

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

April 15, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:04 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Harris Nakamoto
- Jonathan Shick
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch
- William Lydgate
- James (Kimo) Lee

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn

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

Mr. Ritchie made a motion to accept the March 18, 2021 meeting minutes, as presented. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS** – Before Public Hearing

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

Discussion leader Mr. Nakamoto explained that the proposed rules will be presented in a different order than the order on the agenda in order to present the rules in a more logical format. He has asked that DHS explain the reason behind the June 2020 date on the impact statements.

Ms. Dana Balansag, Child Care Program Administrator from DHS's Benefit, Employment & Support Service Division, explained that she and Ms. Dayna Luka at DHS's Child Care Program oversee the statewide childcare facilities licensed by the state.

DHS has been working on several different sets of chapters within the childcare facilities; three of the chapters were reviewed by this Board in September 2020. However, due to the COVID response, DHS was dealing with other matters along with drafting the seven

rules, which is why the small business impact statements were not submitted to this Board until recently.

In November 2014, the federal grant law was enacted which entitles the State of Hawaii to approximately \$30 million; DHS has been working hard at becoming compliant with this law. The four chapters presented today are the complement to the prior three chapters this Board previously approved for public hearings. While childcare providers are already required to have minimum health and safety standards, the proposals are adding the federal standards, which are required for DHS to continue to receive federal funds.

Changes to Chapter 892.2 will allow Hawaii to be compliant with the federal Child Care and Development Block Grant (CCDBG) Act. The \$30 million funds from this grant are needed to help support the state's childcare program and staff that regulate 850 child care facilities and homes statewide as well as the childcare subsidy program that annually provides over 3,300 low-income families access to childcare options and additional support of services to promote and ensure childcare for families and children.

Overall, the federal changes will strengthen the requirements to help protect the health and safety of children in childcare and to help parents make informed choices and gain access to information for child development.

Regarding the potential impact on small business, DHS established annual training requirements for all caregivers, substitutes, and volunteers in licensed and registered homes and childcare centers. These providers are required to create policies for suspension and expulsion of children from the facilities or home. This is because providers of licensed and registered homes and centers are required to have written procedures and plans for emergency preparedness and responses for relocations, sheltered place, lockdown, training and practice skills for staff, communication and reunification with family continuity of operations, and accommodations for infants and toddlers, and children with chronic medical conditions.

In addition, DHS established requirements for maximum group sizes of children which were not previously established. All of these changes will allow DHS and the State of Hawaii to follow federal requirements of the CCDBG. The requirement of completing the initial ongoing training for caregivers, substitutes, volunteers, and licensed and registered homes and centers is expected to help improve the ability to provide the children physical well-being, health, safety, supervision and guidance of children in care.

By expanding the existing requirements for licensed and registered providers to have written procedures and plans for emergency preparedness, it will provide the needs of children with disabilities and special needs as well as when an emergency or disaster occurs. Also, having written policies on suspension and expulsion of children from licensed care homes and centers ensures that parents and providers understand what the suspension and expulsion policies are. It encourages childcare providers to have prevention policies and strategies to reduce the number of suspensions and expulsions that are due to the behavior of children.

Lastly, establishing group-size limits in accordance with the ages of children will ensure they are adequately being supervised at all times and it creates a safe environment for them.

Having group-size limits also will assist in meeting children developmental needs as limiting group sizes may strengthen the relationship between caregivers and their children.

For possible financial impacts to small business, Ms. Luka explained that licensed and registered childcare providers may experience additional operating costs in order to comply with the extra health and safety training requirements. Thus, if the provider decides to pay for the training hours of their staff, it may cost roughly \$160 per individual (16 hours of training x salary of \$10.00 per hour). However, some employee policies incorporate staff training as part of their contract without additional compensation.

There could also be added costs for reporting of staff training certificates to DHS's contractor who handles the recordkeeping of staff training certificates. Additional expenses may include \$20 to \$40 for a multi-purpose fire extinguisher in the childcare area and between \$50 and \$60 for a smoke detector.

Ms. Luka stated that from 2015 through 2019, there have been many discussions and concerns with the stakeholders about the training requirements; one concern involved the required training hours for substitutes. The recommendation that substitutes not be required to complete on-going training hours annually was taken into consideration by DHS. As a result, the number of on-going training hours for substitutes to complete on an annual basis was reduced from 16 hours, which is the requirement for regular staff members, to 10 hours. Training requirements were also reduced to 8 hours for volunteers.

Ms. Luka further stated that the requirement for a substitute to complete an annual on-going health and safety training is to comply with CCDBG. Since the substitute is a replacement of the primary caregiver and he/she is left alone with children in care, completion of ongoing health and safety training hours increases the health and safety of children and the quality of care. In addition, for maximum group-size limits, the requirement to allow more children to be grouped together during specific events or times, i.e., performances, assemblies, and meal and snack times, was incorporated into the rules.

Mr. Nakamoto made a motion to move the proposed chapter to public hearing. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

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

Chair Cundiff indicated that specific information on these rules is reflected in the previous discussion of HAR Chapter 17-892.2, Licensing of Group Day Care Centers and Group Child Care Homes; Ms. Luka stated that there are no other differences than those already discussed.

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

C. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 896 and Adoption of Chapter 896.1, Licensing of Before and After School Child Care Facilities, promulgated by DHS

Chair Cundiff, again, indicated that specific information on these rules is reflected in the discussion of HAR Chapter 17-892.2, Licensing of Group Day Care Centers and Group Child Care Homes; no further comments were noted.

Mr. Nakamoto made a motion to move the proposed chapter to public hearing. Ms. Rodighiero seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 891.1 and Adoption of Chapter 891.2, Registration of Family Child Care Homes, promulgated by Department of Human Services (DHS)

Ms. Luka stated that in addition to the specific information discussed in HAR Chapter 17-892.2, Licensing of Group Day Care Centers and Group Child Care Homes, under the training requirement for Chapter 891.2, the feedback from the registered childcare providers was that it would be very difficult to find a substitute provider.

Therefore, DHS removed the requirement of two substitutes and changed it to when a substitute is called in an emergency, the substitute would only have to comply with the health and safety training. Further, there would be a timeframe in which to complete the training, i.e., within 45 days of being contracted for the specific service.

Overall, both Chair Cundiff and Mr. Nakamoto expressed appreciation for DHS's preparation work on these new chapters. The work performed provided this Board with a much clearer understanding and efficiency of the process. Above all, the great work performed by DHS is key in terms of small business advocacy by listening to the stakeholders and understanding their needs and compassion to the key services provided to the community.

Vice Chair Albitz made a motion to move the proposed chapter to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

A. Discussion and Update on the following:

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

Chair Cundiff explained that due to scheduling issues and a shortened legislative session this year, the Board's two nominations will most likely not make it to the Senate floor. However, an interim session is expected to take place where House Speaker's nominations for this board and other boards will be addressed.

Through the interim session, it is anticipated that nominations will be submitted back to the Governor to be deferred until next session. The Governor will then be asked to issue a Directive that will give Messrs. Nakamoto and Lee the authority to continue on as members until their nominations are considered in next year's legislative session.

Chair Cundiff added that he spoke with House Speaker's staff recently for clarification, and given the difficulty of the legislative session this year regarding COVID-19 and the resulting budget crisis, this Board should not take the fact that its members were not scheduled for nomination as a negative or an offense, as it has affected many boards and commissions.

Mr. Ritchie acknowledged that members of other boards and commissions have experienced the same situation. Staff member Ms. Palcovich and Mr. Ritchie will keep the Board members abreast of this situation.

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

See Section IV. A. a.

V. ADMINISTRATIVE MATTERS

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

Chair Cundiff noted that administratively there is nothing new to report. Regarding the Board's budget, we are still waiting to hear until the final budget figures come in from the legislature.

Chair Cundiff announced that on behalf of this Board and its members he wanted to recognize and thank Deputy Attorney General Margaret Ahn for her outstanding service. As a result of reassignments within the Department of the Attorney General, a new deputy attorney general, Ms. Alison Kato, has been assigned to work with this Board. This will be Ms. Ahn's last meeting with us; however, she has asked to attend next month's meeting to introduce Ms. Kato.

VI. NEXT MEETING - Thursday, May 20, 2021 at 10:00 a.m.

VII. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting and Vice Chair Albitz seconded the motion; the meeting adjourned at 11:00 a.m.