

TITLE 11

DEPARTMENT OF HEALTH

STATE OF HAWAII

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

CHAPTER 185

RULES OF PRACTICE AND PROCEDURE

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SUBCHAPTER 1

GENERAL PROVISIONS

Sec. 11-185-1 **Scope.** The rules in this chapter govern the practice and procedure before the state health planning and development agency. The rules in this chapter are applicable to chapters 186 through 189 of this title. The rules in this chapter are adopted by the State pursuant to chapter 91, Hawaii Revised Statutes. [Eff. FEB 09 1981] (Auth: HRS Sec 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-2 **Definitions.** When used in a rule of the agency, unless the context clearly requires otherwise:

“Administrator” means the administrator or the acting administrator of the state health planning and development agency.

“Agency” means the state health planning and development agency established in chapter 323D, Hawaii Revised Statutes.

“Annual implementation plan” means the annual implementation plan established pursuant to chapter 323D, Hawaii Revised Statutes.

“Person” means an individual or a natural person, a trust or estate, a society, a firm, an assembly, a partnership, a corporation, a professional corporation, an association, the State, any political subdivision of the State, a county, a state agency or any instrumentality of the State, or a county agency or any instrumentality of a county.

“Secretary” means the secretary of the United States Department of Health and Human Services.

“State health plan” means the state health plan established pursuant to chapter 323D, Hawaii Revised Statutes. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-3 Construction of rules. (a) The caption of a rule of the agency is for reference only and is not to be construed in any way as a part of the rule.

(b) Words used in the present tense in a rule of the agency include the future tense.

(c) The singular number in a rule of the agency includes the plural; the plural number includes the singular.

(d) The word “may” in a rule of the agency is permissive.

(e) The word “shall” in a rule of the agency is mandatory. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-4 Computation of time. In computing any period of time prescribed or allowed by a rule of the agency, by an order of the agency, or by any applicable statute, the period of time begins with the day following the act, event, or default. The last day of the period shall be included unless it is a Saturday, Sunday, or a holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or holiday. When the period of time prescribed or allowed is seven days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. As used in this section, “holiday” means any day designated as such pursuant to section 8-1, Hawaii Revised Statutes. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-5 Additional time after notification by mail. Whenever any person in a proceeding held under the agency’s rules has the right or is required to do some act within a prescribed period of time after the agency provides notification to the person by mail, two days shall be added to the prescribed time. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-6 Extension of time. Notwithstanding any rule of the agency to the contrary, whenever any person has the right or is required to do some act within a period of time prescribed or allowed by a rule of the agency or by an order of the agency, the agency may in its discretion and upon such terms or conditions as the agency deems proper extend the period or permit the act to be done after the expiration of the period, where the agency determines that the person’s failure to act before the expiration of the period is clearly excusable under the circumstances. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-7 Agency’s address. The agency’s office is located at Room 205, 600 Kapiolani Boulevard, Honolulu, Hawaii or such other address at which the agency’s office may be located from time to time. The agency’s mailing address is Post Office Box 3378, Honolulu, Hawaii 96801. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-8 Agency’s business hours. The agency’s office shall be open from 7:45 a.m. to 4:30 p.m. of each weekday unless otherwise provided by statute or executive order. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-9 Time and place of filing documents. All documents, including applications, written comments on applications, request for opinion, submittals, correspondence, information, reports, memoranda, and any other papers required or permitted to be filed with the agency, the statewide council, a subarea council, or any committee thereof, in any proceeding shall be filed at the agency' office within the time limit, if any, prescribed by statute, rule of the agency, or order of the agency. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-10 Method of filing documents. Any person may file a document with the agency by hand delivering the document to the agency's office or by mailing the document to the agency's mailing address. If the document is mailed, the correct postage shall be prepaid by the addresser. [Eff. FEB 09 1981] Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-11 Number of copies filed. Except as otherwise provided by any other rule of the agency or an order of the agency, only the original of each document shall be filed with the agency. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-12 Date of filing. The agency shall promptly affix the date and time of receipt to the original of each document received by the agency. The date on which the agency receives the document shall be deemed the date of filing. [Eff. FEB 09 1981] (Auth: HRS Sec.91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-13 Format of documents. Each document filed with the agency by any person shall include the person's name and mailing address. The document shall be signed in ink by the person or the person's authorized agent or attorney. The signature of the person signing the document constitutes a certification that the person has read the document; that to the best of the person's knowledge, information, and belief, every statement contained in the document is true and no statement is misleading; and that the document is not interposed for delay. Each document shall be plainly legible. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-14 Agency's official records. The administrator of the agency shall be responsible for the custody and maintenance of the agency's official records. The agency's official records shall include the files and records of the statewide council, the subarea councils, and any committee thereof. The agency's official records shall include decisions, order, opinions, rules, approved forms, applications filed with the agency, written comments on the applications submitted to the agency, the statewide council, a subarea council, or any committee thereof, papers, correspondence, minutes of public meetings, transcripts of testimony, and any exhibits filed in proceedings. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-15 Retention of documents. All documents filed with or presented to the agency, the statewide council, a subarea council, or any committee thereof shall be retained in the agency's official records for the period required by law. The agency may permit the withdrawal of an original document upon submission of a properly authenticated copy to replace the original document. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-16 Inspection of public records. The agency's public records, as defined in chapter 92, Hawaii Revised Statutes, including all applications filed with the agency, all written comments on the applications submitted to the agency, the statewide council, a subarea council, or any committee thereof, and all written material pertinent to any agency review, shall be available for inspection by any person, in the manner provided in chapter 92, Hawaii Revised Statutes, unless the records are accorded confidential treatment pursuant to law. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-17 Copies of public records. The agency shall furnish copies of the agency's public records to any person upon payment of the statutory fee; provided that payment of the statutory fee shall not be required of any department or agency of the state government or a county government. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-18 Request for information. Any person may request information on any matter relating to the agency by inquiring during regular business hours at the agency's office or by submitting a written request to the agency. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

Sec. 11-185-19 Appearance before the agency. In any proceeding before the agency, any person may appear in his or her own behalf or the person may be represented by or with an attorney or another person designated as a representative. If a person is represented by an attorney, the attorney shall be licensed to practice law by the Supreme Court of Hawaii. The agency may at any time require any person who is appearing in a representative capacity to show his or her authority to act in that capacity. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

SUBCHAPTER 2

PUBLIC HEARING

Sec. 11-185-30 Public hearing. At any public hearing held by the agency, any person shall have the right to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person may conduct reasonable questioning of persons who make factual allegations relevant to the matter which is the subject of the hearing. [Eff. FEB 09 1981] (Auth: HRS Sec. 323D-62) (Imp: HRS Sec. 323D-12)

Sec. 11-185-31 Hearing officer. The agency shall designate the hearing officer who shall preside at the public hearing. The hearing officer shall have authority to take any and all actions necessary to the orderly and just conduct of the hearing. [Eff. FEB 09 1981] (Auth: HRS Sec. 323D-62) (Imp: HRS Sec. 323D-12)

Sec. 11-185-32 Disqualification of hearing officer. (a) No hearing officer shall preside at any public hearing relating to any matter in which the hearing officer, the hearing officer's spouse, or the hearing officer's child has (or within the twelve months preceding the hearing, had) any substantial ownership, directorship, officership, employment, prospective

employment for which negotiations have begun, medical staff, fiduciary, contractual, creditor, debtor, consultative, pecuniary, or business interest.

(b) Where any other conflict of interest exists, the hearing officer shall be disqualified from presiding at the public hearing. The provisions of chapter 84, Hawaii Revised Statutes, and the decisions, advisory opinions, and informal advisory opinions of the state ethics commission shall serve as guidelines in determining whether a conflict of interest exists. [Eff. FEB 09 1981] (Auth: HRS Sec. 323D-62) (Imp: HRS Sec. 323D-12)

Sec. 11-185-33 Intervention. (a) Any person not a party to the public hearing may seek to become a party by filing a motion for leave to intervene. The motion shall state the grounds upon which the person claims to have an interest in the proceeding. At least ten days before the hearing, the person shall file the motion with the agency and shall serve the motion upon all parties or their attorneys. Except for good cause shown, the hearing officer shall disregard any motion that is not timely filed and served.

(b) The hearing officer may permit intervention if the hearing officer determines:

(1) That the person seeking to become a party may be bound by the decision to be issued in the proceeding or has a property or financial interest that may not be adequately represented by existing parties; and

(2) That intervention will not unduly broaden the issues or delay the public hearing.

(c) The hearing officer may permit intervention to such extent and upon such terms as the hearing officer may deem proper. [Eff. FEB 09 1981] (Auth: HRS Sec. 323D-62) (Imp: HRS Sec. 323D-12)

Sec. 11-185-34 Continuance of public hearing. The public hearing shall be held at the time and place set in the notice of hearing, but for good cause shown the hearing officer may at such time and place continue the hearing from day to day or adjourn the hearing to a later date or to a different place without notice other than the announcement thereof at the hearing. [Eff. FEB 09 1981] (Auth: HRS Sec. 323D-62) (Imp: HRS Sec. 323D-12)

Sec. 11-185-35 Limitation on testimony. To avoid unnecessary cumulative evidence at the public hearing, the hearing officer may limit the time for witnesses to testify upon at particular issue. [Eff. FEB 09 1981] (Auth: HRS Sec. 323D-62) (Imp: HRS Sec. 323D-12)

Sec. 11-185-36 Fee for public hearing. The agency shall not impose any fee for the public hearing. [Eff. FEB 09 1981] (Auth: HRS Sec. 323D-62) (Imp: HRS Sec. 323D-12)

SUBCHAPTER 3

PETITION TO ADOPT, AMEND, OR REPEAL RULE

Sec. 11-185-50 Petition for adoption, amendment, or repeal of rule. Any interested person may file with the agency a petition requesting the agency to adopt,

amend, or repeal any rule. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-6) (Imp: HRS Sec. 91-6)

Sec. 11-185-51 Form of petition. The petition requesting the agency to adopt, amend, or repeal any rule shall be in writing and shall include:

- (1) The petitioner's name, mailing address, and telephone number;
- (2) The petitioner's signature or the signature of the petitioner's authorized representative or attorney;
- (3) A statement of the nature of the petitioner's interest;
- (4) A draft or substance of the proposed rule or amendment or a designation of the rule sought to be repealed;
- (5) A statement of the reason or reasons in support of the proposed rule, amendment, or repeal; and
- (6) Any other information relevant to the petition. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-6) (Imp: HRS Sec. 91-6)

Sec. 11-185-52 Number of copies filed. The petitioner shall file with the agency the original and ten copies of the petition requesting the agency to adopt, amend, or repeal any rule. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-6) (Imp: HRS Sec. 91-6)

Sec. 11-185-53 Dismissal of petition. The agency may dismiss any petition requesting the agency to adopt, amend, or repeal any rule that fails to comply with the requirements of section 11-185-51. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-6) (Imp: HRS Sec. 91-6)

Sec. 11-185-54 Written notification of petition. At the agency's discretion and upon written notice to the petitioner, the agency may provide written notification of the petition requesting the agency to adopt, amend, or repeal any rule to any person or persons for review and recommendations on the petition. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-6) (Imp: HRS Sec. 91-6)

Sec. 11-185-55 Action on petition. Within thirty days after the petition requesting the agency to adopt, amend, or repeal any rule is filed, the agency shall file a written ruling denying the petition and stating the agency's reason or reasons for the denial or the agency shall initiate proceedings in accordance with chapter 91, Hawaii Revised Statutes, for the adoption, amendment, or repeal of the rule. In either event, the agency shall send written notification of the agency's action to the petitioner by certified mail, return receipt requested. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-6) (Imp: HRS Sec. 91-6)

Sec. 11-185-56 Action on agency's motion. Nothing in this chapter shall operate to prevent the agency, on its own motion, from acting on any matter disclosed in any petition requesting the agency to adopt, amend, or repeal any rule. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-6) (Imp: HRS Sec. 91-6)

SUBCHAPTER 4

DECLARATORY ORDER

Sec. 11-185-70 Petition for declaratory order. Any interested person may file with the agency a petition for a declaratory order as to the applicability of any statutory provision administered by the agency or of any rule or order of the agency. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-8) (Imp: HRS Sec. 91-8)

Sec. 11-185-71 Form of petition. The petition for a declaratory order shall be in writing and shall include:

- (1) The petitioner's name, mailing address, and telephone number;
- (2) The petitioner's signature or the signature of the petitioner's authorized representation or attorney;
- (3) A designation of the specific statutory provision, rule, or order in question, together with a statement of the controversy or uncertainty involved;
- (4) A statement of the petitioner's interest in the subject matter, including the reason or reasons for submission of the petition;
- (5) A statement of the petitioner's position or contention; and
- (6) A memorandum of authorities containing a full discussion of reasons and legal authorities in support of the petitioner's position or contention. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-8) (Imp: HRS Sec. 91-8)

Sec. 11-185-72 Number of copies filed. The petitioner shall file with the agency the original and ten copies of the petition for a declaratory order. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-8) (Imp: HRS Sec. 91-8)

Sec. 11-185-73 Dismissal of petition. The agency may dismiss any petition for a declaratory order that fails to comply with the requirements of section 11-185-71. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-8) (Imp: HRS Sec. 91-8)

Sec. 11-185-74 Public hearing on petition. There is no right to a public hearing on the petition for a declaratory order. At its discretion, the agency may hold a public hearing on the petition before the agency files its written ruling on the petition. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-8) (Imp: HRS Sec. 91-8)

Sec. 11-185-75 Action on petition. Within forty-five days after the petition for a declaratory order is filed, the agency shall file a written ruling on the petition. The ruling shall deny the petition, stating the agency's reason or reasons for the denial, or the ruling shall be a declaratory order on the matters in the petition. The agency shall send the ruling to the petitioner by certified mail, returned receipt requested. [Eff. FEB 09 1981] (Auth: HRS Sec 91-8) (Imp: HRS Sec. 91-8)

Sec. 11-185-76 Refusal to issue declaratory order. The agency may, for good cause, refuse to issue a declaratory order. Good cause includes, but is not limited to, a finding by the agency that:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts that can reasonably be expected to exist in the near future;
- (2) The petitioner's interest is not of the type that would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief;
- (3) The issuance of the declaratory order may adversely affect the interests of the agency or any of its employees in litigation that is pending or may reasonably be expected to arise; or
- (4) The matter is not within the jurisdiction of the agency. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-8) (Imp: HRS Sec. 91-8)

Sec. 11-185-77 Declaratory order on agency's motion. Nothing in this chapter shall operate to prevent the agency, on its own motion, from issuing a declaratory order to terminate a controversy or to remove uncertainty. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-8) (Imp: HRS Sec. 91-8)

SUBCHAPTER 5

MISCELLANEOUS PROVISIONS

Sec. 11-185-90 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff. FEB 09 1981] (Auth: HRS Sec. 91-2) (Imp: HRS Sec. 91-2)

The State Health Planning and Development Agency authorized the adoption of Chapter 185 of Title 11, Administrative Rules, on January 9, 1981 following public hearings held on Oahu on December 10, 1980, on Kauai on December 10, 1980, on Maui on December 9, 1980, and on Hawaii on December 8, 1980, after public notice was published in The Honolulu Advertiser on November 15, 1980, in The Garden Island on November 19, 1980, in The Maui News on November 17, 1980, and in The Hawaii Tribune-Herald on November 17, 1980.

Chapter 185 of Title 11, Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ James L. Swenson
JAMES L. SWENSON
Administrator
State Health Planning and
Development Agency

APPROVED:

/s/ George R. Ariyoshi
GEORGE R. ARIYOSHI
GOVERNOR
STATE OF HAWAII

Dated: Jan 26, 1981

APPROVED AS TO FORM:

/s/ John Peter Uehara
Deputy Attorney General