

Small Business Regulatory Review Board

MEETING MINUTES

June 16, 2022

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- Dr. Nancy Atmospera-Walch
- James (Kimo) Lee
- William Lydgate
- Taryn Rodighiero
- Sanford Morioka
- Mark Ritchie

ABSENT MEMBERS:

- Garth Yamanaka
- Tessa Gomes

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF March 10, 2022 MINUTES**

Vice Chair Albitz motioned to accept the March 10, 2022 meeting minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

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

- A. Discussion and Action on Proposed New Hawaii Administrative Rules (HAR) Title 11 Chapter 94.2, Nursing Facilities, promulgated by Department of Health (DOH)

Vice Chair Albitz stated that DOH is repealing three chapters and replacing them to be align mostly with federal regulations.

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, explained that DOH has the responsibility of conducting inspections on all health care facilities within the state from a state licensing standpoint. Inspections are also procured through Medicare for Medicare certification purposes. The facilities under DOH's jurisdiction include hospitals, nursing facilities, adult residential care homes, assisted living facilities, clinical laboratories, hospices, home health agencies, etc.

The subject rules and the two rules noted below are in the process of being repealed and amended and new rules are being created; two of the rules are aligned with Medicare; Chapter 11-103.1 in Section III. A. C. is the only rule not being aligned with Medicare.

Chapter 94.2 Nursing Facilities specifically will allow DOH to accept accreditation or certification of one's facilities by other nationally recognized accreditation and/or certification agencies for purposes of renewing state licensure. It was noted that Medicare requirements are much for stringent than state requirements; as such, DOH is aligning the state rules towards the federal rules. This is very beneficial to DOH on a workload and resource allocation standpoint because it allows DOH to conduct only one inspection rather than two or more.

The rule changes will also update requirements for emergencies including but not limited to natural disasters. Mr. Ridley clarified that only the larger institutions such as hospitals would be governed by both federal Medicare and state laws whereas the home health care facilities are only state operated and governed.

Vice Chair Albitz motioned to send the proposed rules to public hearing. Ms. Rodighiero seconded the motion, Dr. Atmosphera-Walch recused herself, and the remaining Board members voted in support of the motion.

B. Discussion and Action on Proposed New HAR Title 11 Chapter 97.1, Home Health Agencies, promulgated by DOH

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, explained that these rules are similar to the nursing home rules (above) in terms of being aligned with the federal Medicare. However, there is one difference. Congress recently passed a law that for the Veteran's Administration (VA) doctors who are in the VA system, regardless as to what state he or she is licensed in, can continue to do work in his or her host state and provide services to VA beneficiaries even when it relates to services being referred to the private sector.

For example, under the current rules a physician or an APRN has to be licensed in the state of Hawaii in order to provide referrals to home health agencies. Licensed home health agencies can only accept referrals from physicians or APRNs who are licensed in Hawaii. This, of course, becomes a problem for the VA when they treat a patient in Hawaii and send them into the community as the VA does not have a robust home health agency system statewide. Thus, it becomes an issue for Hawaii licensed home health agencies to accept these VA beneficiaries.

Thus, the law that Congress recently passed is being incorporated into the rules that would allow a home health agency to accept a referral from a VA physician who is licensed in another state for the VA patient who is being referred for home health services.

Vice Chair Albitz motioned to move the proposed rules to public hearing. Mr. Ritchie seconded the motion, Dr. Atmosphera-Walsh recused herself, and the remaining members voted in support of the motion.

C. Discussion and Action on Proposed New HAR Title 11 Chapter 103.1, Licensure and Certification Fees for Health Care Facilities and Agencies, promulgated by DOH

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, indicated that these rules relate to state licensing fees only; there is no alignment with federal fees as the federal government does not charge a fee for certification. The proposed rule changes reflect updating and increasing the fees only; the fees are for providers that DOH license and certify. There are a number of facilities that would be considered small businesses such as adult residential care homes and community care foster family homes.

The fee increase will be for the initial or brand-new licenses as well as for renewals. The fee changes, which hadn't been increased since 2017, depends on the term of license. While most facilities are licensed and renewed every year, there are also a few facilities that are licensed every two years. The percentage increase for these facilities mostly ranges between 10 to 25 percent.

The Bureau of Labor Statistics and the Consumer Price Index over the past few years were reviewed and used as guides for establishing the proposed fees. DOH is expecting a lot of testimony at the public hearing from operators of adult residential care homes where the change in the fees will be 13 percent; this equates to \$225 per year from \$200 per year. Assisted living facilities will be imposed a 25 percent increase, hospitals will be imposed a 20 percent increase, and clinical laboratories a 33 percent increase.

The fee schedule has not yet been discussed with the impacted businesses despite being a major concern. Overall, there is no indication that fees will be raised next year or in the foreseeable future. Vice Chair Albitz requested a list of comments made by the small businesses that attend the public hearing, and noted that it will be helpful to see a chart outlining both the current and proposed fee rates.

Vice Chair Albitz motioned to move the proposed rules to public hearing. Second Vice Chair Shick seconded the motion, Dr. Atmospera-Walch recused herself, and the remaining Board members voted in support of the motion.

IV. LEGISLATIVE MATTERS

A. Update on the following:

1. Governor's Message 823 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board for a term to expire June 30, 2026
2. Governor's Messages 862 and 823 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board terms to expire June 30, 2022 and June 30, 2026, respectively

3. Governor's Message 725 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. James Lee, for a term to expire June 30, 2024
4. Governor's Message 726 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. Sanford Morioka, for a term to expire June 30, 2023
5. Governor's Message 730 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. William Lydgate, for a term to expire June 30, 2026

Chair Cundiff announced that this Board is now at full capacity. He introduced the most current member Sanford Morioka and he thanked all the members for their participation and all that they do.

V. ADMINISTRATIVE MATTERS

A. Update on the Status of the Board's Phase II Website Project

Mr. Ritchie indicated that the website taskforce is working with NIC on a weekly basis to improve upon the Board's website activity and allowing the public to be more engaged with the Board. Some of the changes will include text changes and rearranging some of the existing information on the site.

Ms. Ariola added that the home page is being revamped to draw small businesses and government agencies to spend more time on the website and to become engaged with the new information to be provided.

B. Review and Update Board Members' "Discussion Leader Assignments" for State and County Agencies' Hawaii Administrative Rules

Chair Cundiff offered the following proposed changes to the Board members' discussion leader assignments:

- Public Utilities Commission – assigned to Tessa Gomes
- Department of Commerce and Consumer Affairs – assigned to Tessa Gomes
- Department of Education – assigned to Dr. Nancy Atmospera-Walch
- Department of Health – assigned to Sanford Morioka
- Department of Human Resource Development – assigned to Sanford Morioka
- Department of Transportation – assigned to Sanford Morioka as back-up

Chair Cundiff motioned to adopt the discussion leader re-assignments as presented Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

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

Chair Cundiff stated that this item will be kept on the agenda particularly since the State, in general, is opening up, which is positive for Hawaii small businesses. He suggested that the members begin thinking about reaching out to the various agencies and setting up meetings with trade organizations and chambers. Once this Board knows what its budget will be for fiscal 2023, it will be in a better position to determine what expenses are available and how they can be used.

Mr. Ritchie added that while business activities are still in flux at DBEDT, some of the business outreach activities are slowly coming back such as the "small business fair" which may be held at the end of the summer or in September.

VI. ELECTION OF BOARD OFFICERS

A. Discussion and Action on the following:

a. Chairperson, pursuant to Section 201M-5 (c), HRS

Mr. Lydgate motioned to elect Mr. Robert Cundiff as Chair of the Board under Section 201M-5 (c), HRS; Dr. Atmosphera-Walch seconded the motion and the Board members unanimously agreed.

b. Vice Chair

Chair Cundiff motioned to elect Ms. Mary Albitz as Vice Chair of the Board; Mr. Lydgate seconded the motion and the Board members unanimously agreed.

c. Second Vice Chair

Chair Cundiff motioned to elect Mr. Jonathan Shick as Second Vice Chair of the Board; Mr. Ritchie seconded the motion and the Board members unanimously agreed.

VII. NEXT MEETING – Thursday, July 21, 2022 at 10:00 a.m., to be held remotely and in-person at 250 S. Hotel Street, Conference Room 436, Honolulu, HI.

VIII. ADJOURNMENT – Mr. Ritchie motioned to adjourn the meeting and Dr. Atmospera-Walch seconded the motion; the meeting adjourned at 11:11 a.m.