


In reply, please refer to
file:

STATE OF HAWAII
DEPARTMENT OF HEALTH
OFFICE OF HEALTH CARE ASSURANCE
601 KAMOKILA BOULEVARD, ROOM 337
KAPOLEI, HAWAII 96707

April 8, 2020

Revised April 9, 2021

MEMORANDUM

FROM: Keith R. Ridley 
Chief, Office of Health Care Assurance

SUBJECT: Waivers, Exceptions, and Exemptions to OHCA's Administrative Rules

As authorized by the Director of Health, the Office of Health Care Assurance (OHCA) is issuing this memo to waive, except, and exempt (hereafter collectively referred to as "waiver") specific rules contained in the Hawaii Administrative Rules (HAR) under OHCA's regulatory authority and as allowed by regulatory language contained therein. These waivers are for the period of the COVID-19 emergency period and may be revoked at any time. The objective of this approval is to prevent the spread of COVID-19 and "flatten the curve," while keeping safe any patient, resident, employee or client of OHCA licensed or certified health care facilities, organizations, and agencies, as well as protecting the general public.

Waivers are granted for the following:

Chapter 11-800, HAR, Home and Community-Based Case Management Agencies and Community Care Foster Family Homes

Authority: §11-800-5 Exceptions. Exceptions to the requirements of this chapter may be made at the discretion of the department.

Waiver applies to:

§11-800-27(b) The service monitoring process shall include: (1) Face-to-face contact with the client at least once a month, with more frequent contacts depending on the client's condition and the caregiver's capacity. The frequency of this contact shall be specific in the service plan[.]

Waiver: Monthly contact may be conducted through electronic means, such as telehealth, in accordance with any existing Governor's Emergency Proclamations, Supplementary Proclamations, Executive Orders, or other mandatory orders issued by the state or city and counties, in lieu of face-to-face contact depending on the client's condition and the caregiver's capacity.

Chapter 11-100.1, HAR, Adult Residential Care Homes

Authority: §11-100.1-2 Definitions:

"Waiver" means an exemption to a rule.

Waiver applies to:

§11-100.1-88(c) Case management services for each expanded ARCH resident shall be chosen by the resident, resident's family or surrogate in collaboration with the primary care giver and physician or APRN. The case manager shall:

- (8) Have face-to-face contacts with the expanded ARCH resident at least once every thirty days, with more frequent contacts based on the resident's needs and the care givers capabilities[.]

Waiver: Monthly contact may be conducted through electronic means, such as telehealth, in accordance with any existing Governor's Emergency Proclamations, Supplementary Proclamations, Executive Orders, or other mandatory orders issued by the state or city and counties, in lieu of face-to-face contact depending on the resident's needs and the care givers capabilities.

Chapter 11-97, HAR, Home Health Agencies

Authority: §11-97-5(o) The director may approve a modification of standards for a home health agency when exceptional circumstances warrant such modification.

§11-97-1 Definitions:

"Home health agency" means a public or proprietary agency, a private nonprofit organization, or a subdivision of such agency or organization which is primarily engaged in providing direct or indirect skilled nursing services and other therapeutic services under a physician's direction to homebound patients on a part-time or intermittent basis (in a place used as the individual's home).

Waiver: Exceptional circumstances exist under the COVID-19 pandemic that warrant the modification of the definition of "home health agency" to include services under the direction of physicians, advance practice registered nurses (APRN), physician assistants (PA) and nurse practitioners (NP).

A licensed home health agency may provide home health services to patients referred by physicians, APRNs, PAs, and NPs who possess a current and valid license from a state other than Hawaii. This includes home health services provided to a Veterans Affairs (VA) beneficiary under the care of a VA physician, VA APRN, VA PA, or VA NP practicing within the scope of their VA employment.

Chapter 11-94.1, HAR, Nursing Facilities

Authority: §11-94.1-2 Definitions:

"Waiver" means an exemption to a rule.

Waiver: A certified nursing assistant (CNA) is defined herein, however, the rules do not specifically require the use of CNAs. Therefore, nurse aides (NA) may be employed by nursing facilities (skilled nursing facilities or intermediate care facility) to perform care to the extent they are trained and demonstrate competencies to perform the duties assigned.

The above waivers shall remain in effect for the emergency period unless terminated by a separate memorandum, whichever occurs first.