that allows the caretaker an extended filing period.

- (i) When the caretaker submits a completed simplified report form within the extended filing period, child care payments shall be provided not later than ten days after the caretaker's normal benefits issuance date.
  - (ii) When the caretaker submits a completed simplified report form after the extended filing period, but before the end of the report month, child care payments shall be provided not later than thirty days after the receipt of the simplified report form.
  - (iii) When the extended filing period ends, and the simplified report form is not received by the department, or is received but is still incomplete, the department shall issue a notice that confirms the termination of child care payments.
- (2) The department shall require the caretaker to provide information on the simplified report form that shall include, but is not limited to, those items listed in paragraphs 17-798.3-17(a)(1) through (10), as well as activity hours; and
  - (3) Child care payments shall only be authorized for the next twelve months provided the caretaker has submitted the completed simplified report form and the required documentation to establish eligibility.
- (b) Re-determination of eligibility shall include determination that an exempt provider

conducting home-based child care, including in-home care, meets the requirements of section 17-798.3-9(c) and subchapters 3, 4, and 5:

- (1) Has current background checks and the results indicate the person does not pose a risk to children in care; in accordance with chapter 17-801;
- (2) Completed annual training, pursuant to sections 17-798.3-51(c) (7) (B) and (C), and
- (3) Completed monitoring inspection visits at least annually, pursuant to section 17-798.3-51(c) (8).

(c) At redetermination, when a caretaker reports a change in the status of the eligible activities from working, or participating in a training or education program, the department shall allow up to three months for the caretaker to resume working, or to attend an education or training program. If the caretaker does not resume an eligible activity within three months from the date of the loss of the eligible activity, child care payments shall be terminated in accordance with section 17-798.3-19.

(d) The department shall take action on any other reported changes that are verified to affect eligibility or payment amounts, in addition to those required under subsections (a) through(c) and sections 17-798.3-17 and 17-798.3-51, after timely and adequate notice. The department shall take action on the reported changes and calculate payments for the balance of the eligibility period as follows:

- (1) Changes that are reported within ten calendar days of the occurrence, that result in a higher payment, shall be implemented in the first month following the month in which the change was reported;
- (2) Changes that are reported after ten calendar days of the occurrence, and result in a higher payment, shall be implemented in the second month following the month in which the change was reported; and
- (3) Changes that are reported that result in a lower payment, due to a lower cost of care

or selection of a child care type that has a lower maximum payment rate, shall be implemented in the first month following the month in which the change was reported, and the department shall recover any overpayments from the date of the occurrence.

(e) When a child turns two years old, kindergarten eligible, or thirteen years old, the child care payments may continue for the duration of the existing eligibility period; provided that no changes have occurred for eligible child for the child care provider, cost of child care, child care type, or address where care is being provided.

(f) Child care payments shall not be authorized for the chosen exempt child care provider until the requirements of section 17-798.3-9(c) and subchapters 3, 4 and 5 are met.

(g) At redetermination when a caretaker reports a change in the selected child care provider, the department shall follow section 17-798.3-9(d). [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**§17-798.3-19 Denial, reduction, suspension, or termination of child care.** (a) Child care payments may be denied, reduced, suspended, or terminated when:

- (1) The caretaker does not complete the process of application, determination of eligibility, or withdraws the application;
- (2) The caretaker does not sign and date the application form or simplified report form prescribed by the department;
- (3) The caretaker does not submit a completed application form or simplified report form prescribed by the department.
- (4) The caretaker does not submit verifying documentation requested by the department;
- (5) The child does not meet the eligibility requirements referenced in subsection 17-

- 798.3-9(a);
- (6) The caretaker does not meet the eligibility requirements referenced in subsection 17-798.3-9(b);
  - (7) The provider does not meet or comply with the eligibility requirements referenced in subsections 17-798.3-9(c) and subchapters 3, 4, and 5;
  - (8) Conditions initially present in the family unit situation have changed and child care is no longer needed;
  - (9) The family unit has not used authorized care;
  - (10) The child has absences that are unexcused for more than five consecutive days;
  - (11) The caretaker voluntarily requests discontinuance of child care payments;
  - (12) The caretaker and the child are unable to use child care and another service must be planned for;
  - (13) The family unit is no longer eligible for child care payments;
  - (14) The family unit cannot be located;
  - (15) The family unit fails to complete the process of re-determination of eligibility;
  - (16) The family unit fails to utilize child care payments in accordance with section 17-798.3-5(c) and does not reconcile the resulting overpayments in accordance with section 17-798.3-22;
  - (17) The department determines pursuant to section 17-798.3-23 that there are insufficient funds to maintain all children receiving care;
  - (18) A caretaker does not participate in any activity allowable under section 17-798.3-9(b)(3)(A) through (H) for a period in excess of three months from the date of loss of the prior allowable activity(ies); or
  - (19) The caretaker fails to provide the required eligibility documentation pursuant to sections 17-798.3-9(d)(4)(B) or (C), and two

months has passed from the date of presumptive eligibility.

(b) Child care payments may be suspended when the payment amount is determined to be zero:

- (1) When children are attending school and only need intersession or summer care;
- (2) The family unit's use of child care services does not begin within thirty days of submittal of the application for services; or
- (3) For a period not to exceed the remaining duration of the caretaker's most recent twelve month eligibility period when the designated provider does not meet the conditions set forth in subsection 17-798.3-9(c) and the family unit must find a different provider.

(c) Child care payments shall be suspended upon the start of an investigation by the department pursuant to 17-798.3-51(e) for the provider caring for an eligible child needing child care payments and payments shall not be retroactively paid for the period of suspension if the department determines that the provider poses a risk to children in care or that the provider is not complying with 17-798.3-9(c) or subchapters 3, 4, or 5. [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**§17-798.3-20 Notice of adverse action.** (a) The department shall provide the caretaker with timely and adequate notice prior to taking adverse action to reduce, suspend, or terminate any child care payments specified in this chapter.

(b) A caretaker can submit verifying documentation for consideration by the department to reverse the proposed department action prior to the effective date of the action.

(c) Only adequate notice is required when the following occurs:

- (1) A caretaker is deceased;

- (2) A caretaker left the State;
- (3) A caretaker requests discontinuance of child care payments;
- (4) A caretaker fails to comply with mandatory report requirements of section 17-798.3-17;
- (5) A caretaker's whereabouts are unknown;
- (6) The department determines pursuant to section 17-798.3-23 that there are insufficient funds to maintain all children receiving care; or
- (7) An application for child care payments is denied. [Eff \_\_\_\_\_ ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**§17-798.3-21 Administrative appeal requests.**

(a) A caretaker may file a written request for an administrative appeal, in accordance with the provisions set forth in chapter 17-602.1, when the caretaker disagrees with the department's adverse action to deny, reduce, suspend, or terminate payment, or with the department's determination of an overpayment.

(b) Child care payments shall not continue during the appeal process. [Eff \_\_\_\_\_ ]  
(Auth: HRS §346-14) (Imp: HRS §346-14)

**§17-798.3-22 Underpayments and overpayments. (a)**

Underpayments shall be processed as follows:

- (1) Prompt action shall be taken to correct any underpayment to a currently eligible caretaker who would have received a greater benefit if an error by the department had not occurred.
- (2) If a caretaker has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment.
- (3) Payments provided to the caretaker to correct

- an underpayment shall not be counted as income.
- (4) Corrective payments shall be made for any underpayment due a former recipient when child care assistance is restored.
  - (b) Overpayments shall be processed as follows:
    - (1) Failure to provide information, as specified in sections 17-798.3-12, 17-798.3-16, 17-798.3-17, and 17-798.3-18, or errors made by the department may affect the caretaker's eligibility and result in an overpayment, and excluding section 17-798.3-9(d)(4)(C).
    - (2) An overpayment made to a caretaker shall be recovered through:
      - (A) Repayment in cash, in full or in part, by the caretaker to the department; or
      - (B) A reduction of not less than ten percent in the amount payable to the caretaker in subsequent months until the entire amount of overpayment is recovered.
    - (3) An individual subject to recovery of an overpayment shall be provided adequate notice by the department including:
      - (A) The reasons, dates, and the amount of the alleged overpayment; and
      - (B) The proposed method by which the overpayment shall be recovered.
    - (4) An overpayment to an individual shall be recovered from the caretaker who was overpaid, from individuals who were members of the family unit when overpaid, or from a family unit which includes members of a previously overpaid family unit.
    - (5) A child care overpayment shall be recovered only from child care payments or TANF payments, provided the caretaker continues to receive such payments.
    - (6) Recovery of an overpayment to former recipients of child care payments shall be referred to the department's fiscal management office for collection action.



- (7) If a caretaker for whom a collection action has been initiated fails to make a payment for any month in the calendar tax year, the department may refer debts exceeding twenty-five dollars to the comptroller of the State for tax setoff as specified in chapter 17-606. [Eff \_\_\_\_\_] (Auth: HRS §§346-14, 346-44) (Imp: HRS §§346-35, 346-44)

**§17-798.3-23 Termination for insufficient funds.**

(a) The department may, at its discretion, refuse to take new applications, reduce payments, or terminate payments when there are insufficient funds to pay child care payments at current amounts through the end of the State fiscal year.

(b) Refusal to take new applications, reducing payments, or terminating payments will first be accomplished in reverse priority from what is listed in section 17-798.3-7. Priority will further be determined within the categories set forth in section 17-798.3-7 by income, with higher income family units terminated first.

(c) The budget will be managed by reviewing monthly expenditures, and evaluating whether the cumulative expenditures at the end of any given month are less than or equal to the number of months that have expired in the fiscal year times 1/12 of the budget appropriation for child care payments.

(d) When the department determines that the budget appropriation has or soon will be exceeded, notices of adverse action may be issued to limit the number of children receiving payments in any given month or to take other necessary action to operate within the child care budget appropriation. A decision under this subsection shall be final and conclusive and not subject to an administrative appeal under section 17-798.3-21. [Eff \_\_\_\_\_] (Auth: HRS §346-14) (Imp: HRS §346-14)

**§17-798.3-24 Waitlist.** (a) The department may implement a waitlist for child care subsidy payments whenever it determines that sufficient funding is not available to sustain payments for all of the applicants requesting assistance.

(b) The following are not subject to the waitlist:

- (1) A family unit who needs child care payments to comply with the First-To-Work (FTW) program participation requirements;
- (2) A family unit whose child is receiving child protective services, and the need for child care is specified in the family unit's case plan as ordered by the court; and
- (3) Former TANF participants who are eligible for Transitional Child Care pursuant to section 17-798.3-36.

(c) When the waitlist is in effect, the department shall prioritize applicants using the following:

- (1) Family units with gross incomes at or below 100% of the Federal Poverty Guideline (FPG) for a family of the same size shall be income-ranked by dividing their monthly gross income by the income limit for a family of the same size;
- (2) Family units with gross incomes above 100% of the FPG for a family of the same size shall be income-ranked by dividing their monthly gross income by the income limit for a family of the same size; and
- (3) Date an application is received by the department.

(d) Upon determining funds are available, the department shall select waitlisted family units by priority, as established in subsection (c), and provide notification of eligibility for program enrollment as established in section 17-798.3-8.

(e) Waitlisted family units selected for child

care payments shall meet all eligibility requirements as established in section 17-798.3-9 at the time of notification of eligibility for program enrollment; provided that if the waitlisted family unit is not eligible, the caretaker will be notified of the application denial.

(f) Eligibility for the initial payment shall be the later of:

- (1) The month that requirements of section 17-798.3-9 are verified by the department; or
- (2) The eligible child's first day in child care.

(g) Assignment of applicants to the waitlist shall be final and conclusive and not subject to an administrative appeal under section 17-798.3-21.

[Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**§§17-798.3-25 to 17-798.3-34 (Reserved)**

SUBCHAPTER 2

TRANSITIONAL CHILD CARE PAYMENTS

**§17-798.3-35 Purpose.** The purpose of this subchapter is to establish the eligibility requirements, benefits, and method of determining payment for transitional child care benefits.

[Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**§17-798.3-36 Eligibility requirements.** (a) The department may provide transitional child care

payments for a period of up to twelve consecutive months to a family unit that ceases to be eligible for TANF as a result of:

- (1) Increased hours of employment or increased income from employment;
- (2) New or increased income from child support; or
- (3) The caretaker voluntarily requesting TANF closure because the caretaker is currently employed.

(b) The family unit shall have received TANF benefits in the month immediately preceding the first month of ineligibility or termination.

(c) The family unit shall meet all the conditions specified in sections 17-798.3-9, 17-798.3-10, 17-798.3-11, 17-798.3-13, 17-798.3-14, 17-798.3-15 and 17-798.3-16.

(d) Eligibility for transitional child care payments shall begin from the date TANF eligibility ends or when the family unit applies for transitional child care payments, whichever is later.

(e) A family unit shall apply for transitional child care payments within twelve months of ending TANF for the reasons stated in subsection (a):

- (1) A family unit that applies for transitional child care payments prior to TANF eligibility ending may do so by request to the department without further application; and
- (2) A family unit that applies for transitional child care payments after TANF eligibility ends shall submit a form prescribed by the department pursuant to section 17-798.3-6.  
[Eff \_\_\_\_\_ ] (Auth: HRS §346-14)  
(Imp: HRS §346-14)

**§§17-798.3-37 to 17-798.3-49 (Reserved)**

SUBCHAPTER 3

GENERAL REQUIREMENTS FOR EXEMPT PROVIDERS

**§17-798.3-50 Purpose.** The purpose of this subchapter is to define the general requirements for exempt child care providers to be authorized to care for children whose families receive child care payments. [Eff \_\_\_\_\_] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-51 General requirements.** (a) The department shall verify that the exempt provider meets exemptions from sections 346-161 or 346-171, HRS, in accordance with section 346-152, HRS.

(b) An exempt provider shall be authorized to care for children whose families receive child care payments under this chapter when all requirements in subchapter 3, 4, and 5 are met.

(c) An exempt provider shall:

- (1) Be eighteen years old or older;
- (2) Afford caretakers unlimited access to their children, including written records concerning the caretakers' children, during normal hours of provider operation and whenever children are in the care of the provider;
- (3) Operate as an exempt provider in accordance with section 346-152, HRS;
- (4) Complete background checks in accordance with section 17-798.3-89 and chapter 17-801;
- (5) Have no known history of physical, psychological or psychiatric problems, or background, in accordance with chapter 17-801 that may adversely affect or interfere with the care of children;
- (6) Be free of physical or psychological

- conditions which may impair or limit the provider's ability to provide child care;
- (7) Satisfactorily complete and provide written evidence to the department to show completion of trainings as required by the department when caring for an eligible child under this chapter which includes but is not limited to:
- (A) An initial training in health and safety standards that is approved by the department prior to caring for an eligible child;
  - (B) Safe sleep training that is approved by the department on an annual basis when the provider starts caring for an eligible child who is less than one year of age, until no eligible children in care are less than one year of age; and
  - (C) A minimum of eight hours of training within one year of completion of the initial training as described in subparagraph (A), and completed annually thereafter, as prescribed by the department in at least two of the following topic areas:
    - (i) Physical care of the young child;
    - (ii) Care of the sick child;
    - (iii) Child nutrition;
    - (iv) Child growth and development;
    - (v) Children with special needs;
    - (vi) Learning activities and play;
    - (vii) Family engagement;
    - (viii) Managing challenging behaviors;
    - (ix) Prevention of child maltreatment and abuse;
    - (x) First aid and child cardiopulmonary resuscitation;
    - (xi) Physical environment;
    - (xii) Health and safety;
    - (xiii) Child care business or program management; or

- (xiv) Community resources; and
  - (xv) Training under section 17-798.3-51(c)(7)(B), when applicable;
- provided that an exempt provider who is the child's grandparent, great-grandparent, sibling living in a separate residence, aunt, or uncle is not subject to this paragraph;
- (8) Submit to initial and annual monitoring inspections where care is being provided, including in-home care, to ensure compliance with the requirements of subchapters 4 and 5 as follows:
    - (A) The department shall assess the qualifications of exempt providers and inspect the premises.
    - (B) All exempt providers shall cooperate with the department by providing access to the premises, records, staff, and household members.
    - (C) Failure to comply with reasonable requests may constitute grounds for the department to determine that the provider is not authorized to care for a child whose family unit receives child care payments;provided that an exempt provider who is the child's grandparent, great-grandparent, sibling living in a separate residence, aunt, or uncle is not subject to this paragraph;
  - (9) Comply with section 17-798.3-66;
  - (10) Agree to report to the department, within one working day of occurrence, the death of a child or staff, and any illness or injury received at the provider that results in a child's hospitalization or emergency treatment;
  - (11) Report to the department within ten calendar days of occurrence, any of the following:
    - (A) Change in contact telephone number;
    - (B) Change in the address where the child

- care is being conducted; or
  - (C) Change in the staff or household members where care is being conducted;
  - (12) Agree to notify all parents of children in care when there are deficiencies in meeting requirements under subchapters 3, 4, or 5;
  - (13) Report any suspected child abuse or neglect in accordance with section 350-1.1, HRS;
  - (14) Have a written policy of expulsion of children which includes the following:
    - (A) The conditions under which a child may be expelled, if applicable;
    - (B) Sufficient timeframe before expulsion occurs to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in subparagraph (C);
    - (C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children or staff;
  - (15) Give parents and guardians a copy of the expulsion policy;
  - (16) Provide written notification to parents or guardians, any concerns that could lead to the child's expulsion; and
  - (17) When expulsion occurs, maintain a record of the conditions, parental notification, and action taken when applicable.
- (d) The eligible family using an exempt provider providing home-based child care, including in-home care, may be authorized to receive child care payments presumptively once the provider is in compliance with paragraphs (c) (1) to (c) (7) (A). Child care payments to the eligible family unit may be made retroactively in accordance with section 17-798.3-6(g).
- (e) If the department receives information that the exempt provider, including relatives excluded from paragraph 17-798.3-51(c) (8), is in violation of subchapters 3, 4 or 5, or that the provider is conducting child care in violation of section 346-152,



HRS, the department will conduct an investigation, including an inspection of the child care facility.

- (1) All exempt providers shall cooperate with the department by providing access to the premises, records, staff, and household members, including relatives excluded from paragraph 17-798.3-51 (c) (8).
- (2) Child care payments shall cease in accordance with sections 17-798.3-9(d) (4) (A) and 17-798.3-19(a) (7) until the department has completed its investigation and determined that the exempt provider is in compliance with section 346-152, HRS, or subchapters 3, 4 or 5. [Eff ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§§17-798.3-52 to 17-798.3-59 (Reserved)**

Subchapter 4

HEALTH REQUIREMENTS FOR EXEMPT PROVIDERS

**§17-798.3-60 Purpose.** The purpose of this subchapter is to define the health requirements for exempt providers to be authorized to care for children whose families are receiving child care payments. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-61 Drinking water provisions.** The provider shall make available suitable drinking water to all children in care. [Eff ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14;

§17-798.3-61

45 C.F.R Part 98)

**§17-798.3-62 Handwashing.** (a) The provider and children shall wash hands using water and soap:

- (1) Before and after eating or drinking;
- (2) Before and after preparing food or beverages;
- (3) Before and after diapering;
- (4) After using the toilet or helping a child in toileting;
- (5) After handling any bodily fluids or items containing bodily fluids;
- (6) After handling pets or animals;
- (7) After outdoor play; and

(b) Paper towels or separate cloth towels for each child for drying hands after hand-washing.

[Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-63 Toilet and handwashing facilities.**

Children shall have access to toilet and handwashing facilities that are clean and stocked with toilet paper and supplies required under section 17-798.3-62(b). [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-64 Handling of diapers or training underpants.** The provider shall handle disposable and cloth diapers and cloth training underpants in the following manner:

- (1) Use a clean non-porous surface for changing diapers;
- (2) Use a space set aside for diapering that is separate from eating and food preparation areas;
- (3) Discard soiled disposable diapers shall be

discarded in a covered container. The covered container shall be kept away from eating, food storage, and food preparation areas and out of the children's reach.

- (4) Place soiled cloth diapers and cloth training underpants, without emptying or rinsing the contents, in a plastic bag and kept away from eating, food storage, and food preparation areas and out of the children's reach.
- (5) Soiled cloth diapers or cloth training underpants shall be given to the child's parent or guardian. [Eff ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-65 Food preparation and protection.**

If the provider offers meals and snacks, the provider shall:

- (1) Designate areas for eating or drinking;
- (2) Clean food preparation areas before and after meals and snacks; and
- (3) Store food in a safe and sanitary manner.  
[Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 42 U.S.C. §§2002, 2005, 2014)

**§17-798.3-66 Evidence of child's health. (a)**

The provider shall obtain from the parent or guardian of each child entering child care, evidence of compliance with examinations and immunizations, in accordance with chapters 11-157 and 11-164.2 for tuberculosis clearance.

(b) The provider shall obtain from the parent or guardian, the health needs for each child, including any allergies, and maintain copies of the evidence.

(c) The provider shall not be required to obtain the evidence described in subsection (a) if the

provider has the following:

- (1) A written statement from the parent or guardian objecting to immunization of the child on the basis of their religion;
- (2) A written statement signed by the child's physician indicating that the child's medical condition contraindicates immunization; or
- (3) Is providing care in the eligible child's home and all children in care are part of the same family unit.

(d) The provider shall allow a grace period of three months from the child's first day in care, with the exception of chapter 11-164.2 for tuberculosis clearance, to obtain the evidence described in subsection (a) or (c) for:

- (1) Children experiencing homelessness; or
- (2) Children in foster care;

provided that the parents or guardians submit to the provider in writing that sets out the health needs for the child, including any allergies, at the time the child is placed in care.

(e) The provider shall be required to obtain the evidence described in subsection (a) and (b) if the provider is a relative specified in section 17-798.3-51(c) (7) and is caring for any other children unrelated to the caregiver. [Eff ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-67 Children who become ill.** The provider shall ensure a clean and safe resting space to isolate children who are ill while in care, and for an ill child less than one year of age the resting space shall be in accordance with section 17-798.2-85.

**§17-798.3-67.01 Administration of medication.**

- (a) When medication prescribed by a health care

professional is administered by the provider or provider's staff:

- (1) The child's parent or guardian shall give written permission to the provider to administer medication;
  - (2) The medication shall be kept in the original container bearing the prescription label which shows a current date, the health care professional's directions for use, and the child's name; and
- (b) When over the counter medication is administered by the provider or provider's staff:
- (1) The child's parent or guardian shall give written permission to the provider to administer medication;
  - (2) The child's parent, guardian, or a health care professional shall give written directions to the provider for the administration of the medication.
- (c) All medication shall be stored out of the reach of the children and shall be returned to parents or guardians when no longer in use. [Eff ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-68 Provider's health standards.** The provider and the provider's staff shall be free of communicable diseases, including tuberculosis. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-69 Personal health habits of provider and staff.** The provider shall ensure:

- (1) No smoking (including electronic smoking devices) is allowed on the premises during child care hours of operation and nicotine products shall be stored out of the reach of children.

- (2) No alcoholic beverages shall be consumed prior to or during child care hours of operation or kept at the facility during child care hours of operation, provided that if it is a family home, alcoholic beverages may be kept on premises but shall be stored out of the reach of children.
- (3) Any medications shall not be consumed prior to or during child care hours of operation that impair or limit the provider's ability to provide child care, provided that if it is a family home, medications may be kept on premises but shall be stored out of the reach of children. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§§17-798.3-70 to 17-798.3-79 (Reserved)**

Subchapter 5

SAFETY REQUIREMENTS FOR EXEMPT PROVIDERS

**§17-798.3-80 Purpose.** The purpose of this subchapter is to define the safety requirements for exempt providers to be authorized to care for children whose families are receiving child care payments.  
[Eff \_\_\_\_\_ ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-81 Supervision.** The provider or the provider's staff must be physically on-site and supervising the children in care at all times. Supervision means to be within sight or hearing

distance to provide for the needs of the children and to respond to an emergency. [Eff ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-82 Managing children's behavior.** (a)

The provider shall ensure an environment that promotes a child's well-being.

(b) The provider shall not use physical punishment as a means of disciplining or managing children's behavior, including but not limited to, spanking, pinching, slapping, or shaking.

(c) The provider shall not cause physical harm or neglect to the child. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-83 Maximum number of children.** (a)

Exempt home-based providers and exempt in-home care providers shall:

(1) Provide care to no more than six children at the same time during any part of a twenty-four hour day, including the provider's own children, except when the provider's children are six years of age or older.

(2) Care at the same time for no more than two children under eighteen months of age, including the provider's own children under eighteen months of age.

(b) Notwithstanding subsection (a), exempt home-based providers meeting the exemption under section 346-152(a)(1), HRS, may be approved by the department to care for up to four children under eighteen months of age when the family unit has the same number of children of such ages, and the care is during the night-time hours, and the provider does not care for any other children at the same time, including the provider's own children,

(c) Notwithstanding subsection (a), exempt in-home care providers meeting the exemption under sections 346-152(a)(10), HRS, may be approved by the department to care for up to eight children, of which up to four children under eighteen months of age, of the same family unit when the family unit has the same number of children needing child care payments, and the provider does not care for any of the provider's own children at the same time. [Eff ]  
(Auth: HRS §§346-14, 346-152, and 346-152.5) (Imp: HRS §§346-14 and 346-152; 45 C.F.R Part 98)

**§17-798.3-84 Disaster plan for emergencies.** The provider shall have the following:

- (1) A smoke detector in the child care area which is properly installed and in proper working condition;
- (2) An unexpired ABC multi-purpose type fire extinguisher in the child care area, kept out of the reach of children;
- (3) An emergency exit plan which is posted in the child care area and practiced regularly with the children;
- (4) Emergency evacuation exits which are kept clear of obstructions;
- (5) A written disaster plan that is reviewed with the parent or guardian and covers emergencies, including fire, flood, natural disaster, evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodation of infants and toddlers, children with special needs, and children with chronic medical conditions.  
[Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)



**§17-798.3-85 Sleeping areas for children in care.** (a) For a child less than one year of age, the provider shall:

- (1) Ensure that areas where children sleep are kept ventilated and at a safe temperature;
- (2) Ensure that each child has a separate crib or playpen;
- (3) Ensure that cribs or playpens used for care have not been recalled by the United States consumer product safety commission; provided that a recalled item may be used if repaired in accordance with the manufacturer's standards, and the provider maintains a record of the repair;
- (4) Not allow for any other sleeping arrangement, including bed-sharing;
- (5) Place the child on his or her back to sleep, unless written instructions for an alternative sleep position are on file from one of the following:
  - (A) A physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.);
  - (B) A physician assistant (PA);
  - (C) An advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States; or
  - (D) A nurse practitioner (NP) licensed by the State of Hawaii.
- (6) Move the child to a crib or playpen for the remainder of the nap when the child falls asleep in a location or in equipment other than a crib or playpen;
- (7) Monitor and periodically check on a sleeping child;
- (8) Ensure that the crib or playpen has a clean, tightly-fitted sheet; and

- (9) Ensure that the crib or playpen does not have any bedding or toys placed in with a child.
- (b) For a child one year of age and older, the provider shall:
  - (1) Ensure that areas where children sleep are kept ventilated and at a safe temperature;
  - (2) Provide individual napping arrangements, where each child shall have his or her own mat, rug, cot, bed, or blanket. [Eff (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98) ]

**§17-798.3-86 Environmental hazards.** (a) The premises, in which child care is carried out, including both indoor and outdoor space, shall be lighted and ventilated at a safe temperature and shall not have environmental hazards.

(b) Accessible electrical outlets shall be covered with child-resistant outlet covers when children in care are not school-age.

(c) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured.

(d) Hazardous substances, including cleaning solutions, alcohol, and medication, are inaccessible to children and in a closed container clearly labeled. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times.

(e) Establish and follow procedures for handling, storing, and disposing of biocontaminants, to use in all situations to prevent the transmission of blood-borne germs that may be spread through blood and body fluids.

(f) All entrances and exits shall be secured.

(g) Children's access to traffic and other outdoor hazards shall be blocked.

(h) Stove tops and controls shall not be accessible to children without supervision by the provider or provider's staff.

(i) Hot water taps shall be inaccessible without

supervision by the provider or provider's staff.

(j) Sharp objects, household items, and tools shall be kept in a safe location and out of children's reach or are supervised when used safely.

(k) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured and locked in a separate place; provided that a law enforcement officer, who is trained and certified to carry a firearm and ammunition, shall not be subject to this subsection for a law enforcement agency-issued firearm when the officer is acting in an official or authorized capacity.

(l) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times, and the provider has written permission from the parents that the children are allowed to have contact with such pets, animals, and fowl.

(m) Indoor and outdoor structures and furnishings that have hazardous sharp edges, rust and splinters shall not be accessible to children.

(n) Swimming or wading pools that are part of the facility, equipment, or program, shall observe the following safety practices:

- (1) A certified lifeguard, who may be the provider, shall be on duty at all times when swimming pools are in use;
- (2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of subsection (n)(1). Children shall be personally attended by a responsible adult at all times and the wading pools shall be emptied immediately after each use; and
- (3) Legible safety rules for the use of all types of pools, except for wading pools, shall be posted in a conspicuous location and read and reviewed at regular intervals by each provider responsible for the care of the children. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp:

HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-87 Emergency care provisions.** The provider shall have the following:

- (1) Information on each child's emergency contact numbers for each parent or guardian;
- (2) Written permission from the parent or guardian of the child for the child to receive emergency care;
- (3) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in care.
- (4) An operating telephone that is available and is easily accessible to the provider;
- (5) A plan for accessing a telephone when not in the usual location where care is being provided;
- (6) A first aid kit that is adequately stocked, readily available, and accessible; and
- (7) A first aid kit, emergency contact phone numbers, and medical treatment release forms when going on trips. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

**§17-798.3-88 Transportation provisions.** When the provider transports children in a personal vehicle, the provider shall:

- (1) Have written permission from the parent or guardian that each child is allowed to be transported by the provider in a personal vehicle;



§17-798.3-89

152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

### CHILD CARE RATE TABLE

Type of Care	Full-Time Care	Part Time Care
<b>Licensed Center-Based Infant/Toddler Care</b>	87 Monthly Hours or more	1-86 Monthly Hours
	\$1,733	\$1,733
<b>NAEYC Accredited*, NECPA Accredited, or Hawaiian Medium Center-Based Care</b>	87 Monthly Hours or more	1-86 Monthly Hours
	\$980	\$980
<b>Licensed Center-Based or Group Child Care Home</b>	87 Monthly Hours or more	1-86 Monthly Hours
	\$795	\$795
<b>NAFCC Accredited^ Family Child Care Home Infant/Toddler Care</b>	87 Monthly Hours or more	1-86 Monthly Hours
	\$750	\$750
<b>NAFCC Accredited^ Family Child Care Home**</b>	87 Monthly Hours or more	1-86 Monthly Hours
	\$700	\$700
<b>Registered Family Child Care Home Infant/Toddler Care</b>	87 Monthly Hours or more	1-86 Monthly Hours
	\$650	\$362
<b>Registered Family Child Care Home **</b>	87 Monthly Hours or more	1-86 Monthly Hours
	\$600	\$334
<b>Legally Exempt Relative and Non-Relative Infant/Toddler Care</b>	87 Monthly Hours or more	1-86 Monthly Hours
	\$400	\$223
<b>Legally Exempt Relative, Non-Relative, and Center-Based Care **</b>	87 Monthly Hours or more	1-86 Monthly Hours
	\$350	\$195
<b>Licensed School-Age Intersession/Summer Care</b>	87 Monthly Hours or more	1-86 Monthly Hours
	\$450	\$350
<b>Licensed Before School Care / After School Care</b>	45+ Monthly Hours	1-44 Monthly Hours
	\$155	\$86
<b>Legally Exempt Before School Care / After School Care</b>	45+ Monthly Hours	1-44 Monthly Hours
	\$120	\$61

\* NAEYC refers to National Association for the Education of Young Children. NECPA refers to National Early Childhood Program Accreditation

^ NAFCC refers to National Association for Family Child Care Accreditation

\*\*Summer and Intersession care rates are the same as the rates listed here. All Rates include an estimate of travel time.

Department of Human Services  
Benefit, Employment and Support Services Division  
January 2, 2020

**Child Care  
Gross Income Eligibility Limits and Sliding Fee Scale**

Family Size	Income Eligibility Limit	0-100% FPG	101%-115% FPG	116%-130% FPG	131%-145% FPG	146%-160% FPG	161%-175% FPG	176%-190% FPG	191%-205% FPG	206%-230% FPG	231% FPG – elig. limit
		0% family co-pay	1% family co-pay	2% family co-pay	3% family co-pay	4% family co-pay	5% family co-pay	6% family co-pay	7% family co-pay	8% family co-pay	9% family co-pay
1	3,632	1,198	1,377	1,557	1,737	1,916	2,096	2,276	2,455	2,755	3,632
2	4,749	1,621	1,864	2,107	2,350	2,593	2,836	3,079	3,323	3,728	4,749
3	5,867	2,045	2,351	2,658	2,965	3,272	3,578	3,885	4,192	4,703	5,867
4	6,985	2,468	2,838	3,208	3,578	3,948	4,319	4,689	5,059	5,676	6,985
5	8,102	2,891	3,324	3,758	4,191	4,625	5,059	5,492	5,926	6,649	8,102
6	9,220	3,315	3,812	4,309	4,806	5,304	5,801	6,298	6,795	7,624	9,220
7	9,429	3,738	4,298	4,859	5,420	5,980	6,541	7,102	7,662	8,597	9,429
8	9,639	4,161	4,785	5,409	6,033	6,657	7,281	7,905	8,530	9,570	9,639
9	9,848	4,585	5,272	5,960	6,648	7,336	8,023	8,711	9,399	9,848	-
10	10,058	5,008	5,759	6,510	7,261	8,012	8,764	9,515	10,058	-	-
11	10,267	5,431	6,245	7,060	7,874	8,689	9,504	10,267	-	-	-
12	10,477	5,855	6,733	7,611	8,489	9,368	10,246	10,477	-	-	-
13	10,687	6,278	7,219	8,161	9,103	10,044	10,687	-	-	-	-
14	10,896	6,701	7,706	8,711	9,716	10,721	10,896	-	-	-	-
15	11,106	7,125	8,193	9,262	10,331	11,106	-	-	-	-	-
For each add'l, add	209	423	486	549	613	209	-	-	-	-	-

Instructions:

1. Gross Income (GI) eligibility limit is at 85% of State Median Income (SMI).
2. Compare GI with Income Eligibility Limit to determine income eligibility.
3. If GI is less than or equal to the Income Eligibility Limit, find the largest reimbursement rate for which the income limit is greater than or equal to GI.

Department of Human Services  
Benefit, Employment and Support Services Division  
January 2, 2020

EXHIBIT II



2. The adoption of chapter 17-798.3, 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 May 19, 2020 and filed with the Office of the Lieutenant Governor.

---

PANKAJ BHANOT  
Director of Human Services

APPROVED AS TO FORM:

---

Deputy Attorney General

### **III. New Business – Before Public Hearing**

#### **B. Discussion and Action on Amendments to Hawaii Administrative Rules Title 17, promulgated by Department of Human Services**

##### **2. Chapter 800 Requirements for Listing of Exempt Center-Based Providers;**

DAVID Y. IGE  
GOVERNOR



PANKAJ BHANOT  
DIRECTOR

CATHY BETTS  
DEPUTY DIRECTOR

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

BESSD 20.C0602

June 1, 2020

**MEMORANDUM:**

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

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

FROM: PANKAJ BHANOT  
DIRECTOR *PB*

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED ADOPTION OF CHAPTER 17-800 HAWAII  
ADMINISTRATIVE RULES, RELATING TO LISTING OF EXEMPT CENTER-BASED  
PROVIDERS

In accordance with Administrative Directive No. 18-02, we are submitting for your review and approval as to form the proposed adoption to Chapter 17-800 relating to Listing of Exempt Center-Based Providers. A copy of the Notice of Public Hearing is also enclosed for your approval as to form, and a copy of the impact statement is included for your information.

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

Enclosures

APPROVED AS TO FORM:

*James Walther*  
\_\_\_\_\_  
Deputy Attorney General

*7/31/20*  
\_\_\_\_\_  
Date

2. The adoption of chapter 17-800, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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



---

PANKAJ BHANOT

Director of Human Services

APPROVED AS TO FORM:

---

Deputy Attorney General

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

Date: 6/1/2020

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17-800

Chapter Name: Child Care Payments and Requirements or Listing Of Exempt Center-Providers

Contact Person/Title: Dana Balansag

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

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

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

Yes  No

If "Yes," provide details: \_\_\_\_\_

I. Rule Description:

New  Repeal  Amendment  Compilation

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

Yes  No

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

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

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

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

Yes  No

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

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

Yes  No

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

\* \* \*

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

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

See Attachment 1

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

See Attachment 1

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

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

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

See Attachment 1

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

See Attachment 1

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

See Attachment 1

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

See Attachment 1

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

See Attachment 1

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

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

See Attachment 1

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

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

\* \* \*

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

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



Pre-Public Hearing Small Business Impact Statement  
To The Small Business Regulatory Review Board  
Listing of Exempt Center-Based Providers  
(Attachment 1)

1. The exempt center-based provider shall meet the requirements under Hawaii Revised Statutes (HRS) section 346-152, to be eligible to provide child care for a child whose family receives a child care subsidy from the Department. The exempt center-based providers, including staff or substitutes shall comply by:
  - a. Completing State and FBI fingerprinting clearances;
  - b. Satisfactorily completing an initial health and safety training;
  - c. Satisfactorily completing a minimum of eight (8) hours of health and safety training within one year of completion of the initial training and annually thereafter;
  - d. Ensuring while children are present at the facility, maintaining the maximum group size limits of children that can be together in one group and following the minimum staff-child ratio for the age of the children in care;
  - e. Ensuring while children are present at the facility, there shall be at least one adult caregiver with a current certificate in First aid and at least one adult caregiver with a current certificate in child cardio-pulmonary resuscitation (CPR)
  
2. The exempt provider may experience a loss in revenue of approximately:
  - a. \$13.25\* (\*current fingerprinting fee) per individual requiring fingerprinting as stated in 1.a;  
\$80.80\* per individual requiring the annual health and safety training as stated in 1.b. (\*8 hours of training X \$10.10/hours state minimum wage);
  - b. \$20 - \$40 for an ABC multi-purpose type fire extinguisher in the child care area;
  - c. \$15 - \$60 for a smoke detector in the child care area;
  - d. \$10 - \$15 for a first aid kit;
  - e. \$117 per individual requiring first aid and/or child cardio-pulmonary resuscitation (CPR) certification standards are equivalent to the American Red Cross or American Heart Association standards
  
3. The Hawaii Criminal Justice Data Center (HCJDC) is the state agency that will process the fingerprinting fees statewide for all individuals requiring State and FBI fingerprinting.
  
4. Exempt providers have the option to choose any type of training topics the Department has identified that issues a certificate and is appropriate to child care and to the ages of children served. No-cost trainings which meet the health and safety training requirements are offered by DHS contract agencies, People Attentive to Children (PATCH) and Learning to Grow (LTG).
  
5. The proposed rules align with the Child Care Development Block Grant (CCDBG) Act of 2014 which includes provisions to protect the health and safety of children in child care.
  
6. Exempt providers may complete annual health and safety training by signing up for no-cost training classes offered by DHS contract agencies, (PATCH) and Learning to Grow.

Pre-Public Hearing Small Business Impact Statement  
To The Small Business Regulatory Review Board  
Listing of Exempt Center-Based Providers

7. The Department held several informational sessions during 2018 and 2019, with child care stakeholders and held discussions at the quarterly Child Care Advisory Committee meetings during 2017 throughout 2019 to review and discuss the proposed rules. There were no concerns that were brought up in any of the informational sessions or quarterly Child Care Advisory Committee meetings.
8. None

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-800  
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-800, Hawaii Administrative Rules, entitled "Requirements for Listing of Exempt Center-Based Providers" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 800

REQUIREMENTS FOR LISTING OF EXEMPT CENTER-BASED  
PROVIDERS

Subchapter 1 Listing Procedures

- §17-800-1 Purpose
- §17-800-2 Definitions
- §17-800-3 Scope
- §17-800-4 Application, inspection, and authorization for listing with the department
- §17-800-5 Denial or removal from department's listing, and hearings
- §§17-800-6 to 17-800-9 (Reserved)

## Subchapter 2 General Requirements

§17-800-10 General requirements

§§17-800-11 to 17-800-19 (Reserved)

## Subchapter 3 Health Requirements

§17-800-20 Drinking water provisions

§17-800-21 Handwashing

§17-800-22 Toilet and handwashing facilities

§17-800-23 Handling of diapers or training  
underpants

§17-800-24 Food preparation and protection

§17-800-25 Evidence of child's health

§17-800-26 Children who become ill

§17-800-26.01 Administration of medication

§17-800-27 Provider's health standards

§17-800-28 Personal health habits of provider and  
staff

§§17-800-29 to 17-800-39 (Reserved)

## Subchapter 4 Safety Requirements

§17-800-40 Supervision

§17-800-41 Managing children's behavior

§17-800-42 Group size and provider-child ratio

§17-800-43 Disaster plan for emergencies

§17-800-44 Sleeping areas for children in care

§17-800-45 Environmental hazards

§17-800-46 Emergency care provisions

§17-800-47 Transportation provisions

§17-800-48 Background checks for exempt center-  
based providers

Historical Note: Chapter 17-800 is based  
substantially upon chapter 17-798.3, Child Care  
Services [Eff ]

SUBCHAPTER 1

LISTING PROCEDURE

**§17-800-1 Purpose.** The purpose of this chapter is to establish the requirements for exempt center-based child care providers to be listed with the department so that child care payments may be authorized to families receiving child care payments under chapters 17-798.3 and 17-799. [Eff (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98) ]

**§17-800-2 Definitions.** As used in this chapter:

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

"Applicant" means an organization that is exempt from licensure or registration by the department under §346-152, Hawaii Revised Statutes (HRS) and is applying to be listed with the department.

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

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

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

"Caretaker" means an adult or an emancipated minor, who resides with and is responsible for the care of a child, and who is a birth, hanai, foster, or adoptive parent, guardian, permanent custodian, step-parent, or relative who is related to the child by

blood, marriage, or adoption, or a person authorized by the caretaker through a power of attorney valid for a period not to exceed twelve months. The caretaker designation may remain even when the caretaker is temporarily absent from the home as long as the caretaker continues to maintain responsibility for the care, education, and financial support of the child. This includes a foster parent who may not be providing financial support to the child but may be receiving support for the child from a private or public agency. This also includes teen parents who are birth parents to the child but cannot apply for child care payments themselves and must have an adult apply on their behalf.

"Child" means any person who has not reached the age of eighteen years, excluding emancipated minors.

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

"Child care facility" means the same as under section 346-151, Hawaii Revised Statutes (HRS).

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

"Department" means the department of human services or its designee.

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

"Exempt center-based provider" means a facility providing legally-exempt child care, in accordance with section 346-152, HRS. It also includes all staff employed at a child care facility, any volunteers who provide care for children for ten hours or more per week, substitutes, and any other individuals who have unsupervised access to children in exempt center-based care.

"Facility" means the premises of the address on the application to be listed with the department, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and

outdoor areas.

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

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

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

"Infant" means a child newborn up to and including twelve months old.

"Legally-exempt care" or "exempt care" means child care which is exempt from licensure or registration by the department under §346-152, HRS.

"Physician" means an individual licensed by the state for the practice of medicine.

"Provider" means any individual eighteen years and older, caregiver, facility, agency, or organization, including exempt center-based providers, and their adult employees, including volunteers who provide care for ten hours or more per week, substitutes, or any other individual who provides direct care, supervision, and guidance to children apart from and in the absence of the child's parent, guardian, or caretaker for part of a twenty-four hour day. Providers are regulated by the department to provide child care or are legally exempt from child care licensure or registration by the department under section 346-152, HRS.

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

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

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

"School age" means the chronological age of a child who is eligible to enroll in grades kindergarten through sixth in public or private schools.

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

"State fiscal year" means a period beginning July 1 and ending June 30.

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

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

"Toddler" means a child over twelve months old up to and including twenty-four months old.

"Volunteer" means a person offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the caregivers. [Eff                                   ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-151 and 346-152.5)

**§17-800-3 Scope.** (a) An exempt center-based provider shall be on a listing with the department if the exempt center-based provider cares for a child whose family is authorized to receive child care payments under chapters 17-798.3 or 17-799.

(b) Child care payments shall be for child care at an exempt center that include, but are not limited



to:

- (1) Supervision to assure the child's safety, comfort, and health;
  - (2) Personal care as appropriate to the child's age and developmental maturity;
  - (3) Activities appropriate to the child's age, developmental stage, and degree of physical or mental ability;
  - (4) Health and nutritional services; and
  - (5) Provision of child care by providers as defined in sections 17-798.3-2 and 17-799-2.
- (c) Child care payments shall not be allowed for educational services including, but not limited to:
- (1) Services provided to a child enrolled in or eligible for public education in kindergarten to twelfth grade during the regular school day, unless the child is out of school due to illness;
  - (2) Services for which a child receives academic credit toward graduation;
  - (3) Any instructional services that supplant or duplicate the academic program of any public or private school that is established for the purpose of compliance with the school attendance law of Hawaii; or
  - (4) Services that provide specialized training or skill development to children, as indicated in §346-152(a)(5) HRS. [Eff  
] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5)

**§17-800-4 Application, inspection, and authorization for listing with the department.** (a)

A completed application to be on a listing with the department shall be submitted by an exempt center-based provider and shall include the following:

- (1) A signed department application form;
- (2) A written statement of operation policies;
- (3) Results of the background checks as

described in section 17-801-4, and as indicated in subparagraphs (A) and (B) below:

- (A) Applicants, employees, substitutes, volunteers, and new employees shall provide consents and complete background checks pursuant to section 17-801-4.
- (B) The department shall conduct the background checks in accordance with chapter 17-801 on all applicants and their employees, substitutes, volunteers, and new employees.

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

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

(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed authorized and the provider shall be placed on the department's listing of exempt center-based providers.

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application must be submitted.

(f) A provider shall be authorized for listing with the department if the provider is in compliance with this chapter.

(g) A provider shall be included in the department's listing unless removed from the department's listing pursuant to section 17-800-5 for up to one year at a time for new applicants and those providers on the listing for less than four consecutive years, and for two years for all other providers.

(h) A provider shall submit an application to be on the department's listing prior to the expiration of the listing period and the application is subject to the department's authorization. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5)

**§17-800-5 Denial or removal from department's listing, and hearings.** (a) The conditions for denial or removal from the department's listing and the action taken by the department shall be as follows:

- (1) The department shall deny or remove a provider from the department's listing if an applicant or listed exempt center-based provider does not comply with the applicable statutes and rules of the department under this chapter;
- (2) The department may deny or remove a provider from the authorized listing if an applicant or listed exempt center-based provider does not cooperate with the department by providing access to its facilities, records, and staff members.

(b) The department shall give notice when the listing application is denied, or the exempt center-based provider is removed the department's listing. The notice shall:

- (1) Be written and sent by certified or registered mail addressed to the location shown on the listing application;
- (2) Contain a statement of the reason(s) for the proposed action and shall inform the exempt center-based provider of the right to appeal the decision to the director of the department in writing, no later than ten working days after the mailing of the notice of the proposed action;

(c) Upon receiving a timely written appeal, the director of the department shall give notice of and an opportunity for an administrative appeal hearing

before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the application to be placed on the department's listing shall be denied or the exempt center-based provider shall be removed from the department's listing; and

(d) If no timely written appeal is made, processing of the application shall end or the exempt center-based provider shall be removed from the department's listing as of the termination of the ten working day period.

(e) The exempt center-based provider shall be immediately removed from being on the department's listing pending the completion of an investigation of a complaint allegation that the exempt center-based provider may pose a risk to the children in care, including but not limited to the following conditions:

- (1) Fails to terminate the employee, substitute, volunteer, or new employee who has a child abuse or neglect, adult abuse, criminal, or background check history and is determined to be not suitable to provide care in accordance with chapter 17-801;
- (2) Fails to exclude the employee, substitute, volunteer, or new employee who is the subject of an ongoing or pending criminal, child welfare, or department investigation in accordance with chapter 17-801;
- (3) Does not provide or require an employee, substitute, volunteer, or new employee to consent to conduct background checks in accordance with chapter 17-801;
- (4) Does not complete or require an employee, substitute, volunteer, or new employee to complete the health and safety trainings specified in section 17-800-10(b)(4); or
- (5) Allows conditions to exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include but are not limited to the existence of a health hazard on the premises, unsafe

facility conditions that cannot be immediately abated, or refusal to terminate an employee as specified in section 17-801-6.

(f) Upon immediate removal from the department's listing pursuant to subsection (e), the department shall:

- (1) Provide the exempt center-based provider written notice of the order by personal service or by certified or registered mail addressed to the provider's last known address;
- (2) Provide a statement of the reasons for the removal from the department's listing in the notice and inform the exempt center-based provider of the right to petition the department to reconsider the order within ten working days after mailing of the notice;
- (3) Give the exempt center-based provider reasonable notice upon receiving a written petition; and
- (4) Provide an opportunity for a prompt administrative appeal before a hearing officer with respect to the order of removal from the department's listing. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of removal shall be affirmed or reversed.

(g) Filing of a request for an administrative appeal does not permit the applicant to continue to be on the department's listing of exempt center-based providers authorized to care for a child whose family is authorized to receive child care payments under chapters 17-798.3 and 17-799.

(h) An applicant who was removed from the listing pursuant to this section, shall be unable to apply to be on the department's listing for:

- (1) A ninety-day period from the date that the exempt center-based provider was removed

§17-800-5

from the department's listing if the removal was their first offense; and

- (2) One year from the date that the exempt center-based provider was removed from the department's listing if the removal was their second offense.

(i) Child care payments to the family shall not continue during the exempt center-based provider's appeal process. The family may select another authorized provider in accordance with chapters 17-798.3 or 17-799. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5)

**§§17-800-6 to 17-800-9 (Reserved)**

SUBCHAPTER 2

GENERAL REQUIREMENTS

**§17-800-10 General eligibility requirements.**

(a) An exempt center-based provider who meets the requirements of this chapter and is on the department's listing may be authorized as a provider for a child whose family unit receives child care payments pursuant to chapters 17-798.3 or 17-799.

(b) In order to be on the department's listing, an exempt center-based provider shall meet the following requirements:

- (1) Afford caretakers unlimited access to their children, including written records concerning their children, during normal hours of provider operation and whenever children are in the care of the provider;
- (2) Operate as an exempt center-based provider in accordance with section 346-152, HRS;

- (3) Complete background checks for all persons required in accordance with chapter 17-801;
- (4) Ensure that each caregiver, within forty-five days of hire, satisfactorily completes and provides written evidence to the department to show completion of trainings as required by the department which includes but is not limited to:
  - (A) An initial training in health and safety standards that is approved by the department prior to caring for an eligible child under chapters 17-798.3 or 17-799;
  - (B) Safe sleep training that is approved by the department prior to caring for an eligible child who is less than one year of age, until no children in care are less than one year of age, and on an annual basis; and
  - (C) A minimum of eight hours of training within one year of completion of the initial training as described in subparagraph (A), and completed annually thereafter, as prescribed by the department, in at least two of the following approved topic areas:
    - (i) Physical care of the young child;
    - (ii) Care of the sick child;
    - (iii) Child nutrition;
    - (iv) Child growth and development;
    - (v) Children with special needs;
    - (vi) Learning activities and play;
    - (vii) Family engagement;
    - (viii) Managing challenging behaviors;
    - (ix) Prevention of child maltreatment and abuse;
    - (x) First aid and child cardiopulmonary resuscitation;
    - (xi) Physical environment;
    - (xii) Health and safety;
    - (xiii) Child care business or program management; or

- (xiv) Community resources; and
  - (xv) Training under section 17-800-10(b)(4)(B), when applicable;
- (5) Submit to initial, annual, and on-going monitoring inspections where care is being provided, to ensure compliance with the requirements of subchapters 3 and 4 as follows:
- (A) The department shall assess the qualifications of exempt center-based providers, the staff members, employees, volunteers, and substitutes and inspect the premises.
  - (B) All exempt center-based providers listed with the department shall cooperate with the department by providing access to the premises, records, and staff.
  - (C) Failure to comply with reasonable requests may constitute grounds for removal from the department's listing and for the department to determine that the exempt center-based provider is not authorized to care for an eligible child pursuant to chapters 17-798.3 or 17-799.
- (6) Agree to report to the department, within one working day of occurrence, the death of a child or staff, or any serious injury received at the exempt center-based provider facility that resulted in a child's hospitalization.
- (7) Report to the department within ten calendar days of occurrence, any of the following:
- (A) Change in contact telephone number;
  - (B) Change in the address where the child care is being conducted; or
  - (C) Change in the staff, employees, substitutes, or volunteers who provide care to children.
- (8) Agree to notify all parents of children in care when there are deficiencies as



- determined by the department for requirements under subchapters 3 or 4;
- (9) Have procedures for reporting any suspected child abuse or neglect in accordance with section 350-1.1, HRS;
  - (10) Have a written policies and procedures for suspension and expulsion of children which includes the following:
    - (A) The conditions under which a child may be suspended or expelled, if applicable;
    - (B) Sufficient timeframe before suspension or expulsion to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in subparagraph (C)
    - (C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children or staff.
    - (D) Parents and guardians are provided written notification of any concerns that could lead to the child's expulsion; and
    - (E) When expulsion occurs, the provider shall maintain a record of the conditions, parental notification, and action taken; and
    - (F) Other policies which may be required by the department.
  - (11) Provider shall make available written policies for review by parents or guardians at the time of enrollment of a child.
  - (12) Provider shall notify parents or guardians and the department of any changes in the child care services it provides as follows:
    - (A) Written notification of changes in the services offered shall be provided to the department and to parents or guardians of children enrolled in the facility; and

§17-800-10

(B) Notification of any changes in service shall be made no later than thirty days before the date of the change and all changes shall be included in the facility's operating policies.

(c) All exempt center-based providers shall report any suspected child abuse or neglect in accordance with section 350-1.1, HRS.

(d) If the department receives information that the exempt center-based provider that is on the department's listing is in violation of subchapters 3 or 4, or that the provider is conducting child care in violation of section 346-152, HRS, the department will conduct an investigation, including an inspection of the child care facility. The exempt center-based provider shall immediately be removed from the department's listing in accordance with section 17-800-5(e) until the department has completed its investigation and determined the exempt center-based provider is in compliance with section 346-152, HRS, or subchapters 3 or 4 or any legal disposition is completed and the department has placed the exempt center-based provider on the department's listing. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§§17-800-11 to 17-800-19 (Reserved)**

Subchapter 3

HEALTH REQUIREMENTS

**§17-800-20 Drinking water provisions.** The provider shall make available suitable drinking water to all children in care. [Eff ] Auth:

HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§17-800-21 Handwashing.** (a) The provider and children shall wash hands using water and soap:

- (1) Before and after eating or drinking;
- (2) Before and after preparing food or beverages;
- (3) Before and after diapering;
- (4) After using the toilet or helping a child in toileting;
- (5) After handling any bodily fluids or items containing bodily fluids;
- (6) After handling pets or animals;
- (7) After outdoor play; and

(b) Paper towels or separate cloth towels shall be used for each child after hand washing.

[Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§17-800-22 Toilet and handwashing facilities.** Children shall have access to toilet and hand-washing facilities that are clean and stocked with toilet paper and supplies required under section 17-800-21(b). [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§17-800-23 Handling of diapers or training underpants.** The provider shall handle disposable and cloth diapers and cloth training underpants in the following manner:

- (1) Use a clean non-porous surface for changing diapers;
- (2) Use a space set aside for diapering that is

- separate from eating and food preparation areas;
- (3) Discard soiled disposable diapers in a covered container. The covered container shall be kept away from eating, food storage, and food preparation areas and out of the children's reach.
  - (4) Place soiled cloth diapers and cloth training underpants, without emptying or rinsing the contents, in a plastic bag and kept away from eating, food storage, and food preparation areas and out of the children's reach.
  - (5) Soiled cloth diapers or cloth training underpants shall be given to the child's parent or guardian. [Eff ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§17-800-24 Food preparation and protection.** If the provider offers meals and snacks, the provider shall:

- (1) Designate areas for eating or drinking;
- (2) Clean food preparation areas before and after meals and snacks; and
- (3) Store food in a safe and sanitary manner. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§17-800-25 Evidence of child's health.** (a) The provider shall obtain from the parent or guardian of each child by the child's first day entering child care, information about the health needs for each child, including any allergies, evidence of compliance with examinations, immunizations, and tuberculosis clearance, in accordance with chapters 11-157 and 11-164.2, and maintain copies of the information and

evidence.

(b) The provider shall not be required to obtain the evidence of immunizations described in subsection (a) if the provider has the following:

- (1) A written statement from the parent or guardian objecting to immunization of the child on the basis of their religion; or
- (2) A written statement signed by the child's physician indicating that the child's medical condition contraindicates immunization.

(c) The provider shall allow a grace period of three months from the child's first day in care to obtain the evidence described in subsection (a) for the following:

- (1) Children experiencing homelessness; and
- (2) Children in foster care;

provided that the parents or guardians submit to the provider in writing that documents the tuberculosis screening as required pursuant to chapter 11-164.2 and the health needs for the child, including any allergies, at the time the child is placed in care. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§17-800-26 Children who become ill.** The provider shall ensure a clean and safe resting space to isolate children who are ill while in care; provided that for an ill child less than one year of age the resting space shall be in accordance with section 17-800-44. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§17-800-26.01 Administration of medication.** (a) When medication prescribed by a health care professional is administered by the provider or

§17-800-26.01

provider's staff:

- (1) The child's parent or guardian shall submit to the provider written permission from the child's parent or guardian to administer medication;
- (2) The medication shall be kept in the original container bearing the prescription label that shows a current date, the health care professional's directions for use, and the child's name; and
- (3) The medication shall be kept out of the reach of the children and shall be returned to parent or guardian when no longer in use.

(b) When over-the-counter medication is administered by the provider or provider's staff:

- (1) The child's parent or guardian shall submit to the provider written permission to administer medication; and
- (2) The child's parent, guardian, or health care provider shall submit to the provider written directions for the administration of the medication. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§17-800-27 Provider's health standards.** The exempt center-based provider shall:

- (1) Be free of communicable diseases, including tuberculosis;
- (2) Be free of physical or psychological conditions which may impair or limit the provider's ability to provide child care. [Eff \_\_\_\_\_ ] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§17-800-28 Personal health habits of provider**

**and staff.** The exempt center-based provider shall ensure:

- (1) No smoking is allowed on the premises, including electronic smoking devices, during child care hours of operation, and nicotine products shall be stored out of the reach of children.
- (2) No alcoholic beverages shall be consumed prior to or during child care hours of operation or kept at the facility during child care hours.
- (3) Any medications that impair or limit the provider's or provider's staff ability to provide child care shall not be consumed prior to or during child care hours of operation. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5;45 C.F.R. Part 98)

**§§17-800-29 to 17-800-39 (Reserved)**

Subchapter 4

SAFETY REQUIREMENTS

**§17-800-40 Supervision.** The provider or the provider's staff must be physically on-site and supervising the children in care at all times. Supervision means to be within sight and hearing distance of the children to ensure the safety and protection of the children in care; provided that supervision may be within hearing distance for school-age children when using restroom facilities. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

**§17-800-41 Managing children's behavior.** (a)

The provider shall ensure an environment that promotes a child's well-being.

(b) The provider and the provider's staff shall not use verbal, psychological, and physical punishment as a means of disciplining or managing children's behavior, including but not limited to, spanking, pinching, slapping, or shaking.

(c) The provider and the provider's staff shall not cause physical harm or neglect to any child. [Eff ] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

**§17-800-42 Group sizes and provider-child ratios.** (a) An exempt center-based provider shall maintain a maximum group size of:

- (1) 40 children for school-age children attending kindergarten and above in a public or private elementary school;
  - (2) 32 children for four-year old children;
  - (3) 24 children for three-year old children;
  - (4) 16 children for two-year old children;
- provided that exceptions shall be made for special events, such as but not limited to assemblies, performances, meal and snack time, and outdoor play area, and the staff-child ratios pursuant to subsection (b) shall be maintained during any such situations.

(b) An exempt center-based provider shall maintain the following minimum staff-child ratio for the ages of the children in care:

- (1) 1:20 for school-age children attending kindergarten and above in a public or private elementary school;
- (2) 1:16 for four-year old children;
- (3) 1:12 for three-year old children; and
- (4) 1:8 for two-year old children. [Eff



] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

**§17-800-43 Disaster plan for emergencies.** The provider shall have the following:

- (1) Verification of fire inspection completed annually by the county fire prevention bureau and no deficiencies that remain uncorrected;
- (2) An unexpired ABC multi-purpose type fire extinguisher in the child care area, kept out of the reach of children when children in care are not school-age;
- (3) An emergency exit plan which is posted in the child care area and practiced regularly with the children;
- (4) Emergency evacuation exits which are kept clear of obstructions;
- (5) A written disaster plan to cover emergencies, including fire, flood, natural disaster, evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions; and
- (6) Mandatory emergency preparedness training for staff, employees, and volunteers. [Eff  
] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

**§17-800-44 Sleeping areas for children in care.**

- (a) For a child less than one year of age, the provider shall ensure the following:
  - (1) Areas where children sleep are kept

- ventilated and at a safe temperature;
- (2) That each child has a separate crib or playpen;
- (3) That cribs or playpens used for care have not been recalled by the United States consumer product safety commission; provided that a recalled item may be used if repaired in accordance with the manufacturer's standards, and the provider maintains a record of the repair;
- (4) Not allowing for any other sleeping arrangement, including bed-sharing;
- (5) Placing the child on his or her back to sleep, unless written instructions for an alternative sleep position are on file from one of the following:
  - (A) A physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.);
  - (B) A physician assistant (PA);
  - (C) An advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States; or
  - (D) A nurse practitioner (NP) licensed by the State of Hawaii.
- (6) Moving the child to a crib or playpen for the remainder of the nap when the child falls asleep in a location or in equipment other than a crib or playpen;
- (7) Monitoring and periodically checking on a sleeping child;
- (8) The crib or playpen has a clean, tightly-fitted sheet; and
- (9) The crib or playpen does not have any bedding or toys placed in with a child.
- (b) For a child one year of age and older, the provider shall ensure the following:
  - (1) Areas where children sleep are kept ventilated and at a safe temperature;

- (2) Individual napping arrangements, where each child shall have his or her own mat, rug, cot, bed, or blanket. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

**§17-800-45 Environmental hazards.** (a) The premises, both indoor and outdoor, in which child care is carried out shall be lighted and ventilated at a safe temperature and shall not have environmental hazards.

(b) Accessible electrical outlets shall be covered with child-resistant outlet covers when children in care are not school-age.

(c) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured.

(d) Hazardous substances, including cleaning solutions and medication, are inaccessible to children and in a closed container clearly labeled. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times.

(e) The provider shall establish and follow procedures for handling, storing, and disposing of bio-contaminants, to use in all situations to prevent the transmission of blood-borne germs that may be spread through blood and body fluids.

(f) All entrances and exits shall be secured or monitored for school-age children.

(g) Children's access to traffic and other outdoor hazards shall be blocked or controlled for school-age children.

(h) Stove tops and controls shall not be accessible to children when children are not school-age, or are supervised when used by children that are school-age.

(i) Hot water taps shall be inaccessible without supervision by the provider or provider's staff.

(j) Sharp objects, household items, and tools shall be kept in a safe location and out of children's reach or are supervised when used safely.

§17-800-45

(k) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured and locked in a separate place and inaccessible to children during all hours of operation; provided that archery equipment may be safely utilized for school-age children under direct supervision by staff trained to use such equipment.

(l) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times, and the provider shall obtain written permission from the parents that the children are allowed to have contact with such pets, animals, and fowl.

(m) Indoor and outdoor structures and furnishings that have hazardous sharp edges, rust and splinters shall not be accessible to children.

(n) Swimming or wading pools that are part of the facility, equipment, or program, shall observe the following safety practices:

- (1) A certified lifeguard, who may be the provider, shall be on duty at all times when swimming pools are in use;
- (2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of subsection (n)(1). Children shall be personally attended by a responsible adult at all times and the wading pools shall be emptied immediately after each use; and
- (3) Legible safety rules for the use of all types of pools, except for wading pools, shall be posted in a conspicuous location and read and reviewed at regular intervals by each provider responsible for the care of the children. [Eff \_\_\_\_\_ ] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

**§17-800-46 Emergency care provisions.** (a) The provider shall have the following:

- (1) Information on each child's emergency contact numbers for each parent or guardian;
- (2) Written permission to allow the child to receive emergency care;
- (3) An operating telephone that is available and is easily accessible to the provider;
- (4) A plan for accessing a telephone when not in the usual location where care is being provided;
- (5) First aid and child cardio-pulmonary resuscitation (CPR) for exempt center-based providers shall ensure the following while children are present at the facility:
  - (A) There shall be at least one adult caregiver with a current certificate in first aid when children are present at the facility;
  - (B) The current first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and approved by the department;
  - (C) A current first aid certificate means a certificate that has not expired;
  - (D) There shall be at least one adult caregiver with a current certificate in child CPR when children are present at the facility;
  - (E) The child CPR course must be provided by the American Red Cross, American Heart Association, or any organization whose child CPR certification standards are equivalent to the American Red Cross or American Heart Association standards and approved by the department;
  - (F) A current certificate means a certificate that has not expired.
- (6) A first aid kit that is adequately stocked,

- readily available, and accessible; and
- (7) A first aid kit, emergency contact phone numbers, and medical treatment release forms when going on trips.

(b) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program. [Eff \_\_\_\_\_ ] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

**§17-800-47 Transportation provisions.** When transportation is provided by the provider, children shall be protected by adequate supervision and safety precautions as follows:

- (1) The provider has written permission from the parent or guardian that each child is allowed to be transported by school bus or other means of transportation such as a personal vehicle;
- (2) During any field trip or excursion operated or planned by the facility, the group sizes and provider-child ratios as required in section 17-800-42 shall apply;
- (3) Children shall be instructed in safe transportation conduct;
- (4) Car seats and safety restraints shall be used as required by applicable laws;
- (5) Children shall be secured in the back seat of the vehicle;
- (6) Children shall not be left alone in vehicles, even with the air conditioning on or windows rolled down; and
- (7) The provider shall take a head count or attendance record check before and after transportation is provided. [Eff \_\_\_\_\_ ] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

**§17-800-48 Background checks for exempt center-based providers.** (a) All exempt center-based providers, and current or prospective staff, including substitutes and volunteers counted in the group sizes and provider-child ratio required under section 17-800-42, shall be subject to and in compliance with chapter 17-801, prior to the exempt center-based provider being listed with the department and annually thereafter in accordance with chapter 17-801, to ensure that all exempt center-based providers, employees, and volunteers that have unsupervised access to children are suitable to provide child care, are of reputable and responsible character, and do not pose a risk to children in care.

(b) The department shall deny listing with the department and not authorize child care payment assistance to the family if the exempt center-based provider determined by the department to be not suitable to provide child care pursuant to chapter 17-801.

(c) The department shall immediately remove from the department's listing the exempt center-based provider and not authorize child care payment assistance to the family, in accordance with section 17-800-5(e), if the exempt center-based provider refuses to terminate employment of a current or prospective staff who is determined by the department to be not suitable to provide child care or exclude from the premises a current or prospective staff who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801." [Eff ]  
(Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

2. The adoption of chapter 17-800, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

---

PANKAJ BHANOT  
Director of Human Services

APPROVED AS TO FORM:

---

Deputy Attorney General



### **III. New Business – Before Public Hearing**

#### **B. Discussion and Action on Amendments to Hawaii Administrative Rules Title 17, promulgated by Department of Human Services**

##### **3. Chapter 801 Background Checks**

DAVID Y. IGE  
GOVERNOR



PANKAJ BHANOT  
DIRECTOR

CATHY BETTS  
DEPUTY DIRECTOR

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

BESSD 20.C0501

May 19, 2020

**MEMORANDUM:**

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

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

FROM: PANKAJ BHANOT *GP*  
DIRECTOR

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED ADOPTION OF CHAPTER 17-801  
HAWAII ADMINISTRATIVE RULES, RELATING TO BACKGROUND CHECKS

In accordance with Administrative Directive No. 18-02, we have completed revisions and are submitting for your review and approval as to form the proposed adoption to Chapter 17-801 relating to Background Checks. A copy of the Notice of Public Hearing is also enclosed for your approval as to form, and a copy of the impact statement is included for your information.

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

Enclosures

APPROVED AS TO FORM:

*James W Walther*  
Deputy Attorney General

*7/10/20*  
Date

2. The adoption of chapter 17-801, 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 May 19, 2020 and filed with the Office of the Lieutenant Governor.



f PANKAJ BHANOT  
Director of Human Services

APPROVED AS TO FORM:

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

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

Date: 5/19/2020

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17-801

Chapter Name: Background Checks

Contact Person/Title: Dana Balansag

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

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

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

Yes  No

If "Yes," provide details: \_\_\_\_\_

I. Rule Description:

New  Repeal  Amendment  Compilation

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

Yes  No

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

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

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

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

Yes  No

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

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

Yes  No

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

\* \* \*

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

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

Refer to Attachment 1

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

Refer to Attachment 1

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

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

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

Refer to Attachment 1

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

Refer to Attachment 1

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

Refer to Attachment 1

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

Refer to Attachment 1

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

Refer to Attachment 1

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

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

Refer to Attachment 1

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

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

\* \* \*

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

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

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

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

1. DHS licensed and registered family child care homes, group child care centers and homes (aka preschools), infant and toddler centers, before and after school facilities, and license exempt centers and homes.

Individuals will be required to have comprehensive background checks and be cleared to work with children in order to be left unsupervised with children. Searches of national and local databases for criminal, sex offender, child abuse and neglect, and adult abuse records will be conducted using the individual's fingerprints and personal identifying information.

An assessment of an individual's background checks may take some time to complete and clear an individual when there is a criminal record, sex offender history, child abuse and neglect record, or adult abuse record. Centers and homes must ensure that there are enough staff that are cleared to work with children so that staff to child ratio requirements are met.

2. 17-801 Background Checks is substantially based on 17-891.1, 17-892.1, 17-895, and 17-896. As such, there are no anticipated increases in the costs that are associated with the proposed rule chapter 17-801.
3. None.
4. Individuals who have completed the national and state fingerprint checks and have been cleared, may begin working or volunteering in DHS licensed and registered family child care homes, preschools, infant and toddler centers, before and after school facilities and exempt centers on a provisional basis, while under the supervision of an individual who has completed and cleared all of the comprehensive background checks, while awaiting the other checks.
5. The proposed rules are based on requirements set forth by the Child Care and Development Block Grant (CCDBG) Act of 2014 which require all individuals who work with children or who have unsupervised access to children to undergo comprehensive background checks and be cleared to work with children. As such, the proposed rules are required to enforce the CCDBG requirements.
6. The individual who is cleared to work or volunteer on a provisional basis before completing all of the comprehensive background checks, helps the centers and homes to meet the staff to child ratio requirements.
7. DHS held discussion sessions with licensed and license exempt child care centers beginning in 2015 and at quarterly DHS Child Care Advisory Committee meetings in



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

2016 through current period. The purpose of the discussion sessions was to solicit feedback on the background checks processes.

- a. Licensed and license exempt child care centers were in support of individuals being provisionally cleared to work with children while awaiting the other checks. A recommendation to have a data system that licensed and license-exempt centers could access to check on an individual's status of being provisionally cleared was suggested. The department will be working to provide a data system to support their needs.

8. Yes

- a. The proposed rules ensure the safety for children in DHS licensed and registered family child care homes, preschools, infant and toddler centers, before and after school facilities and license exempt centers and homes by verifying that individuals who work with children or who have unsupervised access to children do not have background history records that pose a risk to children in care.
- b. The CCDBG Act of 2014 was signed into law on November 19, 2014.

A child care staff member shall be ineligible for employment by a child care provider that is receiving assistance under this subchapter if such individual:

Has been convicted of a felony consisting of -

- (i) murder, as described in section 1111 of title 18, United States Code;
- (ii) child abuse or neglect;
- (iii) a crime against children, including child pornography;
- (iv) spousal abuse;
- (v) a crime involving rape or sexual assault;
- (vi) kidnapping;
- (vii) arson;
- (viii) physical assault or battery; or
- (ix) subject to subsection (e)(4), a drug-related offense committed during the preceding 5 years; or

Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

- c. The proposed rule chapter aligns with the CCDBG Act of 2014 list of felony convictions and adds additional prohibiting crime offenses that have an indefinite disqualification period or a five-year disqualification period. See exhibits 1 and 2.
- d. There are no additional costs of the proposed rule as 17-801 is substantially based on 17-891.1, 17-892.1, 17-895, and 17-896.
- e. There are none.

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-801

Hawaii Administrative Rules

May 19, 2020

1. Chapter 17-801, Hawaii Administrative Rules, entitled "Background Checks" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 801

BACKGROUND CHECKS

§17-801-1	Purpose
§17-801-2	Definitions
§17-801-3	Confidentiality
§17-801-4	Background checks
§17-801-5	Suitability
§17-801-6	Notification to the person and child care facility

Historical Note: This chapter is based substantially upon sections of these chapters 17-891.1, 17-892.1,

§17-801-1

17-895, and 17-896, Hawaii Administrative Rules. [Eff 6/18/87; am and comp 12/10/88; am and comp 12/19/02; am 2/24/17]

**§17-801-1 Purpose.** The purpose of this chapter is to establish the rules governing the administration and implementation of the child care block grant authorized under 42 U.S.C. §9858 and 42 U.S.C. §618 regarding requirements for background checks for the department's child care programs. [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14, 45 C.F.R. §98.1)

**§17-801-2 Definitions.** For the purpose of this chapter:

"Adult abuse perpetrator check" means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, Hawaii Revised Statutes (HRS), by means of a search of the individual's name and birth date in the department's adult protective services file.

"Applicant" means the person who applied for licensure of a group child care center, group child care home, or registration of their family child care home, and for group homes and family homes includes this person's spouse.

"Background checks" means a criminal history record check which includes a Federal Bureau of Investigation fingerprint check, the state criminal record registry or database check, state sex offender registry check and national sex offender public website check, state child abuse and neglect registry check, adult abuse perpetrator registry check, employment history check, and other information obtained by the department regarding the person's ability or suitability to provide child care.

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

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

"Child care" means those situations in which a person, child care provider, child care facility, or exempt child care facility has agreed to assume the responsibility for the child's supervision, apart from and in the absence of the parent, guardian, or caretaker for any part of a twenty-four-hour day. Child care may be provided out of the child's home in out-of-home relative care, in the child's home by relatives or non-relatives, in a child care facility or an exempt child care facility.

"Child care center" or "group child care center" means a place maintained by any individual, organization, or agency for the purpose of providing child care. The term child care center shall include child care nurseries, nursery school groups, preschools, child play groups, parent cooperatives, drop in child care centers, group child care homes, or other similar units operating under any name.

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

"Department" means the department of human services or its designee.

"Exempt care" means child care which is exempt from licensure or registration by the department under HRS §346-152.

"Exempt child care facility" means a place that child care is conducted which is legally-exempt in accordance with section 346-152, HRS, and includes exempt center-based providers pursuant to chapter 17-800.

"Family child care home," "family child care," or "FCC" means any private residence at which care is

provided at any given time to six or fewer children, as defined in section 346-151, HRS.

"Group child care center" means a facility, other than a private home, at which care is provided, as defined in HRS §346-151. The term may include nurseries; infant and toddler centers for children ages six weeks to thirty-six months, preschools; parent cooperatives; drop-in child care centers; before-school and after-school programs; holiday, intersession and summer care for eligible school age children; or other similar care settings that are established to provide group care to a child for any part of a twenty-four hour day and is license-exempt or licensed by the department.

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

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a group child care center or group child care home.

"New hire" means an applicant or prospective employee of a child care facility or exempt child care facility who is seeking to operate or be employed in a child care facility or exempt child care facility for the first time in the state of Hawaii.

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

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

"Registration" means a certificate of approval

issued by the state department of human services authorizing the operation of a family child care home.

"Rehire" means an applicant or prospective employee of a child care facility or exempt child care facility who is seeking to operate or be employed in a child care facility or exempt child care facility following separation from employment of one hundred eighty consecutive days or more and who has been out of state during this break in employment.

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

"Staff member" means administrative, child care, office, maintenance, employees, and volunteers of a child care facility or exempt child care facility.

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

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

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

"Volunteer" means a person working or offering services to a child care facility or exempt child care facility without remuneration, except for reimbursable personal expenses allowed by the caregivers. [Eff

] (Auth: HRS §346-14) (Imp: HRS §346-151)

**§17-801-3 Confidentiality.** Requirements for confidentiality shall be as provided in chapter 17-601. [Eff ] (Auth: HRS §§346-10 and 346-14; 45 C.F.R. §205.50) (Imp: HRS §346-10; 45 C.F.R. §§205.50, 1391.3)

**§17-801-4 Background checks.** (a) Background checks conducted by the department shall include:

- (1) A criminal history record check, including:
  - (A) A Federal Bureau of Investigation fingerprint check; and
  - (B) A state criminal record registry or database check with the use of fingerprints in the state where the person resides;
- (2) Search of the state sex offender registry and national sex offender registries;
- (3) A state child abuse and neglect registry check;
- (4) An adult abuse perpetrator registry check;
- (5) An employment history check; and
- (6) Any other information obtained by the department regarding the person's ability or suitability to provide child care.

(b) All persons in a licensed or registered child care facility, or exempt child care facility shall be subject to background checks.

(c) A person subject to background checks shall provide consent to the department to conduct the background checks, prior to operating, working on-site at, or within five working days of living in a child care facility or exempt child care facility, and annually thereafter no later than the anniversary date of the most recent consent to conduct background checks. The consent shall be given upon forms supplied by the department.

(d) A person subject to background checks shall submit to the department a signed disclosure statement, under penalty of law, that indicates the person's background history that may affect the person's ability and suitability, under this chapter.

[Eff ] (Auth: HRS §346-14, 346-162, 346-172) (Imp: HRS §§346-152.5, 346-154)

**§17-801-5 Suitability.** (a) Results of the background checks shall be reviewed as part of the department's determination of whether a person is suitable as defined in subsection (d) to provide child care.

(b) Each person subject to background checks shall be determined to be suitable by the department to operate, be employed, work in, or live in a child care facility or exempt child care facility, except when a person may be provisionally cleared to work:

- (1) A person may start working on a provisional basis when the requirements in section 17-801-4 (a)(1) are completed and the department does not receive results or other information that the person may pose a risk to children in care or is not suitable to provide care; and
- (2) A person who has been provisionally cleared pursuant to paragraph (1) shall be continuously supervised by another person who has been determined suitable to provide care based upon the results of the background checks described in section 17-801-4(a); provided that paragraphs (1) and (2) do not apply to applicants, registrants, or licensees of family child care homes or group child care homes or their household members.

(c) An applicant, caregiver, staff member, employee, rehired employee, substitute or volunteer who has stopped providing care, stopped residing in a child care home, or left the State for a period of one hundred eighty consecutive days or more, is required to complete background checks again in accordance with section 17-801-4(a), and may be allowed to meet the conditions in subsection (b).

(d) A person is not suitable to provide child care for children if the person:

- (1) Refuses to provide consent to the background checks;
- (2) Makes a materially false statement or omission in disclosing any prior background



history that may affect the person's ability and suitability;

- (3) Is registered or is required to be registered, on a state sex offender registry or repository or the national sex offender registry;
- (4) Is identified on another state's registry or database as the perpetrator of child abuse, neglect, harm, or threatened harm;
- (5) Within a five-year period starting from the date that the child abuse case record was closed, the person has been confirmed by the department as the perpetrator of threatened harm as defined in section 587A-4, HRS. In situations when a finding of threatened harm occurred more than five years from the date that the child abuse case record was closed, a person's suitability shall be based on paragraph (8);
- (6) Is confirmed at any time as the perpetrator of harm against a child as defined in section 587A-4, HRS;
- (7) Is confirmed at any time as the perpetrator of abuse of a vulnerable adult as defined in section 346-222, HRS; or
- (8) Is found by the department, for any other reason that has not been identified in this chapter, to not be of reputable and responsible character or may pose a risk to the health, safety, or well-being of the children in care. Factors that shall be considered by the department include but are not limited to:
  - (i) The nature of the incident;
  - (ii) When the incident occurred;
  - (iii) Patterns of behavior the department determines resulted in or could have resulted in injury to self or others;
  - (iv) Any other relevant information received and deemed credible by the department; and
  - (v) Evidence of rehabilitation.

(e) In instances where a person is the subject of an on-going or pending criminal, child welfare, or department investigation, the person shall be excluded from the premises and the department's determination of whether the person is suitable as defined in subsection (d) cannot be completed until the investigation is closed or any related legal proceeding is completed.

(f) A person shall not provide licensed or registered child care, or exempt child care for a child whose family receives a subsidy from the department pursuant to chapters 17-798.3 and 17-799, if the person has been convicted of an offense listed in Exhibit I, dated January 1, 2020, attached at the end of this chapter.

(g) A person shall not provide licensed or registered child care, or exempt child care for a child whose family receives a subsidy from the department pursuant to chapters 17-798.3 and 17-799, if the person has been convicted within the past five years of the time of the background check of an offense listed in Exhibit II, dated January 1, 2020, attached to the end of this chapter.

(h) The person may file a written request for an administrative appeal to appeal the decision by the department:

- (1) In accordance with the provisions set forth in chapters 17-891.2, 17-892.2, 17-895.1, 17-896.1, for applicants, licensees, or registrants; or
- (2) In accordance with the provisions set forth in chapter 17-602.1, for all other persons not specified in subparagraph (A);

provided that the filing of a request for an administrative appeal does not permit the person to continue to provide child care for children under this chapter, pending the decision of the administrative appeal hearing officer. [Eff ]  
(Auth: HRS §346-14, 346-162, 346-172) (Imp: HRS §346-151, 346-152.5, 346-154)

**§17-801-6 Notification to the person, child care facility, and exempt child care facility.** (a) The department shall provide written notice to a person determined by the department to be not suitable under this chapter or excluded from the premises under this chapter. The written notification shall state the reason for the department's determination.

(b) The department shall request in writing that a provider terminate employment or residence of any person not suitable pursuant to this chapter.

- (1) The request shall be in writing and shall state the reason for the department's determination that the person is not suitable to provide child care;
- (2) When an applicant, registrant, licensee, or provider does not terminate employment or residence as requested by the department, the applicant, registrant, licensee, or provider shall notify the department in writing no later than seven working days after receipt of the request and shall state the reasons for the decision; and
- (3) A license, registration, application, or listing may be denied, suspended, or revoked if the person's employment or residence is not terminated.

(c) In instances described in section 17-801-5(e), the department shall request in writing that a provider exclude the person from the premises until the department has completed a determination whether the person is suitable to provide care pursuant to this chapter.

- (1) The request shall be in writing and shall state the reason for the person's exclusion from the premises;
- (2) When an applicant, registrant, licensee, or provider does not exclude the person from the premises as requested by the department, the applicant, registrant, licensee, or provider shall notify the department in writing within seven working days after

receipt of the request and shall state the reasons for the decision; and

- (3) A license, registration, application, or listing may be denied, suspended, or revoked if the person is not excluded from the premises.

(d) A person who is determined not suitable to provide care under this chapter may contest the results of background checks as follows:

- (1) The person requests an informal review by the department for the limited purpose of contesting the accuracy or completeness of the information contained in the person's records that formed the basis for the decision:

- (A) The person shall provide a written statement to the department specifying the information and the reason why the person believes the background check information is inaccurate or incomplete;

- (B) The department shall attempt to verify the accuracy of the information challenged by the person, including making an effort to locate any missing disposition information related to the disqualifying record:

- (i) If the department locates any missing or corrected information, the department shall review the new or corrected information and issue a written notice to the person with the suitability determination by the department; or
- (ii) If the department cannot locate any missing or corrected information, the department shall issue a written notice that indicates the department's efforts to verify the accuracy of the information challenged, and refer

- the person to the agency or program that produced or maintains the record the person believes to be inaccurate or incomplete, so that the person can have the record corrected or completed; and
- (C) After the person has successfully had the records corrected or completed by the agency or program that produced or maintains the record, the person may request for another background check to be completed by the department in accordance with this chapter.
- (2) The person shall have the right to obtain a copy of the person's criminal history records that were obtained through a fingerprint-based check under this section, according to Title 28 CFR Part 16, and for other records, the department, upon request, shall provide information to the person on how to obtain further information of the person's reports.
- (3) The person may file a written request for an administrative appeal to appeal the decision by the department:
- (A) In accordance with the provisions set forth in chapters 17-891.2, 17-892.2, 17-895.1, 17-896.1, for applicants, licensees, or registrants; or
- (B) In accordance with the provisions set forth in chapter 17-602.1, for all other persons not specified in subparagraph (A);
- provided that the filing of a request for an administrative appeal does not permit the person to continue to provide child care for children under this chapter, pending the decision of the administrative appeal hearing officer." [Eff ]
- (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 42 U.S.C. §§2002, 2005, 2014, 9858f)

### **Prohibiting Crimes Convicted Offenses – Indefinite**

Hawaii Revised Statutes sections listed below and any criminal offense against a child involving violence, even those not listed in this Exhibit I or Exhibit II.

707-701 Murder in the first degree

707-701.5 Murder in the second degree

707-702 Manslaughter

707-702.5 Negligent homicide in the first degree

707-703 Negligent homicide in the second degree

707-705 Negligent injury in the first degree

707-710 Assault in the first degree

707-711 Assault in the second degree

707-712 Assault in the third degree, when the victim is a minor

707-712.5 Assault against a law enforcement officer in the first degree

707-712.7 Assault against an emergency worker

707-713 Reckless endangering in the first degree

707-714 Reckless endangering in the second degree

707-714.5 Criminally negligent storage of a firearm

707-716 Terroristic threatening in the first

707-720 Kidnapping

Department of Human Services  
Benefit, Employment and Support Services Division  
January 1, 2020  
Page 1

**Prohibiting Crimes Convicted Offenses – Indefinite (cont'd)**

707-721 Unlawful imprisonment in the first degree

707-726 Custodial interference in the first degree

707-727 Custodial interference in the second degree-felony

707-730 Sexual assault in the first degree

707-731 Sexual assault in the second degree

707-732 Sexual assault in the third degree

707-733 Sexual assault in the fourth degree

707-733.6 Continuous sexual assault of a minor under the age of fourteen years

707-741 Incest

707-750 Promoting child abuse in the first degree

707-751 Promoting child abuse in the second degree

707-752 Promoting child abuse in the third degree

707-756 Electronic enticement of a child in the first degree

707-757 Electronic enticement of a child in the second degree

707-759 Indecent electronic display to a child

707-765 Extortion in the first degree

707-766 Extortion in the second degree

707-768 Firearms, explosives, and dangerous weapons

707-781 Labor trafficking in the first degree

Department of Human Services  
Benefit, Employment and Support Services Division  
January 1, 2020  
Page 2

**Prohibiting Crimes Convicted Offenses – Indefinite (cont'd)**

707-782 Labor trafficking in the second degree

707-786 Nonpayment of wages

707-787 Unlawful conduct with respect to documents

708-810 Burglary in the first degree

708-812.55 Unauthorized entry in a dwelling in the first degree

708-812.6 Unauthorized entry in a dwelling in the second degree

708-816.5 Entry upon the premises of a facility utilized as a sex, child, or spouse abuse shelter; penalty

708-820 Criminal property damage in the first degree

708-821 Criminal property damage in the second degree

708-839.6 Identity theft in the first degree

708-840 Robbery in the first degree

708-841 Robbery in the second degree

708-842 Robbery; "in the course of committing a theft"

708-893 Use of a computer in the commission of a separate crime

708-8251 Arson in the first degree

708-8252 Arson in the second degree

708-8253 Arson in the third degree

709-902 Abandonment of a child

709-903.5 Endangering the welfare of a minor in the first degree

Department of Human Services  
Benefit, Employment and Support Services Division  
January 1, 2020  
Page 3



## **Prohibiting Crimes Convicted Offenses – Indefinite (cont'd)**

709-904 Endangering the welfare of a minor in the second degree

709-904.5 Compensation by an adult of juveniles for crimes

709-906 Abuse of family or household members, if the conviction is a felony or when the victim is a minor

711-1106.4 Aggravated harassment by stalking

711-1110.9 Violation of privacy in the first degree

711-1111 Violation of privacy in the second degree

712-1202 Sex trafficking

712-1203 Promoting prostitution

712-1209.1 Solicitation of a minor for prostitution

712-1215 Promoting pornography for minors

712-1215.5 Promoting minor-produced sexual images in the first degree

712-1218 Failure to maintain age verification records of sexual performers

712-1218.5 Failure to maintain age verification records of sexually exploited individuals

712-1219 Failure to affix information disclosing location of age verification records of sexual performers

712-1219.5 Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers

712-1240.5 Manufacturing a controlled substance with a child present

712-1249.7 Promoting a controlled substance through a minor

Department of Human Services  
Benefit, Employment and Support Services Division  
January 1, 2020  
Page 4

## **Prohibiting Crimes Convicted Offenses – Five Year Period**

Hawaii Revised Statute sections:

707-714 Reckless endangering in the second degree

707-717 Terroristic threatening in the second degree

707-722 Unlawful imprisonment in the second degree

707-734 Indecent exposure

708-803 Habitual property crime

708-811 Burglary in the second

708-813(b) Criminal trespass in the first degree, when in possession of a fire arm

708-817 Burglary of a dwelling during an emergency period

708-818 Burglary of a building during an emergency period

708-822 Criminal property damage in the third degree

708-830.5 Theft in the first degree

708-831 Theft in the second degree

708-835.5 Theft of livestock

708-835.6 Telemarketing fraud

708-835.7 Theft of copper

708-835.9 Theft of urn

708-836 Unauthorized control of propelled vehicle

Department of Human Services  
Benefit, Employment and Support Services Division  
January 1, 2020  
Page 1

**Prohibiting Crimes Convicted Offenses – Five Year Period (cont'd)**

708-836.5 Unauthorized entry into motor vehicle in the first degree

708-839.5 Unauthorized possession of confidential personal information

708-839.7 Identity theft in the second degree

708-839.8 Identity theft in the third degree

708-851 Forgery in the first degree

708-852 Forgery in the second degree

708-854 Criminal possession of a forgery device

708-858 Suppressing a testamentary or recordable instrument

708-871.5 False labeling of Hawaii-grown coffee

708-875 Trademark counterfeiting

708-891 Computer fraud in the first degree

708-891.5 Computer fraud in the second degree

708-891.6 Computer fraud in the third degree

708-892 Computer damage in the first degree

708-892.5 Computer damage in the second degree

708-892.6 Computer damage in the third degree

708-895.5 Unauthorized computer access in the first degree

708-895.6 Unauthorized computer access in the second degree

708-895.7 Unauthorized computer access in the third degree

Department of Human Services  
Benefit, Employment and Support Services Division  
January 1, 2020  
Page 2

**Prohibiting Crimes Convicted Offenses – Five Year Period (cont'd)**

- 708-8100 Fraudulent use of a credit card
- 708-8100.5 Fraudulent encoding of a credit card
- 708-8102 Theft, forgery, etc., of credit cards
- 708-8103 Credit card fraud by a provider of goods or services
- 708-8104 Possession of unauthorized credit card machinery or incomplete cards
- 708-8200 Cable television service fraud in the first degree
- 708-8202 Telecommunication service fraud in the first degree
- 708-8254 Arson in the fourth degree
- 708-8301 Habitual unlicensed contracting activity
- 708-8303 Unlicensed contractor fraud in the first degree
- 708-8304 Unlicensed contractor fraud in the second degree
- 708A-3 Money laundering
- 709-900 Illegally marrying
- 709-901 Concealing the corpse of an infant
- 709-905 Endangering the welfare of an incompetent person
- 711-1103 Riot
- 711-1106.5 Harassment by stalking
- 711-1106.6 Harassment by impersonation
- 711-1108 Abuse of a corpse

Department of Human Services  
Benefit, Employment and Support Services Division  
January 1, 2020  
Page 3

**Prohibiting Crimes Convicted Offenses – Five Year Period (cont'd)**

- 711-1108.5 Cruelty to animals in the first degree
- 711-1109 Cruelty to animals in the second degree, if the conviction is a felony
- 711-1109.3 Cruelty to animals by fighting dogs in the first degree
- 711-1109.35 Cruelty to animals by fighting dogs in the second degree
- 711-1109.4 Causing injury or death to a service dog or law enforcement animal
- 711-1112 Interference with the operator of a public transit vehicle
- 712-1200 Prostitution
- 712-1206 Loitering for the purpose of engaging in or advancing prostitution
- 712-1207 Street solicitation of prostitution; designated areas
- 712-1208 Promoting travel for prostitution
- 712-1209 Solicitation of prostitution near schools or public parks
- 712-1209.5 Habitual solicitation of prostitution
- 712-1211 Displaying indecent matter
- 712-1214 Promoting pornography
- 712-1215.6 Promoting minor-produced sexual images in the second degree
- 712-1217 Open lewdness
- 712-1221 Promoting gambling in the first degree
- 712-1222.5 Promoting gambling aboard ships
- 712-1224 Possession of gambling records in the first degree

Department of Human Services  
Benefit, Employment and Support Services Division  
January 1, 2020  
Page 4

**Prohibiting Crimes Convicted Offenses – Five Year Period (cont'd)**

- 712-1240.7 Methamphetamine trafficking
- 712-1241 Promoting a dangerous drug in the first degree
- 712-1242 Promoting a dangerous drug in the second degree
- 712-1243 Promoting a dangerous drug in the third degree
- 712-1244 Promoting a harmful drug in the first degree
- 712-1245 Promoting a harmful drug in the second degree
- 712-1246 Promoting a harmful drug in the third degree
- 712-1246.5 Promoting a harmful drug in the fourth degree
- 712-1247 Promoting a detrimental drug in the first degree
- 712-1248 Promoting a detrimental drug in the second degree
- 712-1249 Promoting a detrimental drug in the third degree
- 712-1249.4 Commercial promotion of marijuana in the first degree
- 712-1249.5 Commercial promotion of marijuana in the second degree
- 712-1249.6 Promoting a controlled substance in, on, or near schools, school vehicles, public parks, or public housing projects or complexes
- 712-1250 Promoting intoxicating compounds
- 712-1250.5 Promoting intoxicating liquor to a person under the age of twenty-one
- 712-1257 Prohibited cigarette sales of less than twenty-one, felony
- 712-1258 Tobacco products and electronic smoking devices; persons under twenty-one years of age

Department of Human Services  
Benefit, Employment and Support Services Division  
January 1, 2020  
Page 5

2. The adoption of chapter 17-801, 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 May 19, 2020 and filed with the Office of the Lieutenant Governor.

---

PANKAJ BHANOT  
Director of Human Services

APPROVED AS TO FORM:

---

Deputy Attorney General

#### **IV. Administrative Matters**

##### **A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes -**

*Any Handouts will be Submitted During the Meeting*