

DEPARTMENT OF HEALTH

Adoption of Chapter 11-164.2 and
Repeal of Chapter 11-164
Hawaii Administrative Rules

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SUMMARY

1. Chapter 11-164.2, Hawaii Administrative Rules, entitled "Tuberculosis", is adopted.
2. Chapter 11-164, Hawaii Administrative Rules, entitled "Tuberculosis", is repealed.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 164.2

TUBERCULOSIS

- §11-164.2-1 Purpose
§11-164.2-2 Definitions
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- §§11-164.2-6 to 11-164.2-9 (Reserved)
- §11-164.2-10 Reports to the department by practitioners, individuals in charge of an inpatient or outpatient health care facility, laboratory directors, and infection control officers
- §11-164.2-11 Release of information by practitioners, individuals in charge of an inpatient or outpatient health care facility, laboratory directors, and infection control officers
- §11-164.2-12 Evaluation of persons with TB disease, persons suspected of having TB disease, or persons exposed to communicable TB
- §11-164.2-13 TB clearance evaluation procedures for practitioners and the department
- §§11-164.2-14 to 11-164.2-19 (Reserved)
- §11-164.2-20 TB clearance requirements for child care facility and school personnel
- §11-164.2-21 TB clearance requirements for child care facility and school attendance

household members, volunteers, and staff members such as child care and maintenance workers.

"Communicable TB disease" means TB disease caused by Mycobacterium tuberculosis which may spread from person to person through airborne contact. It generally includes pulmonary or laryngeal TB disease. It may also include other specific conditions determined by the department to represent a risk of transmission to other persons.

"Congregate setting" means any place where a number of persons meet, gather, reside, or share the same enclosed area.

"Course of study" means a sequence of classes leading to a certificate, diploma, degree, or other recognition of educational accomplishment.

"Department" means the department of health of the State of Hawaii, or an authorized officer or agent of the department.

"Director" means the director of health of the State of Hawaii or the director's duly authorized agent.

"Food establishment" means a place where food or beverages are prepared, packaged, served, sold, or otherwise provided for human consumption, but excludes establishments that offer only prepackaged foods, produce stands that only offer unprocessed fresh fruits and vegetables, or kitchens in private homes.

"Food handler" means any person who prepares, packages, serves, sells, or otherwise provides food or beverages for human consumption.

"Food handling" means engaging in the activities of a food handler in a food establishment.

"Hawaii TB Control Branch" means the department's Tuberculosis Control Branch.

"Health care facility" means a place licensed or certified by the department, including but not limited to hospitals, at which health care is provided.

"Hospital" means any institution currently licensed as such by the department, pursuant to section 321-14.5, HRS.

"Infection control officer" means an individual designated by a health care facility to provide

practice registered nurse authorized by the State of Hawaii to practice within the State.

"Pulmonary TB" means TB disease involving the lungs.

"Residential care setting" means a place licensed or certified by the department where people live, and medical care, therapeutic care, or other services are provided.

"Risk factor" means a variable associated with an increased risk of or susceptibility to latent TB infection or TB disease.

"School" means a congregate setting for educational purposes, including Head Start, preschools, kindergarten, elementary, intermediate, middle, or secondary schools, but excludes parent cooperatives, play groups, respite programs, and summer recreation programs.

"School personnel" means personnel employed by a school, including bus drivers and volunteers, or other persons anticipated to have contact with students for more than thirty days cumulatively within a twelve-month period.

"TB" or "tuberculosis" means infection or disease caused by *Mycobacterium tuberculosis*. It presents in two forms, "Latent TB infection" and "TB disease".

"TB clearance" means a department-approved form that provides documentation that a person has been evaluated by a practitioner and found to be free of communicable TB. The TB clearance provides a reasonable assurance that the individual is free from communicable TB at the time of the evaluation. The TB clearance form does not imply any guarantee of protection from future tuberculosis risk for the individual listed. The department may require additional evaluation or testing of any person known, reported, or suspected to have TB disease, pursuant to section 11-164.2-11. The TB clearance form is included in the DOH TB Clearance Manual, referenced in section 11-164.2-13.

"TB disease" or "active TB" means *Mycobacterium tuberculosis* is active and multiplying in any part of

(b) Any person who fraudulently obtains a TB clearance shall be subject to the penalties in subsection (a) and shall also relinquish the fraudulently obtained TB clearance to the department. [Eff] (Auth: HRS §§321-9, 321-18, 325-13, 325-14) (Imp: HRS §§321-1, 321-9, 321-18, 325-14)

§11-164.2-4 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 this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff] (Auth: HRS §§321-9, 325-13) (Imp: HRS §§321-9, 325-13)

§11-164.2-5 Suspension of rules. The director may suspend any or all of these rules in the event of a shortage of diagnostic or treatment materials, or in the event of a public health emergency as declared by the director. [Eff] (Auth: HRS §§321-9, 325-13) (Imp: HRS §§321-9, 325-13)

§§11-164.2-6 to 11-164.2-9 (Reserved)

§11-164.2-10 Reports to the department by practitioners, individuals in charge of an inpatient or outpatient health care facility, laboratory directors, and infection control officers. (a) Any practitioner, individual in charge of an inpatient or outpatient health care facility, laboratory director, or infection control officer who makes a diagnosis of TB disease or identifies a person suspected of having TB disease shall report this to the department using the Notifiable Disease Report for Tuberculosis (NDR-TB). The practitioner, individual in charge of an

§11-164.2-11 Release of information by practitioners, individuals in charge of an inpatient or outpatient health care facility, laboratory directors, and infection control officers. Upon request, any practitioner, individual in charge of an inpatient or outpatient health care facility, laboratory director, or infection control officer treating a person for TB disease shall provide the department any additional information relative to the person's case as is necessary, in the opinion of the department, for the protection and safety of the public and for case management and epidemiologic study of the case. [Eff _____] (Auth: HRS §§321-1, 321-9, 321-29, 325-13) (Imp: HRS §§321-1, 321-9, 321-29, 321-31, 325-71)

§11-164.2-12 Evaluation of persons with TB disease, persons suspected of having TB disease, or persons exposed to communicable TB. Notwithstanding a person's possession of a TB clearance, any person who is:

- (1) Known to have TB disease;
- (2) Reported to the department as having TB disease;
- (3) Reasonably suspected by the department of having TB disease; or
- (4) Reasonably suspected by the department to have been exposed to communicable TB,

may be required by the department to be evaluated or tested at a department TB clinic, or at a hospital or by a practitioner approved by the department, for the purpose of assessing the extent and progress of TB disease, if any, in the person.

[Eff _____] (Auth: HRS §§321-1, 321-9, 321-29, 325-13) (Imp: HRS §§321-1, 321-9, 321-29, 321-31, 325-76)

and present it to the child care facility before the child is sixteen months of age or the child shall be excluded from the child care facility until a TB clearance is presented.

(b) Every child care facility shall maintain a copy of each child's TB clearance while the child is participating, and shall make that copy available for inspection by the department of human services. If a child participates in a different child care facility, the same TB clearance can be used provided the child was at least 12 months of age when the TB clearance was obtained.

(c) Every school shall maintain a copy of each student's TB clearance while the student is enrolled, shall make that copy available for inspection by the department, and shall transmit a copy of the TB clearance and the student's health record to the school to which a student transfers.

(d) This section shall not apply to those persons who attend school through online or other off-campus training and who never physically attend school for instruction or training. [Eff _____]
(Auth: HRS §§302A-1162, 321-9, 321-11, 321-31, 325-13) (Imp: HRS §§302A-1162, 321-1, 321-9, 321-31, 325-76)

§11-164.2-22 TB clearance requirements for post-secondary school personnel. (a) Prior to starting employment at a post-secondary school, post-secondary school personnel shall present to the administrator of the post-secondary school:

(1) A TB clearance obtained within twelve months prior to the start date; or

(2) A TB clearance obtained after age sixteen.

(b) Every post-secondary school shall maintain a copy of the TB clearance for all post-secondary school personnel, and shall make the copy available for inspection by the department. [Eff _____]

(Auth: HRS §§302A-1162, 321-9, 321-11, 321-31, 325-13) (Imp: §§302A-612, 302A-1162, 321-1, 321-9, 321-31, 325-76)

admission into a health care facility or residential care setting licensed or otherwise regulated by the department may be temporarily admitted by providing the following:

- (1) Documentation of a chest x-ray taken within the preceding thirty days that excludes a diagnosis of communicable TB disease; or
- (2) If a chest x-ray is not available, evidence that a practitioner has completed a TB risk assessment on the person and determined that the person has no TB symptoms.

The person shall obtain a TB clearance within two weeks of the admission or may be discharged.

(c) A person who does not meet the requirements of subsections (a) or (b) who requires urgent or unexpected admission into a health care facility or residential care setting licensed or otherwise regulated by the department may not be admitted.

(d) The following persons shall be exempt from the requirements in this section:

- (1) Persons who are not in contact with, or who have not shared air space with patients or residents of the facilities (e.g., telephone operators who work in a separate office from patients or residents), or who will never be in contact with clinical specimens that may contain *Mycobacterium tuberculosis*;
- (2) Patients of acute inpatient facilities; and
- (3) Infants under twelve months of age.

[Eff _____] (Auth: HRS §§321-9, 321-11, 321-31, 325-13) (Imp: HRS §§321-1, 321-9, 321-31, 325-76)


§11-164.2-25 TB clearance requirements for food handlers. (a) Prior to starting employment as a food handler, a person shall present to the employer a copy of:

- (1) A TB clearance obtained within twelve months prior to the start date; or
- (2) A TB clearance obtained after age sixteen.

DEPARTMENT OF HEALTH


The adoption of chapter 11-164.2, and the repeal of chapter 11-164, Hawaii Administrative Rules, on the Summary Page dated _____, were adopted on _____ following a public hearing held on December 29, 2017, after public notice was given in the Honolulu Star Advertiser, The Garden Isle, Hawaii Tribune Herald, West Hawaii Today, and The Maui News on November 19, 2017.

The foregoing rulemaking action shall take effect ten days after filing with the Office of the Lieutenant Governor.



Virginia Pressler, M.D., Director
Department of Health

APPROVED:



David Y. Ige
Governor
State of Hawaii

Dated: 03-07-2018

APPROVED AS TO FORM:



Deputy Attorney General

Filed