

DEPARTMENT OF HEALTH

Repeal of Chapter 11-86, Earnings and Income of Patients and Wards of Waimano Training School and Hospital, Chapter 11-87, Payment Fees for Waimano Training School and Hospital and Chapter 11-88, Services for the Developmentally Disabled or Mentally Retarded, and Adoption of Chapter 11-88.1 Services for Persons with Developmental or Intellectual Disabilities

SUMMARY

1. Chapter 11-86, Hawaii Administrative Rules, entitled "Earnings and Income of Patients and Wards of Waimano Training School and Hospital" is repealed.
2. Chapter 11-87, Hawaii Administrative Rules, entitled "Payment Fees for Waimano Training School and Hospital" is repealed.
3. Chapter 11-88, Hawaii Administrative Rules, entitled "Services for the Developmentally Disabled or Mentally Retarded Persons" is repealed.
4. Chapter 11-88.1, Hawaii Administrative Rules, entitled "Services for Persons with Developmental or Intellectual Disabilities" is adopted to read as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 86

EARNINGS AND INCOME OF PATIENTS AND WARDS OF
WAIMANO TRAINING SCHOOL AND HOSPITAL

Repealed

§§11-86-1 to 11-86-10 Repealed. [OCT 26 2014]

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 87

PAYMENT FEES FOR WAIMANO TRAINING SCHOOL AND HOSPITAL

Repealed

§§11-87-1 to 11-87-3 Repealed. [OCT 26 2014]

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 88

SERVICES FOR THE DEVELOPMENTALLY DISABLED OR MENTALLY
RETARDED

Repealed

§§11-88-1 to 11-88-43 Repealed. [**OCT 26 2014**]

DEPARTMENT OF HEALTH

Adoption of Chapter 11-88.1

Hawaii Administrative Rules

[OCT 26 2014]

1. Chapter 88.1 of Title 11, Hawaii Administrative Rules, entitled "Services for Persons with Developmental or Intellectual Disabilities" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 88.1

SERVICES FOR PERSONS WITH DEVELOPMENTAL OR
INTELLECTUAL DISABILITIES

Subchapter 1 General Provisions

- \$11-88.1-1 Purpose
- \$11-88.1-2 Definitions
- \$11-88.1-3 Record Retention
- \$11-88.1-4 Rights of persons with developmental or
intellectual disabilities

Subchapter 2 Eligibility Requirements

- \$11-88.1-5 Developmental or intellectual
disabilities
- \$11-88.1-6 Waiver Requirements
- \$11-88.1-7 Application for division services
- \$11-88.1-8 Disposition of division application
- \$11-88.1-9 Termination of division eligibility
- \$11-88.1-10 Decrease or termination of services
- \$11-88.1-11 to 11-88.14 (Reserved)

Subchapter 3 Scope and Content of Services

- \$11-88.1-15 Scope of services
- \$11-88.1-16 (Reserved)

Subchapter 4 Appeal Rights; Informal Reviews and
Administrative Hearings

- \$11-88.1-17 Denial of application for division services
- \$11-88.1-18 Denial of application for Medicaid waiver services
- \$11-88.1-19 Suspension, reduction (decrease), or termination of division services
- \$11-88.1-20 Suspension, reduction (decrease), or termination of Medicaid waiver services
- \$11-88.1-21 (Reserved)

Subchapter 5 Provision of Services

- \$11-88.1-22 Case managers and individualized service plans
- \$11-88.1-23 Payment for division services
- \$11-88.1-24 Payment for home and community-based Medicaid waiver services
- \$11-88.1-25 Purchase of service contracts
- \$11-88.1-26 Payment for care and treatment of persons receiving services; liability
- \$\$11-88.1-27 to 11-88.1-28 (Reserved)

Subchapter 6 Home and Community-Based Services Providers

- \$11-88.1-29 Providers of home and community-based services
- \$11-88.1-30 Corrective action
- \$11-88.1-31 Other basic service requirements
- \$\$11-88.1-32 to 11-88.1-33 (Reserved)

Historical Notes: This chapter is based substantially upon chapter 11-88, Hawaii Administrative Rule. [Eff 10/22/90; am 6/30/99; R **OCT 26 2014**]

SUBCHAPTER 1

GENERAL PROVISIONS

§11-88.1-1 Purpose. The Developmental Disabilities Division shall establish a system and conditions for the provision of services for persons who meet criteria for having a developmental or intellectual disability. This chapter establishes rules for services provided by the Developmental Disabilities Division. [Eff ~~OCT 26 2014~~ (Auth: HRS §§321-9, 333F-18) (Imp: HRS §§333F-2, 333F-3)]

§11-88.1-2 Definitions. As used in this chapter:

"Adaptive behavior" is the collection of conceptual, social, and practical skills that have been learned by people in order to function in their everyday lives.

"Activities of daily living" (ADL) means activities related to personal care including, but not limited to, bathing, dressing, toileting, transferring and eating.

"Adult day health services (ADH)" means services offered to a participant in a non-institutional community-based setting encompassing health and social services needed for optimal functioning of the participant.

"Adverse event" means any incident or event that may have quality of care implications for participants, including but not limited to:

- (1) Changes in the participant's condition requiring medical treatment;
- (2) Hospitalization of the participant;
- (3) Death of the participant;
- (4) All bodily injuries sustained by the participant for which medical treatment (i.e., treatment rendered by a physician, nurse practitioner, ambulance or emergency medical personnel, or emergency room medical staff) that may or may not require necessary follow-up regardless of cause or severity;

- (5) Injuries of unknown cause;
- (6) All reports of abuse and neglect made to the Department of Human Services Adult Protective and Community Services Branch (APCS) or the Department of Human Services Child Welfare Services Branch (CWS);
- (7) All medication errors and unexpected reactions to drugs or treatment;
- (8) Situations where participant's whereabouts are unknown; or situations where participant's behavior requires a plan of action or intervention.

"Applicant" means a person whose written application has been submitted to the division but who has not received final action on their application.

"Application" means the documentation needed to determine eligibility for services from the division. An application must be complete to be considered.

"Assessment" means the process of gathering a broad range of information through indirect and direct means such as interviewing, record reviews, and direct observations. Assessment information assists in identifying what is important to the person, how any issue of health or safety may be addressed, and what needs to happen to support the person in the person's desired life.

"Assistive technology" means a device such as an item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain or improve the functional capabilities of a participant or a service that directly assists the participant in the selection, acquisition or use of an assistive device. Assistive technology does not include devices and services available under the State Plan and EPSDT.

"Case management services" means services defined in HRS §333F-1.

"Centers for Medicare & Medicaid Services (CMS)" means the United States Department of Health and Human Services, Center for Medicare & Medicaid services.

"Chore services" means services needed to maintain the home in a clean, sanitary and safe environment.

"Clinical Interdisciplinary Team (CIT)" means the established committee that uses available clinical evidence-based and current prevailing practices in the field of intellectual and other disabilities to assist in the determination of eligibility and to provide consultation to the case managers.

"Conservator" means a person who is appointed by a court to manage the estate of a protected person pursuant to section 560:5-409, HRS. The term includes a limited conservator.

"Consumer directed services" means services where the provider is directly employed by the participant or designated representative and meets the developmental disabilities division's criteria to deliver non-Medicaid services and Medicaid waiver services.

"Cost share" means the amount identified by the department of human services as an individual's excess income available for meeting a portion of the individual's own Medicaid health care cost.

"Department" means department of health, State of Hawaii.

"Department of Health (DOH)" means department of health, State of Hawaii.

"Department of Human Services (DHS)" means the department of human services, State of Hawaii, which administers Title XIX, section 1915(c) of the Social Security Act (Hawaii Medicaid program).

"Developmental disabilities" means a severe chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two (22);
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic sufficiency; and

- (5) Reflects the person's need for a combination and sequence of special care, interdisciplinary care, or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

"Developmental Disabilities Division (DDD)" means developmental disabilities division, department of health, State of Hawaii.

"Director" means director of the department of health, State of Hawaii.

"Division" means the developmental disabilities division, department of health, State of Hawaii.

"Division chief" means the chief of the developmental disabilities division, department of health, State of Hawaii.

"Early and Periodic Screening, Diagnostic, and Treatment (EPSDT)" means Medicaid's comprehensive and preventive child health program for individuals under the age of twenty-one (21) years.

"Emergency outreach" means services that are immediate and short-term, on-site or telephonic, support for situations in which a participant's presence in home or program is at risk due to the participant's display of challenging behavior that occurs with intensity, duration and frequency so as to endanger the participant's safety or the safety of others or results in the destruction of property.

"Emergency respite services" means emergency short-term out-of-home placement for a participant with potential for danger to self or others, challenging behavior, or the participant's significant support system is compromised such as the death of a primary caregiver.

"Emergency shelter services" means emergency short-term out-of-home placement of a participant in need of intensive intervention in order to avoid institutionalization or more restrictive placement and

for return to the current or a new living situation once stable.

"Employment services" means pre-vocational, or on-going individual employment support or group employment support to assist a participant to prepare for, obtain, and sustain paid employment at or above the State's minimum wage or to engage in self-employment.

"Environmental accessibility adaptations (EAA)" means those physical adaptations to a participant's home that are necessary for the health, welfare and safety of the participant and that enable the participant to function with greater independence in the home. Such adaptations include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities or the installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the participant.

"Guardian" means a court appointed legal guardian of the person pursuant to sections 560:5-204 and 560:5-304, Hawaii Revised Statutes.

"Home and community-based services (HCBS) waiver program" means services provided under the Title XIX, section 1915(c) waiver of the Social Security Act. The HCBS program permits a state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization.

"Individualized service plan (ISP)" means the written plan required by section 333F-6 that is developed by the individual, with the input of family, friends, and other persons identified by the individual as being important to the planning process. The plan shall be a written description of what is important to the individual, how any issue of health or safety shall be addressed, and what needs to happen to support the individual in the individual's desired life.

"Instrumental activities of daily living" (IADL) means activities such as light housework, laundry,

meal preparation, transportation, grocery shopping, using the telephone, managing one's medication and money management.

"Intellectual disability (ID)" means significantly sub-average general intellectual functioning resulting in or associated with concurrent moderate, severe, or profound impairments in adaptive behavior and manifested during the developmental period.

"Intermediate care facility for individuals with intellectual disabilities (ICF/ID)" means an ICF/ID that provides intermediate care facility/mental retardation (ICF/MR) services as defined in 42 CFR 440.150.

"Intermediate Care Facility for Persons with Intellectual Disabilities level of care (ICF/ID LOC)" is a level of care determination for an individual applying for Medicaid waiver services. An individual that meets ICF/ID LOC shall have a diagnosis of either developmental or intellectual disability, adaptive functioning with at least moderate deficiency or below, and will benefit from waiver services.

"Medicaid waiver" or "waiver services" or "waiver" or "home and community-based services" program means the Title XIX, section 1915(c) waiver program approved by the Centers for Medicare & Medicaid Services (CMS) for which institutional requirements are waived for an individual with a developmental or intellectual disability, who requires services and support similar to those provided in an institution, to remain in the community.

"Monitor" means to conduct a systematic, coordinated, objective, qualitative review of services provided by any person, agency or organization.

"Natural Support" means unpaid support that is available to the participant within the family, and community.

"Non-medical transportation" means services offered to enable a waiver participant to gain access to waiver and other community services, activities and resources. These services are offered in addition to medical transportation required by federal Medicaid

regulations and transportation services under the State Plan.

"Participant" means a person who meets the eligibility criteria and voluntarily elects to receive services from the division.

"Person" means any individual, and the individual's guardians or legal representatives.

"Personal assistance/habilitation (PAB) services" means a range of assistance or training in activities of daily living (ADL) and instrumental activities of daily living (IADL).

"Personal emergency response system (PERS)" means an emergency response system in which an electronic device that enables a waiver participant to secure help in an emergency is connected to a response center.

"Person-centered planning" means a process, directed by the individual or the family with long term care needs, intended to identify the strengths, capacities, preferences, needs, and desired outcomes of the individual.

"Provider" means an agency or individual who provides Medicaid waiver services and meets the developmental disabilities division's criteria to deliver the services to participants.

"Purchase of service (POS) provider" means an agency or individual who meets the division's criteria to deliver non-Medicaid waiver services.

"Representative" means any person who can advise and advocate for a person with a developmental or intellectual disability and who shall serve at the request and pleasure of that person; provided that should the person with a developmental or intellectual disability be a minor, is legally incapacitated, or has not requested a representative, the parent or guardian of the person may request a representative to assist on behalf of the person with a developmental or intellectual disability.

"Respite" means services that are furnished on a short-term basis because of the absence or need for relief of those individuals normally providing care for the participant.

"Services" means appropriate assistance provided to a person with a developmental or intellectual disability living in the community. These services include case management, residential alternatives, respite services, counseling, program for single-entry access, informational and educational services to the public, provision of individually appropriate services, and support which are not provided under other federal, state, or county laws and regulations.

"Severe, chronic disability" means a documented consistent pattern of disability over the lifetime of a person that is progressive or expected to be lifelong or unchanged.

"Skilled nursing (SN)" means services within the scope of chapter 457, HRS, and other skilled nursing functions required by federal law and the State Plan. Services are supervised by or provided by a registered professional nurse licensed to practice in the State of Hawaii.

"Specialized medical equipment and supplies (SMES)" means devices, controls or appliances which enable a participant to increase abilities to perform activities of daily living or to perceive, control or communicate with the environment in which the participant lives. Items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan are included.

"State matching funds" means the portion of Medicaid costs that the State pays to finance its Medicaid program. The state match is determined by the federal medical assistance percentage (FMAP).

"State Plan" means Hawaii Medicaid State Plan.

"Support" means both government funded and non-government funded services which assist a person with a developmental or intellectual disability to live in the community.

"Title XIX" means the Medicaid program defined in the Title XIX of the Social Security Act, 42 Code of Federal Regulations, Chapter 42, Public Health Service, department of health and human services.

"Training and consultation" means services for an individual who provides support, training, or supervision to a participant. These services include instruction about treatment regimens and other services included in the ISP, the use of equipment specified in the service plan, and updates as necessary to safely maintain the participant at home.

"Utilization Review Committee (URC)" means the committee that reviews services for the authorization of services above or below the service limitations or conditions to ensure that participants' needs are met.

"Vehicular modifications" means adaptations to an automobile or van to accommodate the special needs of a participant to integrate more fully into the community and to ensure the health, welfare and safety of the participant. This does not include adaptations or improvements to the automobile or van that are of general utility and are not of direct medical or remedial benefit to the participant; purchase or lease of an automobile or van; and regularly scheduled upkeep and maintenance of the automobile or van.

"Ward" means a person for whom a guardian has been appointed.

"Waitlist" means a list, maintained by the department, of persons waiting for home and community-based services. [Eff **OCT 26 2014**] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §§333F-1, 333F-2, 333F-3, 333F-5, 42 CFR §§440.150, 440.180, 441.300)

§11-88.1-3 Record Retention. (a) The division shall maintain records to document information acquired about applicants for division services and participants in the administration of the division's programs, including waiver services, according to federal and state laws, regulations, and departmental policies on record retention; the controlling time period to be determined by whichever is longest.

(b) Information acquired about applicants and participants shall:

- (1) Substantiate the expenditure of public funds;

(2) Be kept in confidential records and files of the division. [Eff ~~OCT 26 2014~~]
(Auth: HRS §§321-9, 333F-18) (Imp: HRS §§333F-2, 333F-6, 333F-8, 333F-18)

§11-88.1-4 Rights of persons with developmental or intellectual disabilities. Persons with developmental or intellectual disabilities shall have the rights as those identified in section 333F-8, HRS. In addition:

- (1) The division shall utilize its reporting and management process to collect information on adverse events.
- (2) Should abuse or neglect be suspected, the division will report the incident to the appropriate authority.
- (3) The division shall establish a policy and a process for reviewing and limiting the use of restraints or seclusion. [Eff ~~OCT 26 2014~~] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §§333F-2, 333F-8, 333F-18, 346-224)

SUBCHAPTER 2

ELIGIBILITY REQUIREMENTS

§11-88.1-5 Developmental or intellectual disabilities. (a) To be considered as having a developmental disability, a person must have a severe, chronic disability that meets the definition of developmental disability. The person must have all of the following:

- (1) A diagnosis that meets the definition of an eligible condition for a severe and chronic disability. The diagnosis is attributable to a mental or physical impairment or combination of mental and physical impairments; is manifested before the person attains age twenty-two (22); is likely to

continue indefinitely; result in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic sufficiency; and reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

- (A) Evidence of an eligible condition under cerebral palsy or epilepsy requires a diagnosis by a licensed physician; or
 - (B) Evidence of an eligible condition under autism spectrum disorder requires a diagnosis by a board certified neurologist, board certified psychiatrist, board certified developmental-behavioral pediatrician, or licensed psychologist using the most recent Diagnostic and Statistical Manual of Mental Disorders criteria; or
 - (C) Evidence of an eligible condition or disorder due to a neurological condition, or central nervous system disorder, or chromosomal disorder that results in both substantial impairment of general intellectual functioning and adaptive behavior skill deficits similar to those of a person with intellectual disability, and requires a diagnosis by a licensed physician or licensed psychologist.
- (2) Concurrent substantial deficits in at least three (3) adaptive functioning areas at least three (3) standard deviations below the mean as assessed on standardized measures of adaptive behavior.

- (A) The substantial limitation in adaptive functioning may reflect the current adaptive functioning at the time of application; and
 - (B) Must be attributable to the person's developmental disability and not solely to other excluded conditions.
- (3) The mental or physical impairment or combination of mental and physical impairments cannot be primarily from dementia, mental illness, emotional disorders, substance abuse, sensory impairment, learning disabilities, attention deficit hyperactivity disorder, spinal cord injuries, or neuromuscular disorders.
- (b) To be considered as having an intellectual disability, a person must have a severe, chronic disability that meets the definition of intellectual disability. The person must meet all of the following:
 - (1) A diagnosis by a licensed psychologist or physician or other licensed professional that meets the division's requirements. The diagnosis must meet the definition of intellectual disability using an appropriate, individually administered comprehensive intelligence quotient test administered by a licensed psychologist or school psychologist with results of two (2) or more standard deviations below the mean with onset before age eighteen years;
 - (2) Concurrent substantial deficits in at least three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency, in at least three (3) standard deviations below the mean as assessed on standardized measures of adaptive behavior;

- (3) The intellectual disability and functional deficits must be manifested before the age of eighteen years; and
 - (4) The substantial limitation in adaptive functioning may reflect the current adaptive functioning at the time of application and must be attributable to the eligible condition of intellectual disability.
- (c) To be eligible for division services, a person with a developmental or intellectual disability shall meet the following requirements.
- (1) Be a citizen of the United States, a national of a United States territory, or an alien legally admitted to the United States for permanent residency;
 - (2) Be residing voluntarily in the State of Hawaii with the intent to reside in the State permanently or indefinitely; and
 - (3) Not be a resident of a public institution, including being an inmate of a correctional facility or residential psychiatric facility.
- (d) Past and present eligibility for services is neither proof nor guarantee of future eligibility for services provided by the division. Determination of eligibility is made independently on the basis of current division eligibility criteria.
- (e) Past and present eligibility for services in other states, departments or programs, is neither proof nor guarantee of eligibility for services provided by the division. [Eff **OCT 26 2014**] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §333F-1)

§11-88.1-6 Waiver requirements. (a) To be eligible for home and community-based waiver services, a person shall be deemed eligible for division services under section 11-88.1-5, be Medicaid eligible as determined by the department of human services, and meet ICF/ID level of care as determined by the department of human services. [Eff **OCT 26 2014**] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §333F-1)

§11-88.1-7 Application for division services.

(a) A person applying for support or services under this chapter shall do so through the division's standardized access intake system.

(b) Submission of an application for division services shall indicate intent to apply for services and support from the division.

(c) The application for division services shall be made in writing on an application form prescribed by the division. Should the applicant for division services be unable to complete the application, the division will provide assistance. The application for division services shall:

- (1) Include or have attached any available information such as psychological, medical, social summary and other reports to establish eligibility for services;
- (2) Include a completed application signed by:
 - (A) The adult person with developmental or intellectual disabilities; or
 - (B) The applicant's legal guardian, or the applicant's family member, or other representative with the best interest of the applicant when the applicant is an adult; or
 - (C) The applicant's parent or legal guardian when the applicant is a minor.

Division staff may request the applicant to provide additional necessary information including standardized evaluations as determined necessary by the division to make a determination of eligibility.

(d) The date of the application for division services shall be the date of the receipt of all required documents identified by the division.

(e) Division staff shall inform the applicant of division services and the division's policies and requirements.

(f) The division will notify the applicant if all necessary information is not received by the division within ninety (90) working days of the

submittal of the application for division services, the application shall be closed, and no determination made. The applicant may request in writing that a determination be made based on available information.

(g) The division may extend the deadline up to thirty (30) working days due to an unavoidable delay in obtaining information.

(h) Upon receipt of all documents required to complete the application for division services, the division shall provide notification of receipt of a completed application, and shall determine whether the applicant for division services is eligible to receive services. The date of receipt of the final piece of documentation is considered the date of a completed application for division services.

(i) The application for division services shall not be processed and the applicant will be notified in writing if:

- (1) The applicant permanently leaves the State; or
- (2) The applicant's whereabouts are unknown; or
- (3) The applicant does not respond to written communications from the division; or
- (4) The applicant is residing in a public institution such as a correctional facility or state psychiatric facility; or
- (5) The applicant chooses to reside in a long-term care facility or in an intermediate care facility for persons with intellectual disabilities. [Eff **OCT 26 2014**] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §§333F-2, 333F-6)

§11-88.1-8 Disposition of division application.

(a) Within thirty (30) working days from the date of a completed application, the division shall determine eligibility for services; and

(b) The applicant shall be notified in writing of the eligibility determination results.

(c) Should the applicant be deemed not eligible, the written notice shall provide the reasons for

ineligibility and inform the applicant of the right to appeal and describe the appeal process.

- (1) The applicant shall be fifteen (15) working days to request an informal review with the division, in writing, as provided in section 11-88.1-17.
- (2) Should the result of the informal review be unfavorable to the applicant, the applicant may appeal the results of the informal review through a formal hearing, in writing, as provided in section 11-88.1-17.

(d) An applicant determined eligible for division services may also be eligible for Medicaid waiver services as provided in section 11-88.1-6. [Eff

] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §§333F-2, 333F-6) OCT 26 2014

§11-88.1-9 Termination of division eligibility.

(a) Eligibility for services may be terminated when the:

- (1) Participant in waiver services no longer meets the eligibility criteria in effect at the time of redetermination for services as determined by assessments or evaluations completed by qualified professionals. The division may review a person's eligibility at any time;
- (2) Participant requests termination from the program;
- (3) Participant chooses a nursing facility or ICF/ID facility in lieu of the division services;
- (4) Participant, or the participant's legal guardian, or the participant's family member, or other representative with the best interest of the participant, elects not to sign or consent to the proposed individualized service plan, the current individualized service plan has expired and no new individualized service plan is in place for ninety (90) working days or more;

- (5) Participant permanently leaves the state; or
- (6) Participant dies.

(b) The division shall provide a written notice to the participant of the division's action to terminate eligibility. Such notice shall be provided at least ten (10) working days prior to the effective date of ineligibility and shall describe the appeal process.

(c) The termination date of division eligibility shall be the date of the following situations:

- (1) Participant dies;
- (2) Participant is no longer a resident of the state;
- (3) Participant is admitted to a public institution;
- (4) Participant and the division mutually agree to an effective date prior to the first of the proceeding calendar month;
- (5) Participant enters a nursing facility or an ICF/ID facility; or
- (6) For all other situations, the effective date of termination of eligibility will be determined by the division. [Eff **OCT 26 2014**]
] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §§333F-2, 333F-18)

§11-88.1-10 Decrease or termination of services.

(a) Division and waiver services may be decreased or terminated when the:

- (1) Participant and the division or its agent mutually agree to terminate or reduce services;
- (2) Provider of service contract is terminated and no other options are available through contractual agreement;
- (3) Friends or relatives of the participant express willingness and are able to care for the participant without charge in lieu of division services;

- (4) Current services or level of services are not necessary based on an assessment by the division;
- (5) Participant, or the participant's legal guardian, or the participant's family member, or other representative with the best interest of the participant, elects to not approve or sign the proposed individualized service plan and the current individualized service plan has expired; or
- (6) Allocated resources to pay for services have reached or exceeded its limit after DOH and DHS have acted with good faith in their best efforts to secure sufficient state and federal funding, respectively.

(b) The division will provide a written notice of the action to decrease or terminate services to the participant. Such notice shall be provided at least ten (10) working days prior to the effective date of decrease or termination of services and shall also describe the appeal process.

(c) The effective date of decrease or termination of services shall be determined by the division's policy for termination. This effective date may change accordingly based on the following exceptions:

- (1) The date of the participant's death;
- (2) The day before the date the participant becomes the responsibility of department of human services managed care health plan as a long-term care enrollee;
- (3) In cases of possible fraud, the date five (5) working days after the mailing date of the notification of possible fraud. [Eff OCT 26 2014]
] (Auth: HRS §§321-9, 333F-18, 333F-19)
 (Imp: HRS §§333F-2, 333F-18; 42 CFR
 §§431.211, 431.213, 431.214)

§11-88.1-11 to 14 (Reserved)

SUBCHAPTER 3

SCOPE AND CONTENT OF SERVICES

§11-88.1-15 Scope of services. (a) Services and support administered or provided by the division for eligible persons with developmental or intellectual disabilities may include:

- (1) Access to division services;
- (2) Access to support in the community in coordination with other federal, state, county, or private agencies such as:
 - (A) Adult programs, residential alternatives and services;
 - (B) Case management services independent of the direct service provider;
 - (C) Crisis services to maintain persons with developmental or intellectual disabilities in community settings;
 - (D) Recruiting, training, certifying, monitoring of foster homes for adults with developmental or intellectual disabilities, and referral of these adults in these homes;
 - (E) Providing, planning, developing, coordinating and monitoring programs, services, or facilities necessary to provide an array of services for persons with developmental or intellectual disabilities, which are not duplicative of other entitlements;
 - (F) Informational services to families, the general public and to lay and professional groups;
 - (G) Consultative services to the judicial branch of government, educational institutions, and health and welfare agencies;
 - (H) Planning and developing collaboratively and cooperatively with public health providers and private agencies for

programs to prevent developmental or intellectual disabilities.

(b) Programs and services shall be limited to the amount of resources allocated or available for purposes of this chapter.

(c) A person shall meet eligibility requirements for services and support established and funded by the division.

(1) A person who is qualified for Medicaid coverage shall apply for and utilize home and community-based waiver services prior to accessing state funded services administered by the division.

(2) When a person cannot be served due to the unavailability of appropriate providers, necessary funding, or both, the division shall assist the person in finding other community or department resources or place the person's name on the division's waiting lists for division-funded services, or both.

(d) Home and community-based services, authorized through the Medicaid waiver program, include any service approved by CMS, such as:

- (1) Adult day health (ADH);
- (2) Assistive technology;
- (3) Case management;
- (4) Chore services;
- (5) Emergency outreach, emergency respite services, emergency shelter services;
- (6) Employment services (pre-vocational, individual employment support, group employment support);
- (7) Environmental accessibility adaptations (EAA);
- (8) Non-medical transportation;
- (9) Personal assistance/habilitation (PAB);
- (10) Personal emergency response system (PERS);
- (11) Respite;
- (12) Skilled nursing;
- (13) Specialized medical equipment and supplies;
- (14) Training and consultation; and
- (15) Vehicular modifications.

(e) Consumer-directed services approved by CMS in the waiver application include chore, PAB, and respite services.

(f) All home and community-based services shall be authorized by the division and included in the participant's written ISP.

(g) Home and community based services for a waiver participant shall be subject to the limits and conditions as contained in the Medicaid waiver.

(h) The utilization review committee reviews services for the authorization of services above or below the service limitations or conditions.

(i) Home and community-based services shall not be provided for a waiver participant under the following conditions:

- (1) While temporarily admitted to an acute care facility, rehabilitation facility, nursing facility, or intermediate care facility for individuals with intellectual disabilities unless authorized by the division;
- (2) For school-aged children for services identified in the individualized education plan; and
- (3) For services provided by other state agencies (e.g. department of education, department of human services, division of vocational rehabilitation), so as not to supplant other funding sources.

(j) Waiver participants shall receive the full Medicaid primary and acute care benefit package through a department of human services managed care health plan. All department of human services health plans are required to coordinate the primary and acute health care benefits for the home and community-based waiver participants. [Eff **OCT 26 2014**] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §321-11.2, HRS §333F-6, 333F-21, 42 CFR §440.180)

§11-88.1-16 (Reserved)

SUBCHAPTER 4

APPEAL RIGHTS; INFORMAL REVIEWS AND ADMINISTRATIVE HEARINGS

§11-88.1-17 Denial of application for division services. (a) Any applicant who is denied eligibility for division services may request:

- (1) An informal review; or
- (2) An administrative hearing; or
- (3) An informal review and an administrative hearing.

(b) An informal review is an opportunity to discuss the division action with the division and to provide additional information not previously provided to the division that may support reconsideration of the division action.

- (1) A request for an informal review shall be made in writing and shall be made within fifteen (15) working days of the date indicated on the notice of the division action.

- (2) The division shall issue a written decision within thirty (30) working days from the date the division receives the request for the informal review or as soon as practicable.

(c) An administrative hearing is a contested case held in accordance with chapter 91, HRS, and chapter 11-1, HAR.

- (1) A request for an administrative hearing shall be made in writing within fifteen (15) working days of the date indicated on the notice of the division action or the informal decision, or whichever is later.

- (2) The deadline to request an administrative hearing is not extended by an applicant's request for an informal review. [Eff OCT 26 2014]
] (Auth: HRS §§321-9, 333F-18) (Imp. HRS §333F-18)

§ 11-88.1-18 Denial of application for Medicaid waiver services. (a) Any applicant who is denied eligibility for Medicaid waiver services may request:

- (1) An informal review from the division in accordance with section 11-88.1-17(b); or
- (2) An administrative hearing from the division in accordance with section 11-88.1-17(c); or
- (3) An informal review from the department of human services in accordance with section 17-1703.1-2, HAR; or
- (4) An administrative hearing from the department of human services; or
- (5) All of the above.

(b) An administrative hearing with the department of human services is a contested case held in accordance with chapter 91, HRS, and chapter 17-1703.1, HAR.

- (1) A written request for an administrative hearing from the department of human services shall be made to the department of human services within ninety (90) working days of the date indicated on the notice of division action.
- (2) The deadline to request an administrative hearing with the department of human services is not extended by an applicant's request for a division informal review or a division administrative hearing.
- (3) The deadline to request an administrative hearing is not extended by an applicant's request for an informal review with the department of human services. [Eff **OCT 26 2014**]
] (Auth: HRS §§321-9, 333F-18) (Imp.
HRS §333F-18; 42 CFR §431.201)

§ 11-88.1-19 Suspension, reduction (decrease), or termination of division services. (a) A participant may appeal the suspension, reduction (decrease), or termination of division services. During an appeal, all services will continue. A participant may appeal the suspension, reduction

(decrease), or termination of division services by submitting a request for:

- (1) An informal review; or
- (2) An administrative hearing; or
- (3) An informal review and an administrative hearing.

(b) An informal review is an opportunity to discuss the division action with the division and to provide additional information not previously provided to the division that may support reconsideration of the division action.

- (1) A request for an informal review shall be in writing, but shall be made within fifteen (15) working days of the date indicated on the notice of division action.

- (2) The division shall issue a written decision within thirty (30) working days from the date the division receives the request for the informal review or the informal decision whichever is later.

(c) An administrative hearing is a contested case held in accordance with chapter 91, HRS, and chapter 11-1, HAR.

- (1) A request for an administrative hearing shall be made in writing within fifteen (15) working days of the date indicated on the notice of division action.

- (2) The deadline to request an administrative hearing is not extended by an applicant's request for an informal review. [Eff

OCT 26 2014
(Auth: HRS §§321-9, 333F-18) (Imp.
HRS §333F-18)

§ 11-88.1-20 Suspension, reduction (decrease), or termination of Medicaid waiver services. (a) A participant may appeal the suspension, reduction (decrease), or termination of Medicaid waiver services. During an appeal, all services will continue. A participant may appeal the suspension, reduction (decrease), or termination of Medicaid waiver services by submitting a request for:

- (1) An informal review from the division in accordance with section 11-88.1-17(b); or
 - (2) An administrative hearing from the division in accordance with section 11-88.1-17(c); or
 - (3) An informal review from the department of human services in accordance with section 17-1703.1-2, HAR; or
 - (4) An administrative hearing from the department of human services; or
 - (5) All of the above.
- (b) An administrative hearing with the department of human services is a contested case held in accordance with chapter 91, HRS, and chapter 17-1703.1, HAR.
- (1) A written request for an administrative hearing from the department of human services shall be made to the department of human services within ninety (90) working days of the date indicated on the notice of division action.
 - (2) The deadline to request an administrative hearing with the department of human services shall not be extended by an applicant's request for any of the following:
 - (A) An informal review with the division;
 - (B) An administrative hearing with the division; or
 - (C) An informal review with the department of human services. [Eff **OCT 26 2014**
(Auth HRS §§321-9, 333F-18) (Imp.
HRS §333F-18; 42 CFR §431.201)

§11-88.1-21 (Reserved)

SUBCHAPTER 5

PROVISION OF SERVICES

§11-88.1-22 Case managers and individualized service plans. (a) Should the division determine in

accordance with subchapter 2 that the applicant is eligible for services, the participant shall be assigned to a case manager within ten (10) working days of the date of eligibility determination. The division's case manager shall assist the participant to develop, with the input of family and friends as necessary, an individualized service plan.

(b) For participants admitted into the home and community-based services waiver program, within thirty (30) working days after the date of admission into the waiver program, the division's case manager shall develop a revised written individualized service plan prescribing the home and community-based services that will be provided, and specifying the goals, frequency and type of providers.

(c) The individualized service plan shall be developed by the individual, with the input of family, friends, and other persons identified by the individual as being important to the planning process and may include but shall not be limited to:

- (1) Assessment of what is important to the participant, how any issue of health or safety shall be addressed, and what needs to happen to support the participant in the participant's desired life;
- (2) A budget to effectuate the individualized service plan; and
- (3) Authorization of services and support funded by the division.

(d) The division's case manager shall ensure that the individualized service plan is implemented, monitored, evaluated, and revised as necessary.

(e) Services and support provided by the division shall continue as long as:

- (1) The participant continues to be eligible for services from the division as provided in section 11-88.1-5, HAR;
- (2) The participant has continued need for services;
- (3) The support and services are available in the community; and

(4) The division has the available financial resources to pay for the support and services.

(f) The division's case manager shall send a copy of the individualized service plan to the participant, and with the consent of the participant, send copies of the individualized service plan to persons responsible for implementing the individualized service plan. [EFFECT 26 2014 (Auth: HRS §§321-9, 333F-18) (Imp: HRS §333F-6, 333F-18, 333F-19)]

§11-88.1-23 Payment for division services. (a) Services to eligible persons may be provided directly by division staff or by POS providers.

(b) The director may, following the process for procurement set forth under existing law, contract with private groups, institutions, corporations, and other qualified private organizations to provide services and support for persons with developmental or intellectual disabilities. Services and support provided by POS providers shall be limited by the terms, scope and funding specified in the purchase of service contract.

(c) The director may also enter into agreements to effectuate the purposes of this chapter with the federal government, other state departments and agencies, and the counties.

(d) The division may obtain services from POS providers for a fee for persons with developmental or intellectual disabilities. In these instances, the division shall reimburse the POS provider of the services according to the department's negotiated payment rates for the service.

(e) State funds will not be expended for out-of-home placement to another state, or to supplant, substitute, duplicate or supplement services provided by the State Plan, IDEA, or federal, state, or county mandate or law.

(f) The division may require POS providers that receive division funds for program services and that generate revenues from products or services by program

participants to use the revenues from products or services for the purpose for which the funds were originally granted. Further, the revenues may be used for:

- (1) Expanding the project or program;
 - (2) Supporting other projects or programs that further the services for persons with developmental or intellectual disabilities; or
 - (3) Obtaining equipment or other assets needed for the project or program.
- (g) POS providers that receive division funds for providing developmental or intellectual disabilities services, shall apply cost share prior to receiving division funds.
- (h) The department shall not supplant or duplicate services provided under other federal, state, or county laws. [Eff **OCT 26 2014**] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §§333F-2, 333F-6 333F-17)

§11-88.1-24 Payment for home and community-based Medicaid waiver services. (a) The department shall pay only for Medicaid home and community-based services approved by CMS, specified in a written individualized service plan made between the participant and the division or its designee, and authorized by the case manager.

(b) The payment rate for each service shall be established by the [division] based on applicable Medicaid rates.

(c) The payment rate for each service shall not exceed the approved rate of payment by CMS.

(d) The department or the division shall recover overpayments from providers.

(e) Subject to the availability of appropriate providers and necessary funding, for a person deemed eligible for HCBS waiver services, the department shall provide services within ninety (90) working days of the date of eligibility determination.

(f) Providers that receive waiver funds for providing developmental or intellectual disability services shall apply cost share prior to receiving waiver funds. [Eff OCT 26 2014] (Auth: HRS §§321-9, 333F-13) (Imp: HRS §333F-21)

§11-88.1-25 Purchase of service contracts. (a) All programs and services contracted for or provided by the division shall meet the division's program and fiscal standards as well as federal standards when applicable. All standards and monitoring procedures are established to ensure delivery of quality programs and appropriate outcomes and services to persons with developmental or intellectual disabilities.

- (1) The program standards shall be established by the division. The division may apply national recognized standards and principles as its program standards.
- (2) The division shall designate monitoring teams to determine compliance with program and fiscal standards.

(b) Rights of persons applying for or receiving services shall be recognized and protected at all times.

(c) All records, applications, reports, certificates, or other documents made for the purpose of these rules which directly or indirectly identify a person subject hereto shall be kept confidential pursuant to the provisions of section 333E-6, Hawaii Revised Statutes. [Eff OCT 26 2014] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §§333E-6, 333F-2, 333F-20)

§11-88.1-26 Payment for care and treatment of persons receiving services; liability. (a) Payment for care and treatment of persons receiving services and liability are as written in section 333F-13, HRS.

- (1) Each participant or the guardian, parent, or liable party shall be responsible for a

monthly payment as determined by the division.

- (2) An agreement shall be signed by the division and the participant or the liable party, which states the payment amount and the date payment is due to the division.
- (3) Should the division fail to receive the agreed upon amount by the specified date for two (2) consecutive months, a notice of termination will automatically be sent notifying the recipient that services will be terminated thirty (30) working days from the date the notice is mailed. [Eff **OCT 26 2014**]
] (Auth: HRS §§321-9, 333F-13) (Imp: HRS §333F-6, 333F-13)

§§11-88.1-27 to 11-88.1-28 (Reserved)

SUBCHAPTER 6

HOME AND COMMUNITY-BASED SERVICES PROVIDERS

§11-88.1-29 Providers of home and community-based services. (a) Any willing provider that meets the qualifications defined in the home and community-based services waiver as set forth in the DDD Medicaid Waiver Provider Standards Manual and the standards established by the division may submit a written request to the division to become a provider.

(b) With the exception of contractors for environmental accessibility adaptations, vehicle modifications, specialized medical equipment and supplies, assistive technology, personal emergency response system, and consumer directed service providers; all providers shall sign a Medicaid provider agreement with the department of human services.

(c) A provider shall comply with all applicable federal, state, and local laws, ordinances, rules,

regulations and licensing requirements.

(d) A provider shall comply with all provider division and program standards at all times. The division may apply nationally recognized standards and principles as its program standards.

(e) A provider shall obtain and maintain liability insurance with respect to the provider's operation of a home or facility in a coverage amount deemed sufficient and appropriate by the division and provide proof of such insurance on an annual basis.

(f) A provider who transports participants shall obtain and maintain automobile insurance in a coverage amount deemed sufficient and appropriate by the division and provide proof of such insurance on an annual basis.

(g) The division shall designate monitoring teams to determine compliance with program and fiscal standards.

(h) A provider's Medicaid provider agreement with the department of human services shall be terminated when the provider fails to provide home and community-based services in accordance with the terms set forth in the Medicaid provider agreement.

(i) A provider's Medicaid provider agreement with the department of human services may be terminated when the provider fails to comply with division and program standards applicable to providers.

(j) A provider shall recognize and protect the rights of persons applying for or receiving services at all times.

(k) A provider shall keep confidential all records, applications, reports, certificates or other documents made for the purposes of these rules which directly or indirectly identify a person subject hereto, pursuant to the provisions of section 333E-6, HRS and federal law. [Eff **OCT 26 2014**] (Auth: HRS §§321-9, 333F-18) (Imp: HRS §§333E-6, 333F-2, 42 CFR §§431.107, 440.180, 455 subpart E)

§11-88.1-30 Corrective action. (a) When the department of human services or the division determines that a provider has failed or is unable to comply with the applicable requirements of the Medicaid provider agreement, the department of human services or the division shall notify the provider in writing of the specific areas of noncompliance and may do one or more of the following:

(1) Establish a specific time frame for the correction of each area of noncompliance and require submission of an acceptable written corrective action plan from the provider that addresses each area of noncompliance; or

(2) Where a provider fails to meet standards through a corrective action plan, the division and the department of human services may suspend the provider's certification to participate in the waiver program for all or new participants.

(b) Any provider that is suspended from participation in the waiver program shall be offered provider appeal rights to the department of human services under subchapter 3 of chapter 17-1736.

(c) When the identified areas of noncompliance are not corrected within the time specified in an accepted plan of correction, the department of human services or the division may require the transfer of participants to another provider and terminate the Medicaid provider agreement.

(d) The Medicaid provider agreement shall be immediately terminated when there is noncompliance, as determined by the department of human services and the division, which poses an imminent and serious risk to the life, health, safety or welfare of participants.

(e) Any provider whose Medicaid provider agreement is terminated from participation in the waiver program shall be offered provider appeal rights to the department of human services under subchapter 3 of 17-1736.

(f) Upon termination of a Medicaid provider agreement:

- (1) The division shall immediately notify the provider's participants of the termination and assist participants in the selection of and transition to a new provider; and
 - (2) The provider shall cease providing services immediately after existing participants have been transferred to another provider.
- (g) Should the department of human services and the division determine that the provider of a terminated Medicaid provider agreement is willing and able to comply with the requirements of the Medicaid provider agreement, a new application for a Medicaid provider agreement may be submitted. If the application is approved, the provider may enter into a new Medicaid provider agreement.
- (h) All suspensions or terminations of Medicaid provider agreements shall be authorized by the department of human services prior to being implemented by the division. [Eff **OCT 26 2014**]
(Auth: HRS §§ 321-9, 333F-18, 346-14) (Imp: 42 CFR part 455, subpart E)

§11-88.1-31 Other basic service requirements.

- (a) Providers of home and community-based services shall establish and implement written policies and procedures that govern access to, duplication of, and dissemination of information from applicants' and participants' records.
- (b) The following information about applicants and participants shall not be released to outside parties other than the division, the department of human services and their assigned representatives or contractors, or as required or allowed by federal and state laws:
- (1) Names and addresses;
 - (2) Eligibility status, the amount of assistance, or both;
 - (3) Medical services provided;
 - (4) Social and economic conditions or circumstances;

- (5) The department of human services or division's evaluation of personal information;
- (6) Medical data, including diagnosis and past history of disease or disability; and
- (7) Other information as required by the division.

(c) The conditions for release of information by the provider shall be in accordance with federal and state laws and regulations.

(d) A participant shall be given a choice of available qualified providers of waiver services identified in the individualized service plan.

(e) Providers shall provide home and community-based services to waiver participants without discrimination, separation or any other distinction on the basis of race, color, national origin, or mental or physical disability in accordance with applicable federal and state statutes, rules and regulations.

(f) Providers of home and community-based waiver services shall retain for seven (7) years from the date of a participant's discharge all records pertaining to that participant. [Eff **OCT 26 2014**]
(Auth: HRS §§321-9, 333F-18, 346-14) (Imp: HRS §622-58, 42 CFR §431.107)

§§11-88.1-32 to 11-88.1-33 Reserved

OFFICE
GENERAL INVESTIGATIVE
DIVISION

14 OCT 16 11:42

The Department of Health authorized the repeal of Chapters 11-86, 11-87, and 11-88, and the adoption of Chapter 11-88.1 of the Hawaii Administrative Rules, following public hearings held on Hawaii on January 31, 2014 and February 7, 2014, on Kauai on February 14, 2014, on Oahu on February 21, 2014 and February 28, 2014, and on Maui on March 7, 2014, after public notice was given in the Honolulu Star-Advertiser, the Hawaii Tribune-Herald, the Garden Island, the Maui News, and the West Hawaii Today on December 29, 2013 and February 21, 2014, and following public hearings held on Oahu, Hawaii, Kauai, Maui and Molokai on July 10, 2014, after public notice was given in the Honolulu Star-Advertiser, the Hawaii Tribune-Herald, the Garden Island, the Maui News, and the West Hawaii Today on June 10, 2014.

Repeal of Chapters 11-86, 11-87, and 11-88, and adoption of Chapter 11-88.1 of Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.



LINDA ROSEN, M.D., M.P.H.
Director
Department of Health

Date: SEP 30 2014

APPROVED:



NEIL ABERCROMBIE
Governor
State of Hawaii

Date: 10.15.14

APPROVED AS TO FORM:



Deputy Attorney General
State of Hawaii

Date: SEP 25 2014

Date: _____
Filed: _____

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LIEUTENANT GOVERNOR'S
OFFICE