

DEPARTMENT OF HEALTH

Amendments to Chapter 11-72
Hawaii Administrative Rules

March 31, 2020

SUMMARY

1. §11-72-2 is amended.
2. New §11-72-31.5 is added.
3. New subchapter 9 is added.



§11-72-2 Definitions. Whenever used in this chapter, unless the context otherwise provides:

* * *

"Alternative destination" means a health care facility as defined in section 323D-2, HRS, other than a hospital-based emergency department, that has been designated by the department of health, in accordance with subchapter 9, to receive and treat patients who have been assessed by emergency medical services personnel as having injuries or conditions that may be safely and appropriately treated by the alternative destination. Alternative destination types may include, but not be limited to, urgent care clinics, crisis or subacute stabilization units, and sobering centers.

* * *

"Community paramedicine" or "community paramedicine program" means an enhanced and expanded service in the state comprehensive emergency medical services system that allows state-licensed health care professionals, and community health workers, to assist with public health, primary care, and prevention services, including services through telehealth.

"Community paramedic visit" means a scheduled visit in which an emergency medical services professional certified under section 453-32, HRS, assists with public health, primary care, and prevention services, including services through telehealth.

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"Transport to an alternative destination" means a patient is provided emergency medical services and transported by emergency ground ambulance to an alternative destination.

"Treat/no transport" means a patient is provided advanced life support or basic life support by

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emergency medical services personnel but is not
transported. [Eff AUG 12 1985; am **APR 30 2020**]
(Auth: HRS §§321-223, 224.2, 321-224.4, 321-233) (Imp:
HRS §§321-222, 321-223, 321-224.2, 321-224.4, 321-226,
321-228, 321-233)

§11-72-31.5 Fees for treat/no transport, transport to an alternative destination, and community paramedic visits. (a) The fee for treat/no transport shall be as follows:

(1) For advanced life support services:
\$1,530.00; and

(2) For basic life support services: \$1,363.00.

(b) The fee for transport to an alternative destination shall be \$1,363.00 plus mileage of nineteen dollars per mile.

(c) The fee for a community paramedic visit shall be \$1,363.00.

(d) The fees under subsections (a), (b), and (c) shall be subject to fee increases, fee collection, and ability to pay pursuant to sections 11-72-31 and 11-72-32.

(e) In the sole discretion of the department of health, the fees under subsection (a) may be reduced or waived by the department of health where the services provided by emergency medical services personnel do not justify the fees charged or where an emergency situation, as determined by the department of health, exists. For purposes of this subsection, an emergency situation is a state of affairs involving an actual substantial injury to public health or where there is a clear and present danger of such an injury occurring. [Eff **APR 30 2020**] (Auth: HRS §§321-224.2, 321-224.4) (Imp: HRS §§321-224.2, 321-224.4)

SUBCHAPTER 9

DESIGNATION OF ALTERNATIVE DESTINATIONS

§11-72-70 Designation of alternative destinations; methods. (a) The department of health may designate an alternative destination pursuant to an application for designation by an applicant that meets the requirements of sections 11-72-71 and 11-72-72, or it may directly designate a State-operated or State-contracted health care facility as defined in section 323D-2, HRS, or a Federally Qualified Health Center with a freestanding emergency department that it determines meets the minimum requirements under section 11-72-72.

(b) The department of health may engage in discussions with potential applicants for the purpose of understanding the availability of services and facilities; provided that the department of health shall not engage in any activity that may give an applicant a competitive advantage over another. [Eff **APR 30 2020**] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-71 Application for designation. (a) For the purposes of this subchapter, "applicant" shall mean a person or entity submitting an application for designation as an alternative destination under this subchapter.

(b) Upon determining a need for an alternative destination, the department of health shall establish an open application period for the designation of the alternative destination.

(c) An open application period shall not be less than thirty calendar days.

(d) At least thirty calendar days prior to the start of an open application period, the department of health shall publish a public notice of the open application period at least once in a daily newspaper of statewide circulation and shall post the public

notice on the department's website. The public notice shall include, at a minimum, the following information:

- (1) A brief description of the alternative destination type and services desired for designation, including the geographic area to be served;
- (2) The maximum number of alternative destination sites the department of health intends to designate by geographic area;
- (3) The target population to be served in terms of the estimated number of patients and the patients' health needs within the geographic area to be served;
- (4) The date and time the open application period begins and ends;
- (5) Where and how to obtain an application form;
- (6) Where and how to submit an application form;
- (7) The date, time, and place of a pre-application meeting to be held, if any;
- (8) The name, phone number, or electronic mail address of the contact person to whom inquiries may be addressed; and
- (9) Any other information the department of health deems appropriate.

(e) An applicant shall submit a completed application on a form and in a manner prescribed by the department of health.

(f) Applications shall be submitted to the department of health no later than the end of the open application period.

(g) If an applicant believes any portion of an application contains information that should be withheld as confidential, the applicant shall request in writing nondisclosure of designated proprietary data to be kept confidential and shall provide justification to support confidentiality. The applicant shall clearly mark the designated proprietary data in the application.

(h) Information and statements provided in an application shall become conditions of a designation as an alternative destination if the application is

selected, and failure to satisfy the conditions may be cause for suspension or revocation pursuant to section 11-72-80. [Eff **APR 30 2020**] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-72 Minimum requirements for applicants.

- (a) An applicant shall:
- (1) Be registered to do business in the State of Hawaii;
 - (2) Have a Hawaii tax identification number;
 - (3) Be licensed in accordance with applicable federal and State laws for the type of health care facility;
 - (4) Have accreditation or certification as may be required by the department of health for the particular type of alternative destination to be designated;
 - (5) Accept all patients regardless of a patient's race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability, including the use of a service animal;
 - (6) Accept all federal, State, or private health insurance;
 - (7) Accept all patients regardless of a patient's ability to pay;
 - (8) Be open for service twenty-four hours per day and three hundred sixty-five days per year; provided that the department of health may establish fewer hours or days to ensure a minimum level of service;
 - (9) Have a qualified medical staff person available on-site to immediately receive patients from emergency medical services personnel; provided that "qualified medical staff person" shall include a physician, physician assistant, or paramedic licensed or certified pursuant to chapter 16-85, an osteopathic physician licensed pursuant to chapter 16-93, or a registered nurse or

- advanced practice registered nurse licensed pursuant to chapter 16-89;
- (10) Have a physician licensed pursuant to chapter 16-85, to provide overall medical direction;
 - (11) Have additional, appropriately credentialed medical and operational staffing as may be required by the department of health to ensure safe and appropriate care for patients;
 - (12) Utilize an electronic health records system and provide data, as specified by the department of health, related to patients transferred by ambulance;
 - (13) Have an ambulance parking plan and an accessibility plan for gurneys. Both plans shall be subject to the department of health's determination of adequacy;
 - (14) Have at least two examination rooms, a separate waiting room, and restricted access patient bathrooms, and any additional building or space requirements as required by the department of health;
 - (15) Provide treatment and diagnostic services as specified by the department of health for the type of alternative destination being designated;
 - (16) Have appropriate medical equipment and supplies as specified by the department of health for the treatment of patients;
 - (17) Have a transfer plan, determined to be adequate by the department of health, to ensure the timely transfer of patients to the appropriate level of medical care;
 - (18) Have a dedicated telephone line and specified internet connection to be used to communicate with emergency medical services personnel;
 - (19) Comply with policies and protocols established by the department of health related to the receiving and treatment of

patients from emergency medical services personnel;

- (20) Have no pending litigation that, in the determination of the department of health, may substantially adversely affect the applicant's ability to perform as an alternative destination; and
- (21) Meet any other requirements established by the department of health to ensure safe and appropriate care and provide any documentation evidencing ability to meet any requirements as may be required by the department of health.

(b) The department of health shall list all minimum requirements and required documentation in the application form. [Eff **APR 30 2020**] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-73 Review of applications; rejection.

- (a) The department of health shall review applications for completeness and may reject an application for any of the following reasons:
 - (1) The application is submitted after the end of the open application period;
 - (2) The application is deemed incomplete by the department of health; provided that an application that contains errors determined to be non-substantive by the department of health may be deemed complete;
 - (3) The application does not meet the requirements of section 11-72-72;
 - (4) The provision of misleading, incorrect, false, or fraudulent information or the withholding or omission of information that is material to an application;
 - (5) Refusal by an applicant to allow a site visit or to provide any information reasonably requested or required by the department of health in the evaluation of an application; or

(6) Any other reason that serves the purposes of this subchapter.

(b) The department of health shall send a written notice notifying an applicant of a rejection decision and the reason therefor.

(c) An applicant aggrieved by a decision made pursuant to this section may request an appeal in accordance with section 11-72-81. [Eff

APR 30 2020] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-74 Cancellation of open application period. (a) The department of health may cancel an open application period at any time prior to designation when the department finds it is in the public interest.

(b) The department of health shall publish a public notice of the cancellation of an open application period in a daily newspaper of statewide circulation and shall post the public notice on the department's website. The department of health shall send written notice of a cancellation to any applicants who submitted an application. [Eff

APR 30 2020] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-75 Evaluation of applications. (a) When evaluating applications, the department of health may conduct discussions with applicants or conduct site visits for the purposes of:

- (1) Verifying information provided in an application;
- (2) Promoting understanding of the minimum requirements pursuant to section 11-72-72; or
- (3) Clarifying elements of an applicant's application, qualifications, or ability to meet the minimum requirements;

provided that applications may be accepted and evaluated without discussions or site visits.

(b) Upon request from the department of health, an applicant shall submit additional materials and documentation reasonably required by the department of health in its evaluation of an application.

(c) The department of health shall accord fair and equal treatment to applicants with respect to any opportunity for discussions and site visits.

(d) The department of health shall evaluate applications to determine whether they adequately meet the minimum requirements pursuant to section 11-72-72.

(e) The department of health shall make a written evaluation for each application. [Eff

APR 30 2020] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-76 Granting of designation. (a) The department of health shall grant designation to an application that has been evaluated as meeting the minimum requirements of section 11-72-72, except when the number of applications evaluated as meeting the minimum requirements exceeds the maximum number of alternative destination sites to be designated as established in the public notice under section 11-72-71(d), in which case subsection (b) shall apply.

(b) When the number of applications evaluated as meeting the minimum requirements exceeds the maximum number of alternative destination sites to be designated for a geographic area, the department of health may:

- (1) Grant designation to all applications regardless of the maximum number of alternative destination sites established in the public notice for the geographic area; or
- (2) Grant designation to the application or applications that the department of health determines to be the most advantageous to the State in meeting the maximum number of alternative destination sites established in the public notice for the geographic area; provided that a justification of this

determination shall be included in each applicant's written evaluation.

(c) Upon completion of the evaluation process, the department of health shall compile a list of applicants that were selected for designation and shall send the list to each applicant and post the list on the department's website.

(d) The department of health shall issue a written notice of designation to each applicant selected for designation. The notice shall include, at a minimum:

- (1) The name and physical address of the alternative destination site;
- (2) The term of the designation; and
- (3) A statement of or reference to requirements that must be met to retain the designation pursuant to this subchapter.

(e) An applicant aggrieved by a decision made pursuant to this section may request an appeal pursuant to section 11-72-81. [Eff **APR 30 2020**]
(Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-77 Designation; term and extensions. (a) The term of designation granted by the department of health shall be three years unless suspended or revoked by the department of health or surrendered by the alternative destination.

(b) The department of health may extend the term of a designation one time if the department determines that the alternative destination is still needed, an extension is in the interest of public health and safety, and the alternative destination continues to comply with this subchapter.

(c) To obtain an extension of term, an alternative destination shall submit an updated application to the department of health on a form and in a manner prescribed by the department of health.

(d) In determining whether the alternative destination continues to comply with this subchapter, the department of health shall evaluate an application for extension in accordance with section 11-72-75 and



shall review any instance of noncompliance with this subchapter during the alternative destination's original term of designation.

(e) The extended term of designation may be granted by the department of health and shall not exceed three years.

(f) The department of health shall send a written notice notifying an alternative destination of the department's decision to extend the designation term.

(g) An alternative destination aggrieved by a decision made pursuant to this section may request an appeal pursuant to section 11-72-81. [Eff

APR 30 2020] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-78 Designation; transferability. No designation shall be assigned or otherwise transferred except with the prior written approval of the department of health. The department of health shall approve an assignment or transfer based on its determination that the assignment or transfer will not adversely impact the alternative destination's ability to comply with the requirements of this subchapter and its determination that the assignee or transferee meets the requirements of section 11-72-72. [Eff

APR 30 2020] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-79 Operating requirements for alternative destinations. An alternative destination shall:

- (1) Comply with the provisions of this subchapter and all other applicable laws and all department of health policies, procedures, and protocols;
- (2) Comply with the requirements of section 11-72-72 and the requirements specified by the department of health in the application under which the alternative designation was designated;

- (3) Decline a patient from emergency medical services personnel only when the alternative destination has made a medical determination that the alternative destination cannot treat the patient safely and appropriately; provided that the alternative destination shall document the specific reasons why a patient was declined for treatment;
- (4) Comply with all requirements imposed by federal, State, and private health insurers;
- (5) Maintain malpractice insurance and commercial general liability insurance in accordance with coverage limits established by the department of health;
- (6) Collect and submit patient data to the department of health in accordance with forms and instructions prescribed by the department of health, which may include the use of department of health-approved software;
- (7) Maintain adequate records and documentation to demonstrate the alternative destination's compliance with this subchapter;
- (8) Within five working days, notify the department of health in writing of any inability to meet any of the requirements of this subchapter that is expected to last for more than five consecutive days or any change to the operations that may affect the alternative destination's performance under this subchapter;
- (9) Notwithstanding paragraph (8), immediately notify the department of health if the alternative destination is not able to accept patients from emergency medical services personnel, the reason therefor, and the estimated length of time these circumstances will continue; and upon remedying these circumstances, immediately notify the department of health the alternative destination is able to accept patients;



- (10) Notify the department of health in writing no later than ninety days prior to voluntarily surrendering its designation;
- (11) Upon reasonable notice, provide the department of health access to inspect its facility, interview personnel, or review, inspect, evaluate, and audit records and documents related to the provision of care as an alternative destination to verify compliance with this subchapter; and
- (12) Comply with any other operating requirements established by the department of health to ensure safe and appropriate care. [Eff
APR 30 2020] (Auth: HRS §321-224.2)
(Imp: HRS §321-224.2)

§11-72-80 Suspension or revocation of designation. (a) The department of health may suspend or revoke a designation for any of the following reasons:

- (1) Failure to comply with any provision of this subchapter or any other applicable law;
 - (2) Submission of misleading, incorrect, false, or fraudulent information to the department of health; or
 - (3) Any attempt to prevent, interfere with, or impede in any way, the work of the department of health in the lawful enforcement of this subchapter or any other applicable State law.
- (b) In determining whether to revoke a designation, the department of health may consider:
- (1) The number of instances of non-compliance;
 - (2) The severity of each instance relative to public health and safety;
 - (3) The nature and circumstances of each instance;
 - (4) Whether each instance was corrected, the manner of correction, and the duration of the instance; and

- (5) Whether the instances indicate a lack of commitment or ability to comply with this subchapter.

(c) The department of health, when it has reason to believe a violation of any provision of this subchapter has occurred, may conduct an investigation to determine whether the violation has occurred. The department of health shall notify the alternative destination of an investigation, unless extenuating circumstances exist that would reasonably preclude notification.

(d) If the department of health determines that an alternative destination has violated any provision of this subchapter, the department of health shall notify the alternative destination in writing of the specific areas of noncompliance and the department of health may do one or more of the following:

- (1) Establish a specific timeframe for the correction of areas of noncompliance; or
- (2) Require submission of a written corrective action plan from the alternative destination that addresses areas of noncompliance and that shall be subject to approval by the department of health.

(e) If the identified areas of noncompliance are not corrected to the satisfaction of the department of health or a satisfactory corrective action plan is not submitted to the department of health within the required timeframe and the department of health intends to suspend or revoke a designation, the department of health shall notify the alternative destination in writing of the suspension or revocation decision, the reason or reasons therefor, the right to appeal the decision, and the procedure to appeal the decision.

(f) Without regard to subsections (c), (d), and (e), the department of health may summarily suspend a designation if the department of health finds that an alternative destination has engaged in a deliberate and wilful violation of these rules or that the public health, safety, or welfare requires immediate action. The department of health shall notify the alternative

destination in writing of the suspension decision, the reason or reasons therefor, the right to appeal the decision, and the procedure to appeal the decision.

(g) Upon a finding by the department of health that the alternative destination has not violated a provision of this subchapter or has satisfactorily corrected the areas of noncompliance, the department of health shall rescind its suspension and reinstate the alternative destination's designation.

(h) An alternative destination aggrieved by a decision made pursuant to this section may request an appeal pursuant to section 11-72-81. [Eff

APR 30 2020] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-81 Appeals. (a) An alternative destination aggrieved by a decision made pursuant section 11-72-73, 11-72-76, 11-72-77, or 11-72-80 may appeal the decision by filing a written complaint to the department of health in accordance with section 11-1-22 not later than fourteen calendar days from the date of notification. For the purposes of this subsection, "date of notification" shall mean the date the department of health sent an electronic mail of the department's decision to the aggrieved party or three working days after the department of health mailed a letter of the department's decision to the aggrieved party.

(b) An appeal hearing shall be conducted in accordance with chapter 91, HRS, and chapter 11-1.

(c) Filing of an appeal shall not operate as a stay of a decision made pursuant to section 11-72-73, 11-72-76, 11-72-77, or 11-72-80. [Eff

APR 30 2020] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)

§11-72-82 Disclosure of information. (a) The department of health shall not disclose information in any application or related to the number or names of persons or entities that obtained an application,

attended a pre-application meeting, or submitted an application until after the granting of designation.

(b) All applications shall be available for public inspection in accordance with existing law governing information practices after the granting of designation, except those portions an applicant indicates in writing as trade secrets or other proprietary data that are to remain confidential.

(c) All information received by the department of health from an applicant or alternative destination shall be subject to federal and State laws relating to privacy and information practices. [Eff

APR 30 2020] (Auth: HRS §321-224.2) (Imp: HRS §321-224.2)



DEPARTMENT OF HEALTH

Amendments to chapter 11-72, Hawaii
Administrative Rules, on the Summary page dated March
31, 2020, shall take effect upon filing with the
Office of the Lieutenant Governor.



BRUCE S. ANDERSON
Director of Health

APPROVED AS TO FORM:



Deputy Attorney General



DAVID Y. IGE
Governor
State of Hawaii

Date: Apr 7, 2020

Filed

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OFFICE

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