

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 90

ASSISTED LIVING FACILITY

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§11-90-1 Purpose. The purpose of this chapter is to establish a new category of community based residential care setting to be named "assisted living facility" and to establish minimum standards and requirements for licensure to protect the health, welfare, and safety of residents in such facilities. Assisted living facilities shall serve the purpose of providing a combination of housing, meal services, health care services, and personalized supportive services designed to respond to individual needs. The following principles are applied:

- (1) Aging in place;
- (2) Negotiated plan of care; and
- (3) Managed risk. [Eff August 23, 1999] (Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

§11-90-2 Definitions. As used in this chapter:

"Abuse" means actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment as §11-90-2

further defined in section 346-222, HRS.

"Activities of Daily Living" or "ADL" means those personal functional activities required by an individual for continued well-being including eating, dressing, personal hygiene, mobility, toileting, and behavior management.

"Aging in place" means the process of remaining in his or her living environment ("home") despite the physical or mental decline that may occur due to the aging process. For aging in place to occur, needed services are provided, increased or adjusted to compensate for the physical or mental decline of the individual within the ability of the facility.

"Assistance" means the resident can perform some part of an activity, but cannot do it entirely alone.

"Assisted living" means encouraging and supporting individuals to live independently and receive services and assistance to maintain independence. All individuals have a right to live independently with respect for their privacy and dignity, and to live in a setting free from restraints.

"Assisted living facility" means an assisted living facility as defined in section 321-15.1, HRS. This facility shall consist of a building complex offering dwelling units to individuals and services to allow residents to maintain an independent assisted living lifestyle. The environment of an assisted living facility shall include one in which meals are provided, staff are available on a 24-hour basis and services are based on the individual needs of each resident. Each resident, family member, and significant others shall work together with facility staff to assess what is needed to support the resident so that the resident can achieve his or her greatest capacity for living independently. The facility shall be designed to maximize the independence and self-esteem of limited-mobility persons who feel that they are

no longer able to live on their own.

"Choice" means viable options created for residents to enable them to exercise greater control over their lives.

"Department" means the department of health.

"Dependent" means the resident cannot perform any part of an activity; the activity must be done entirely by someone else.

"Dietitian" means a person who is registered or  
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eligible for registration by the Commission on Dietetic Registration of the American Dietetic Association.

"Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by designing a residential program that delivers services in a manner which shows courtesy and respect for a resident's right to make decisions.

"Direct care staff" means an employee of an assisted living facility who is responsible and available for providing services directly to residents including assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, or recreation.

"Director" means the director of health or the director's designated representative.

"Emergency" means a life-threatening situation. It also means those conditions specific to a resident which are identified in the resident's care plan as requiring emergency care which may include behavior that poses a danger to staff or others.

"Health care services" means the provision of services in an assisted living facility that assist the individual in achieving and maintaining the highest state of positive well-being (i.e., psychological, social, physical, and spiritual) and functional status. This may include nursing assessments and the monitoring and delegation of nursing tasks by registered nurses pursuant to chapter 457, HRS, care management, records management, and coordinating basic health care and social services per residents in such settings.

"Homelike" means a type of environment which promotes

the dignity, security, and comfort of residents through the provision of personalized care and services to encourage independence, choice and decision-making by each resident. A homelike environment is also supported by the use of residential building materials and furnishings.

"Independence" means supporting resident capabilities and facilitating use of their abilities.

Independence is supported by creating barrier free structures and careful design of assistive devices.

"Independent" means the resident can perform the ADL with assistance.

"Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to such needs and  
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preferences.

"Legal representative or designee" means an attorney at law, a person holding a general power of attorney or special power of attorney for health care, guardian, conservator, or any person appointed by a court to manage the personal or financial affairs of the resident or person or agency legally responsible for the welfare or support of the resident, other than the facility.

"License" means an assisted living facility license.

"Licensed nurse" means a person who is licensed as a registered nurse in the State of Hawaii pursuant to chapter 457, HRS.

"Licensee" means the person or entity (the owners) to whom a license to operate an assisted living facility is issued and who is legally responsible for the operation of the facility.

"Managed risk" means a formal process of negotiating and developing a plan to address resident needs, decisions, or preferences to reduce the probability of a poor outcome for the resident or of putting others at risk for adverse consequences.

"Misappropriation of resident's property" means the illegal or improper use of a client's funds or property for profit or advantage.

"Modified diet" means a diet for a diabetic, a low fat diet, low sodium diet, or soft diet, or a special diet

otherwise ordered by a physician.

"Neglect" means a type of action or conduct, performed without the resident's informed consent, which results in the deprivation of food, water, medication, medical services, shelter, or other services necessary to maintain minimum physical or mental health.

"Negotiated Plan of Care or Service Plan or Agreement" means a written plan for services developed with the resident or significant others and which includes a recognition of the resident's capabilities and choices. The plan defines the division of responsibility in the implementation of services and specifies measurable goals.

"Personal care" means the following two categories of activities:

- (1) Activities of daily living such as ambulation, mobility, transfer and lifting,

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- (2) Instrumental activities of daily living which are directly related to the well-being of the resident such as meal preparation, bed, kitchen and bathroom cleanliness, housekeeping, laundry, essential errands, transportation, medication assistance, and maintenance of health records.

"Physician" means a person who is licensed to practice medicine or osteopathy under chapter 453 or chapter 460, HRS.

"Primary care provider" means a person who is licensed to practice medicine or osteopathy under chapter 453 or chapter 460, HRS, or a person who is licensed and recognized as an advanced practice registered nurse under chapter 457.

"Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

"Resident" means any person who is receiving room,

board, care, and services in an assisted living facility for a fee on a 24-hour basis.

"Self-administration of medication" means the act of a resident placing medication in or on his or her own body without assistance. This means the resident manages and takes his or her own medications, the resident identifies his or her own medication, the time and manner of administration.

"Service plan" means a written plan for services developed with input from a facility staff representative, the resident or significant other (if the resident consents) and includes recognition of the resident's capabilities and choices. The plan defines the division of responsibility in the implementation of the services to be provided and specifies measurable goals. The service plan also specifies who will be responsible for providing services and when and how often care and services will be provided or arranged. The plan shall be developed at the time of admission and shall be reviewed and updated at least semi-annually or when the condition of the resident changes, or when the need arises.

"Services" means activities or care provided by §11-90-2

the facility which assist the residents in developing appropriate skills to increase or maintain their level of functioning or which assist them in performing personal care or activities of daily living.

"Social work services" means the professional activity of helping individuals, groups, or communities to enhance or restore their capacity for social functioning and to create societal conditions favorable to their goals.

"Unlicensed assistive personnel" means an individual who is not licensed to practice nursing, but who provides tasks of nursing care in the State of Hawaii pursuant to chapter 457, HRS.

"Waiver" means an exemption from a specific rule for a duration not longer than one year which may be permitted a facility, for a specified period of time, at the discretion of the director.

Whenever the singular is used in this chapter it may

include the plural. [Eff August 23, 1999 ] (Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

§11-90-3 Licensing. (a) The facility shall meet all requirements for licensure under state law. All assisted living facilities shall be licensed except those operated by the federal government. The licensee shall file an application with the director and the facility shall be licensed pursuant to this chapter prior to admitting residents.

(b) The director or designated representative shall inspect each assisted living facility no less than every two years for relicensing. The director or designated representative, without prior notice, may enter the premises at any reasonable time to secure compliance with or to prevent a violation of this chapter.

(c) Summary reports of licensing inspections shall be kept on file in the facility and shall be available upon request.

(d) No facility licensed under the provisions of this chapter, shall deny admission to any individual on account of race, religion, ancestry, sexual orientation, or national origin.

(e) The director shall prescribe the content and form of the license, and may authorize a waiver or

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waivers for a particular facility.

(f) In the event of a change of name, location, ownership, or licensed occupancy, the director shall be notified fifteen days prior to the change; an inspection at the discretion of the director shall be conducted and, if the provisions of this chapter are met, a new license issued.

(g) Every license shall continue in force for a period of no less than two years unless otherwise specified, or unless suspended or revoked.

(h) Following inspection of the facility by the department, a list of deficiencies, if any, shall be

presented to the facility. The facility shall return a plan of correction to the department within ten days that addresses each of the deficiencies identified by the department. Facilities shall be allowed a reasonable time to implement the plan of correction. A follow-up survey and inspection shall be made by the department to determine the progress in the plan of correction. If there has not been substantial progress in carrying out the plan of correction, the license shall not be renewed. At the discretion of the director, a provisional license may be issued.

(i) The current license shall be posted in a conspicuous place visible to the public within the facility. A facility which has fulfilled the requirements of licensure shall be known as an assisted living facility and this designation shall be reflected on the facility's license.

(j) The director may suspend, revoke, or refuse to issue a license for failure to comply with the requirements of this chapter, or for any cause deemed a potential hazard to the health and safety of the residents, employees, or the general public. Any person affected by the director's final decision of denial, suspension, or revocation may appeal in accordance with chapter 91, HRS.

(k) An applicant for a license or relicensing may be denied a license or relicense for any of the following reasons:

- (1) Failure to meet requirements of this chapter;
- (2) Financial inability to operate and conduct the facility in accordance with these minimum standards and rules;
- (3) Conviction in a court of law; or
- (4) Had a substantiated finding of abuse, neglect

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or misappropriation of resident funds or property in any civil action.

(l) Penalties, hearing, and appeals. In addition to any other appropriate action to enforce this chapter pursuant to state law, the director may initiate procedures for invoking fines as provided in section 321-



20, HRS and to revoke the license after hearing held in accordance with chapter 91, HRS.

Infractions which may require invoking the procedures in this subsection include, but are not limited to the operation of an assisted living facility without a license granted by the department or if substantive violations of this chapter are found as a result of routine or unannounced inspection of a facility which has a license.

(m) Applicants for licensure or existing licensees applying for license renewal shall pay appropriate fees, as determined by the director. Prior notice of the amount of the fee shall be provided the licensee.

(n) Separate buildings located contiguously and operated as an integrated unit by the same management are not required to have separate licenses. Distinct staffing plans are required for each building and must be approved in advance by the department.

(o) Applications for licensure shall be made to the department on a form provided by the department and shall include full and complete information as follows:

- (1) Identity and financial interest of any person, including stockholders, who have ownership in the facility representing an interest of ten per cent or more in such assisted living facility;
- (2) Each officer and director of the corporation if the facility is organized as a corporation, each general partner if the facility is organized as a partnership, or the governing body if the facility is government owned;
- (3) A summary of all lease, management, and sales agreements and contracts relative to the direct operation and ownership of the facility. The applicant shall provide a copy of any of the above, if requested by the department;
- (4) Name of the administrator of the facility and

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- (5) Location (address) of the facility and mailing address;

- (6) Maximum number of residents to be served at any one time;
  - (7) Information and supporting documentation regarding qualifications and training of staff as required in these rules;
  - (8) Verification of evacuation capacity designation for fire and life safety protection;
  - (9) Proposed annual budget identifying sources of revenue; and
  - (10) Evidence that the premises comply with state and county building, housing, fire, and other codes, ordinances, and laws for the type of occupancy to be licensed. Compliance shall include but not be limited to the following:
    - (A) Occupancy requirement of the county building code;
    - (B) Applicable zoning ordinance of the county;
    - (C) The obtainment of a use permit if required by the county; and
    - (D) Applicable state laws and administrative rules relating to sanitation, health, and environmental safety.
- [Eff August 23, 1999 ] (Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

§11-90-4 Minimum building and structural requirements. The facility shall provide each resident with the following:

- (1) Apartment unit with a bathroom, refrigerator, and cooking capacity, including a sink;
- (2) The unit shall be a minimum of 220 square feet, not including the bathroom;
- (3) The cooking capacity may be removed or disconnected depending on the individual needs of the resident;
- (4) The unit shall have a separate and complete bathroom with a sink, shower, and toilet;
- (5) The unit shall accommodate physically

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challenged persons and persons in wheelchairs, as needed;

- (6) The unit shall have a call system monitored 24-hours a day by facility staff;
- (7) The unit shall be wired for telephone and television;
- (8) Access to common areas such as activity rooms, lounges, dining rooms, and laundry; and
- (9) Private accessible mailbox in which the resident may send and receive mail, which meets postal standards.

[Eff August 23, 1999 ] (Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

§11-90-5 Emergency care and disaster planning. (a) There shall be written policies and procedures to follow in an emergency which shall include provisions for the following:

- (1) Arranging for rapid primary care provider attention or arranging for other available assistance;
- (2) Transportation arrangements for hospitalization or other services which are appropriate;
- (3) Maintenance of an appropriate first aid kit for emergency use; and
- (4) Quarterly rehearsal of emergency evacuation plans for staff and residents to follow in case of fire, explosion, or other civil emergency occurring in or within the environs of the facility.

(b) The facility shall develop and maintain a written disaster preparedness plan to be followed in case of emergency or disaster. A copy of the plan shall be readily available at all times within the facility. Such plan shall include procedures for evacuating all individuals in the facility, which shall include the following:

- (1) Provisions for evacuating residents with

- impaired mobility or cognitive impairments;
- (2) Provisions for transporting all of the residents of the facility to a predetermined appropriate facility or facilities that will

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accommodate all the residents of the facility in case of a disaster requiring evacuation of the facility; and

- (3) A written transfer agreement, renewed every two years, with the appropriate facility or facilities for accommodating all of the residents of the facility in case of a disaster requiring evacuation of the facility. [Eff August 23, 1999 ] (Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

§11-90-6 General policies, practices, and administration. (a) The administrator or director of the assisted living facility shall:

- (1) Have at least two years experience, in a management capacity, in the housing or health care services or personal care industries, or any combination thereof;
  - (2) Show evidence of having completed an assisted living facility administrator's course or equivalent course acceptable to the department; and
  - (3) Be accountable for providing training for all facility staff in provision of services and principles of assisted living.
- (b) All facility staff shall be in compliance with current department tuberculosis clearance procedures.
- (c) All staff shall be trained in cardiopulmonary resuscitation and first aid.
- (d) The facility shall have written policies and procedures which incorporate the assisted living principles of individuality, independence, dignity, privacy, choice, and home-like environment.

[Eff August 23, 1999 ] (Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

§11-90-7 Inservice education. There shall be a staff inservice education program for the entire staff that includes:

- (1) Orientation for all new employees to acquaint them with the philosophy, organization,

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- (2) Ongoing inservice training on a regularly scheduled basis (minimum of six hours annually). [Eff August 23, 1999 ] (Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

§11-90-8 Range of services. (a) Service plan.

- (1) The assisted living facility staff shall conduct a comprehensive assessment of each resident's needs, plan and implement responsive services, maintain and update resident records as needed, and periodically evaluate results of the plan. The plan shall reflect the assessed needs of the resident and resident choices, including resident's level of involvement; support principles of dignity, privacy, choice, individuality, independence, and home-like environment; and shall include significant others who participate in the delivery of services;
- (2) A service plan shall be developed and followed for each resident consistent with the resident's unique physical, psychological, and social needs, along with recognition of that resident's capabilities and preferences. The plan shall include a written description of what services will be provided, who will

provide the services, when the services will be provided, how often services will be provided, and the expected outcome. Each resident shall actively participate in the development of the service plan to the extent possible;

- (3) The initial service plan shall be developed prior to the time the resident moves into the facility and shall be revised if needed within 30 days. The service plan shall be reviewed and updated by the facility, the resident, and others as designated by the resident at least annually or more often as needed; and
- (4) The facility shall designate a staff member to review, monitor, implement, and make appropriate modifications to the service plan

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for each resident.

- (b) Services.
- (1) The assisted living facility shall provide the following:
  - (A) Twenty-four hour on-site direct staff to meet the needs of the residents;
  - (B) Three meals daily, seven days a week, including modified diets and snacks which have been evaluated and approved by a dietitian on a semi-annual basis and are appropriate to residents' needs and choices;
  - (C) Laundry services to the extent that the resident is unable to perform these tasks for himself or herself;
  - (D) Opportunities for individual and group socialization;
  - (E) Services to assist the resident in performing all activities of daily living, including bathing, eating, dressing, personal hygiene, grooming, toileting, and ambulation;
  - (F) Nursing assessment, health monitoring, and routine nursing tasks, including those

which may be delegated to unlicensed assistive personnel by a currently licensed registered nurse under the provisions of the state Board of Nursing; and

- (G) Household services essential for the health and comfort of the resident (e.g. floor cleaning, dusting, bed making, etc.).
- (2) The assisted living facility shall also have the capability to provide or arrange access to the following services:
- (A) Transportation for medical and social appointments;
  - (B) Ancillary services for medically related care (e.g. physician, pharmacist, therapy, podiatry, etc.), barber or beauty care services, social or recreational opportunities, and other services necessary to support the resident;
  - (C) Services for residents who have behavior

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problems requiring ongoing staff support, intervention, and supervision;

- (D) Social work services; and
  - (E) Maintenance of a personal fund account for residents showing deposits and withdrawals.
- (3) The assisted living facility shall have policies and procedures relating to medications to include but not be limited to:
- (A) Self-medication:
    - (i) Residents must have physician or prescribing advanced practice registered nurse's written order of approval for self-medication of prescription medications;
    - (ii) Residents able to handle their own medication regimen may keep prescription medications in their

- unit;
  - (iii) Residents may keep and use over-the-counter medications in their unit without a written order unless otherwise indicated by a physician or prescribing advanced practice registered nurse's written orders;
  - (iv) If more than one resident resides in the unit, an assessment shall be made of each person's ability to safely have medications in the unit. If safety is a factor, the medication shall be kept in a locked container in the unit; and
  - (v) Residents who self-medicate with prescription drugs or maintain over-the-counter drugs in their units shall have all their medications reviewed by either a registered pharmacist, registered nurse, or physician at least every 90 days.
- (B) Administration of medication:
- (i) Prescription and non-prescription medications which the facility has responsibility for administering to a resident must be identified in the resident's record and must be

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- prescribed in writing for the resident by a physician or prescribing advanced practice registered nurse; and
- (ii) The facility shall provide and implement policies and procedures which assure that all medications administered by the facility are reviewed at least once every 90 days by a registered nurse or physician, and is in compliance with applicable state laws and administrative rules.



(4) Recreational or social activities are to be made available to residents on a daily basis.

(c) Licensed nursing staff shall be available seven days a week to meet the care management and monitoring needs of the residents. [Eff August 23,1999]  
Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

§11-90-9 Record and reports system. (a) The facility shall establish policies and procedures to maintain a system of records and reports which shall include the following:

- (1) Copy of a current physician or primary care provider's report of resident's physical examination which includes tuberculosis clearance and verification that the resident is free from other infectious or contagious diseases;
- (2) Service plan;
- (3) Contracts or other documents which set forth details of services to be delivered, charges, and other conditions agreed to between the resident and the facility; and
- (4) Incident reports of any bodily injury or other unusual circumstances affecting a resident which occurs within the facility, on the premises, or elsewhere, shall be retained by the facility under separate cover, and be available to authorized personnel and the department. The resident's physician or primary care provider shall be called immediately if medical care is necessary or

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indicated.

(b) The facility records and reports shall be available for review at any time by authorized personnel and the department. [Eff August 23, 1999] (Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

§11-90-10 Admission and discharge. (a) The facility shall develop admission policies and procedures which support the principles of dignity and choice. The admissions process shall include completion of or the providing of the following:

- (1) A service listing which details the services available, the base rates, the services included in the base rate, and the fees for all other additional services. A service listing shall also describe services which the facility does not provide, but will assist to arrange or coordinate;
- (2) Handbook or house rules which state the assisted living philosophy and clearly define the privileges and responsibilities of the resident and the conditions under which apartment units may be occupied by the residents;
- (3) A service plan for the resident developed by facility staff with the resident and significant others, specifying care and services to be provided, based on resident needs and choices;
- (4) A service contract which documents a completed agreement between the resident and the facility, describing services to be provided, rates charged, and conditions under which additional services or fees may be charged;
- (5) The resident shall be informed of his or her rights, including steps for complaints and appeals upon admission; and
- (6) Designation of alternative decision-maker or legal representative.

(b) The facility shall develop discharge policies and procedures that include, but not be limited to, the following:

- (1) Residents shall receive a written 14 day

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notice when:

- (A) Resident's behavior imposes an imminent danger to self or others;
  - (B) The facility cannot meet the resident's needs with available support services or services are not available; and
  - (C) Resident or responsible person has a documented established pattern in the facility of not abiding by agreements necessary for assisted living; or
- (2) Residents shall receive a written notice when:
- (A) The facility has had its license revoked, not renewed, or voluntarily surrendered; or
  - (B) Non-payment of charges by the resident.
- (3) Residents shall be given the opportunity of an informal conference if requested, in writing, within 10 days of receipt of discharge notice. The purpose of the conference is to determine if a satisfactory resolution can be reached. Participants in the conference may include the facility representative, the resident, and others as designated by the resident, a family member, or all of these individuals.
- [Eff August 23, 1999] (Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

§11-90-11 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected thereby. [Eff August 23, 1999] (Auth: HRS §§321-1, 321-9, 321-10, 321-11(10), 321-15.1) (Imp: HRS §§321-9, 321-11(10), 321-15.1)

The Department of Health adopted chapter 90, title 11, Hawaii Administrative Rules, on June 29, 1999, following public hearings on Hawaii, Kauai, and Maui on July 8, 1998, and on Oahu on July 9, 1998, after public notice was given in the Honolulu Advertiser on June 5, 1998.

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

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Director  
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APPROVED AS TO FORM:

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BENJAMIN J. CAYETANO  
Governor  
State of Hawaii

Date: August 12, 1999

August 12, 1999  
Filed