

DEPARTMENT OF HEALTH

Adoption of Chapter 11-700
Hawaii Administrative Rules

AUG 10 2018

SUMMARY

Chapter 11-700, Hawaii Administrative Rules,
entitled "Home Care Agencies", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 700

HOME CARE AGENCIES

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§11-700-1 Purpose. This chapter establishes minimum standards and requirements for licensure of home care agencies to protect the health, safety, and welfare of clients receiving care from home care agencies. [Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-11, 321-14.8)

§11-700-2 Definitions. As used in this chapter: "Administrator" means the person who is responsible for the management of the home care agency.

"Client" means a person who receives personal care services or homemaker services from a licensed home care agency in exchange for payment. A qualified client is generally considered to be a person with limited physical or mental capacity or function to perform personal care services or homemaker services without assistance from another person.

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

"Director" means the director of health, State of Hawaii, or the director's designee.

"Home care agency" means a public or proprietary agency, a private, nonprofit organization, or a subdivision of an agency or organization, engaged in providing personal care services or homemaker services to clients in the client's temporary or permanent place of residence. Home care agency does not include organizations that provide only housecleaning services, nor does it apply to an individual, including an individual who is incorporated as a business, or is an unpaid or stipended volunteer.

"Home care service" means personal care or homemaker services, which are provided to clients in the client's temporary or permanent place of residence.

"Homemaker" means an individual who has had experience or training in the performance of homemaker services.

"Personal care aide" means a person who has successfully completed the basic nurse aide course in a state-approved nurse aide training program or an equivalent course or has successfully completed coursework which qualifies a person as a certified or licensed health care professional. The department reserves the right to determine an equivalent course.

"Respite care" means personal care or homemaker services, which offer temporary substitute support for clients in order to provide a brief period of rest or relief for caregivers.

"Service plan" means a written plan for home care services developed with input from the supervisor and the client or the client's representative, or both, and includes recognition of the client's capabilities and choices. The plan defines the division of responsibility in the implementation of the services to be provided. The service plan also specifies who will be responsible for providing services and when and how often personal care or homemaker services will be provided or arranged.

"Supervisor" means an individual with a minimum of two years of experience or training in the home care industry or industry closely related to personal

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care or homemaker services, or who possesses a professional license such as a registered nurse, licensed practical nurse, social worker, physical therapist, or occupational therapist. The supervisor may also be the administrator. The supervisor shall not be a client's case manager. [Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-11, 321-14.8)

§11-700-3 Legal authorization to operate. A home care agency shall at all times comply with the laws of the State of Hawaii and shall, whenever requested by the director, submit to the director evidence of compliance therewith. The evidence shall include, but not be limited to, copies of licenses, certificates, permits, or other authorizations required by the laws of the State of Hawaii. [Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-11, 321-14.8)

§11-700-4 License. (a) It is unlawful for any person to maintain, operate, or permit to maintain or operate a home care agency, unless the home care agency is licensed by the director.

(b) Any person, organization, or corporation desiring to operate a home care agency shall submit an application to the director for a license on forms provided by the department. The application shall identify the name of the agency, the street address of the agency, the geographic service area, the name or names of the owner or owners, the name or names of members of the governing body, the name and qualifications of the administrator, the name and qualifications of the supervisor, scope of services to be offered, policies and procedures relating to the administration of the agency's business and relating to the conduct of providing home care agency services to clients, background check results on owners, management, and staff, and any other information required by the department to determine the suitability of the agency to be licensed.

(c) The director shall issue a license if the proposed home care agency meets the requirements of this chapter.

(d) A license, unless sooner suspended or revoked, shall be valid for two years from the date it is originally issued, or within thirty days thereafter. A home care agency shall apply for renewal of a license at least thirty days prior to the expiration date of the license. If an application for renewal is not timely filed, the license shall automatically expire.

(e) Each license shall be issued only for the home care agency named in the application and shall not be transferable or assignable to any other agency.

(f) A home care agency shall post the license issued by the director in a conspicuous place on the premises of the home care agency.

(g) A home care agency shall notify each client concerned, or the client's responsible party, or both, at least thirty days prior to the expiration of its license, the voluntary surrender of its license, or as directed under any order of revocation or suspension of license by the department. The license shall be promptly surrendered to the department when revoked or suspended, or when the home care agency terminates services.

(h) Authorized staff of the department may make unannounced inspection visits to a home care agency at any time.

(i) A nonprofit entity that solely provides homemaker services, where ninety per cent or more of its staff is comprised of volunteers, shall be exempt from these licensing requirements. [Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-11, 321-14.8)

§11-700-5 License denial, suspension, revocation, and nonrenewal. The director may suspend, revoke, deny, or refuse to issue a license for failure to comply with the requirements of this chapter, any provision of chapter 321, HRS, or any term of condition of a license issued pursuant to this chapter. The director's decision to suspend, revoke, deny, or refuse to issue a license shall become final,

unless not later than twenty days after receipt of the director's decision, the home care agency submits a written request for a hearing in accordance with chapter 91, HRS, chapter 11-1, and this chapter.

[Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-10, 321-11) (Imp: HRS §§321-10, 321-11, 321-14.8)

§11-700-6 Scope of services. (a) A home care agency may provide personal care services or homemaker services, or both, and may provide respite care services.

(b) Personal care services shall be performed by personal care aides. Personal care services shall include activities based on the assessment of the client's needs, including but not limited to:

- (1) Personal hygiene and grooming;
- (2) Bathing;
- (3) Skin care;
- (4) Oral hygiene;
- (5) Hair care;
- (6) Dressing;
- (7) Assistance in toileting;
- (8) Assistance with ambulation, mobility, transfers, and positioning; and
- (9) Assistance with exercise and range of motion.

Personal care services do not include the management of the client's money or finances, or the balancing of the client's checkbook.

(c) Homemaker services shall be provided by personal care aides or homemakers. Homemaker services shall include activities based on the assessment of the client's needs, including but not limited to:

- (1) Routine housecleaning such as sweeping, mopping, dusting, making beds, washing dishes, cleaning toilets, sinks, showers, or bathtubs, or disposing of rubbish;
- (2) Care of clothing and linens, including washing, drying, ironing, and mending;
- (3) Shopping for household supplies, clothing, and personal essentials;
- (4) Running errands or picking up medication;
- (5) Shopping for food or preparing meals;

- (6) Escorting the client to medical care services or to nutritional or recreational programs; and
- (7) Assisting with simple health care routines such as reminders to take oral medication, to maintain diet restrictions, or to perform recommended exercises.

Homemaker services do not include the management of the client's money or finances, or the balancing of the client's checkbook. [Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-11, 321-14.8)

§11-700-7 Service plan. (a) A supervisor shall develop with the client or the client's representative, or both, a service plan for home care services, which shall be signed by the supervisor and the client or the client's representative and incorporated into the client's record.

(b) The home care agency staff and supervisor shall review the service plan at least annually and whenever there has been a change in the client's condition.

(c) The staff of the home care agency shall bring to the attention of the supervisor any changes in the client's condition that may indicate the need for altering the service plan, assisting with additional services, or changes in service. [Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-11, 321-14.8)

§11-700-8 Policies and procedures. A home care agency shall have policies and procedures that include:

- (1) The scope of services offered, the conditions under which they are offered, and the geographic coverage;
- (2) Provisions to prohibit discrimination against any prospective or current client based on race, sex, including gender identity or expression, sexual orientation, color, religion, ethnicity, country of origin, gender, or marital status to receive

- home care services in the geographic area of the home care agency;
- (3) Provisions to establish that services provided are specified under the service plan and regularly reviewed by the supervisor;
 - (4) Provisions to establish that the supervisor and all staff shall become familiar with and follow the service plan;
 - (5) Requirements for the contents and maintenance of client records that shall include but not be limited to:
 - (A) A record for each client; and
 - (B) Procedures for the staff to document information in the record about the services rendered to each client; and
 - (6) An orientation program for all personnel rendering services to clients on the home care agency's policies and procedures and a continuous in-service education program.
[Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-11, 321-14.8)

§11-700-9 Administration and standards. (a)

The administrator is responsible for ensuring that the appropriate level of supervision is provided.

(b) The administrator shall not allow personal care aides or homemakers to perform any service that is not within their scope of duties.

(c) The supervisor shall perform a supervisory visit of all employees providing client services at each client's residence at least once a year.

(d) The home care agency shall:

- (1) Establish written job descriptions that specify the qualifications and experience of each category of personnel and the type of activity each category of personnel may perform;
- (2) Establish written human resource policies that shall be given to each staff member, including but not limited to provisions concerning wage scale, hours of work, vacation and sick leaves, and use of car if

provided, or mileage allowed if private transportation is utilized;

- (3) Document that every employee and volunteer, who has direct client contact, has documented evidence of tuberculosis (TB) clearance in accordance with the most current and updated guidelines in chapter 11-164 Hawaii administrative rules prior to their first contact with clients;
- (4) Conduct background checks in accordance with section 321-15.2, HRS, to ensure that all employees and volunteers who provide client care or who supervise staff, including the administrator, do not have a history of a criminal conviction, abuse, neglect, threatened harm, or other maltreatment against children or adults bearing a rational relationship to the duties and responsibilities of their position in accordance with state and federal laws, and prudent business practice. Relevant charges include but are not limited to assault, abuse, neglect, threatened harm, or theft;
- (5) Maintain client records, job descriptions, and human resource reports and policies; and
- (6) Maintain confidentiality of all records pertaining to clients', and make the records available only to authorized personnel as required or allowed by law. [Eff **AUG 10 2018**]
(Auth: HRS §§321-9, 321-11, 321-15.2) (Imp: HRS §§321-11, 321-14.8, 321-15.2)

§11-700-10 Penalty. A person who violates any of the provisions of this chapter shall be fined not more than \$500 or the director may initiate procedures for invoking penalties as provided in chapter 321, HRS. [Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-11, 321-18, 321-20) (Imp: HRS §§321-9, 321-14.8, 321-18, 321-20)

§11-700-11 Enforcement. (a) If the department determines that any person has violated any provision

of this chapter, any provision of chapter 321, HRS, or any term or condition of a license issued pursuant to this chapter, the department shall do one or more of the following:

- (1) Issue an order assessing an administrative penalty for any past or current violation; or
- (2) Require compliance immediately or within a specific time.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of any license issued pursuant to this chapter and any administrative penalty assessed in accordance with section 321-20, HRS. The order shall state with reasonable specificity the nature of the violation, the legal bases for the findings of violation, and the right to request an administrative hearing and retain legal counsel. The order shall be provided to the alleged violator by certified mail.

(c) Any order issued under this chapter shall become final, unless not later than twenty days after receipt of the notice of order by certified mail, the alleged violator requests in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after receipt of the notice of order by certified mail unless the alleged violator requests in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director or director's designee shall require that the alleged violator appear before the director for a hearing at a time and place specified in a notice of hearing and answer the charges complained of.

(d) Any hearing conducted under this section shall be conducted as a contested case hearing under chapter 91, HRS. If after a hearing held pursuant to this section, the director or the director's designee finds that the violation or violations have occurred, the director or the director's designee shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an

appropriate order or orders. If, after the hearing on an order or penalty contained in a notice, the director or the director's designee finds that no violation has occurred or is occurring, the director or the director's designee shall rescind the order or penalty or both.


(e) Nothing in this section shall be construed to limit other penalties provided elsewhere.
 [Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-10, 321-11, 321-14.8, 321-18, 321-20) (Imp: HRS §§321-9, 321-10, 321-11, 321-14.8, 321-18, 321-20)

§11-700-12 Validity. If any provisions of this chapter or the application thereof to any person or circumstances are held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected thereby. [Eff **AUG 10 2018**] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-11, 321-14.8)

DEPARTMENT OF HEALTH

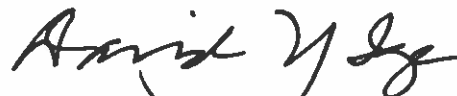
Chapter 11-700, Hawaii Administrative Rules, on the Summary Page dated AUG 10 2018, was adopted on AUG 10 2018, following public hearings held on May 14, 16, 17 and, 18, 2018, after public notice was given in the Honolulu Star Advertiser, West Hawaii Today, Hawaii Tribune-Herald, The Garden Island, and Maui News on April 8, 2018.

The adoption of chapter 11-700 shall take effect ten days after filing with the Office of the Lieutenant Governor.


For BRUCE S. ANDERSON, PH.D.
Director
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APPROVED AS TO FORM:


Deputy Attorney General


DAVID Y. IGE
Governor
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Date: 07-30-2018

Filed

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