

DEPARTMENT OF HEALTH

Adoption of Chapter 11-118
Hawaii Administrative Rules

October 31, 2018

SUMMARY

Chapter 11-118, Hawaii Administrative Rules,
entitled "Disinterment Permits", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-118

DISINTERMENT PERMITS

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§11-118-1 Definitions. As used in this chapter: "Burial site" has the same meaning as defined in section 6E-2, Hawaii Revised Statutes (HRS).

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"Cemetery" has the same meaning as defined in section 441-1, HRS.

"Cemetery authority" has the same meaning as defined in section 441-1, HRS.

"Cemetery property" has the same meaning as defined in section 441-1, HRS.

"Container believed to hold remains" means something in which remains are placed for burial or other disposition, such as a body bag, box, burial receptacle, casket, or coffin.

"Department" means the department of health.

"Director" means the director of the state department of health or the director's duly authorized agent.

"Disinterment" means any exposure, disturbance, or removal of remains or of any burial receptacle, coffin, or other container believed to hold remains, from any place of burial or any location believed to be a place of burial, whether that burial is marked or unmarked.

"Disposition" means the mode of situating remains, including burial, cremation, entombment, medical or research use, burial at sea, transport within or between islands and out of State, or other disposal approved by the department.

"Disturbance of remains" includes, but is not limited to, digging or excavating at a place of burial that causes contact with, disturbance of, or exposure of any burial receptacle, coffin, or other container believed to hold remains, whether or not the place of burial is marked or unmarked and whether or not the burial receptacle, coffin, or other container is opened.

"Electronic disinterment application and permit system" means the department's Internet-based program used to apply for, process, and issue a disinterment permit.

"Family burial plot" has the same meaning as defined in section 441-5.5, HRS.

"Funeral services" has the same meaning as defined in section 441-1, HRS.

"Inadvertently discovered remains" means remains that are unexpectedly exposed or disturbed in a place not known to be a place of burial.

"Interment" has the same meaning as defined in section 441-1, HRS.

"Marked burial" means a place of burial with a headstone, plaque, or other identifying marker, containing remains.

"Mortuary" means an entity meeting the requirements set forth in section 11-22-3.

"Mortuary authority" has the same meaning as defined in section 441-1, HRS.

"Niche" has the same meaning as defined in section 441-1, HRS.

"Person" has the same meaning as defined in section 441-1, HRS.

"Place of burial" means a place where remains are located, including a known, maintained, actively used cemetery or cemetery property registered by the department of commerce and consumer affairs where remains are interred, a family burial plot, or an unmarked burial site. "Place of burial" does not include a niche that only contains cremated remains.

"Plot" has the same meaning as defined in section 441-1, HRS.

"Remains" means all or part of a dead human body or corpse, exclusive of ashes, cremated remains, or medical waste.

"State" means the State of Hawaii.

"State registrar" means the state registrar of vital statistics of the state department of health or the state registrar's duly authorized agent.

"Unmarked burial" means a specific designated location that has no headstone, plaque, or other identifying marker, but which is known to contain human remains. "Unmarked burial" does not include an inadvertent discovery of remains or an inadvertent discovery of a burial site. [Eff **OCT 19 2018**]
(Auth: HRS §§321-9, 321-11, 338-25.5) (Imp: HRS §338-25.5)

§11-118-2 Permit required for disinterment (a)

Subject to section 11-118-3, a disinterment permit is required for the disinterment or disturbance of remains from a place of burial for all purposes, including:

- (1) Removing or disturbing and reintering the same remains in the same location;
- (2) Interring additional remains, including cremated remains, in a place of burial;
- (3) Removing to cremate or otherwise dispose of the remains pursuant to a disposition permit;
- (4) Removing the remains to inter the remains in another location pursuant to a disposition permit;
- (5) Removing unknown or unidentified remains for the purpose of identifying the remains (e.g., unknown or unidentified armed forces members);
- (6) Temporarily removing remains to repair or renovate cemetery property or other place of burial;
- (7) Removing or relocating remains after damage or threatened damage to a place of burial due to hurricanes, floods, natural disasters, or other unexpected occurrence; provided that the landowner, including the owner of a cemetery or the owner's representative, notifies the department of the damage or threatened damage as soon as possible after the occurrence and applies for a disinterment permit; and
- (8) Any other reason, subject to the approval of the department.

(b) A disinterment permit is not required for disinterment or disturbance of remains at burial sites where prehistoric or historic remains are interred, but any exposure, disturbance, or removal of any remains or burial goods from those sites is subject to

the approval of the department of land and natural resources. [Eff **OCT 19 2018**] (Auth: HRS §§ 6E-43, 6E-43.6, 321-9, 321-11, 338-23, 338-25, 338-25.5) (Imp: HRS §338-25.5)

§11-118-3 Authority to permit disinterment is limited. (a) The state registrar shall not issue a disinterment permit for remains that appear to be over fifty years old which are discovered or are known to be buried at any place of burial other than a known, maintained, actively used cemetery unless the applicant for the disinterment permit is otherwise eligible to obtain a disinterment permit pursuant to section 11-118-4.

(b) The state registrar may issue a disinterment permit for remains that are inadvertently discovered, so long as the department has jurisdiction over the remains and provided that immediately upon the exposure, disturbance, or removal, the disinterment stops, the department is notified, and an application for a disinterment permit is submitted.

(c) The department shall not grant permission to disinter remains that are not subject to this chapter, within the jurisdiction of law enforcement, or within the jurisdiction of the department of land and natural resources without a court order.

[Eff **OCT 19 2018**] (Auth: HRS §§ 6E-43, 6E-43.6, 321-9, 321-11, 338-25.5) (Imp: HRS §338-25.5)

§11-118-4 Eligibility for a permit. (a) Individuals eligible to apply for a disinterment permit include:

- (1) A survivor of the decedent in the following priority order:
 - (A) Spouse or reciprocal beneficiary;
 - (B) Child eighteen years of age or older, or if more than one child, a majority of the children eighteen years of age or older;
 - (C) Parent(s);

- (D) Sibling eighteen years of age or older, or if more than one sibling, a majority of the siblings eighteen years of age or older;
 - (E) Grandparent, or if more than one grandparent, a majority of the grandparents; and
 - (F) Grandchild eighteen years of age or older, or if more than one grandchild, a majority of the grandchildren eighteen years of age or older;
- (2) An individual with a legal relationship to the decedent, including the following:
- (A) A personal representative of the decedent's estate; and
 - (B) A person designated by a court of competent jurisdiction;
- (3) A law enforcement officer with jurisdiction in the state acting within the law enforcement officer's official capacity;
- (4) An authorized representative of the United States Department of Defense seeking to disinter remains of armed forces service members; and
- (5) A landowner, including the owner of a cemetery or the owner's representative, with a court order authorizing the removal of remains buried on the landowner's property.
- (b) In addition to the requirements in subsection (a), individuals applying for a disinterment permit for remains that are not located in a known, maintained, actively used cemetery shall submit proof of a written agreement to disinter from the owner of the property where the remains are located.
- (c) The department shall not grant permission to disinter remains to individuals who do not meet the eligibility requirements of this section without a court order. [Eff **OCT 19 2018**] (Auth: HRS §§321-9, 321-11, 338-25.5) (Imp: HRS §338-25.5)

§11-118-5 How to apply for a disinterment

permit. (a) An applicant for a disinterment permit shall use the services of a mortuary or cemetery to submit an application for a disinterment permit to the state registrar on a form and in a manner approved by the state registrar. An owner of a family burial plot is not considered a cemetery or a mortuary.

(b) On behalf of an applicant, a mortuary or cemetery shall submit an application for a disinterment permit to the state registrar on a form approved by the state registrar through the electronic disinterment application and permit system or other approved method, provided that the mortuary or cemetery is in compliance with all applicable requirements of chapter 441, HRS, chapter 11-22, Hawaii Administrative Rules, and any other applicable laws, and has been trained and registered to participate in the electronic disinterment application and permit system, as determined by the state registrar.

(c) A mortuary or a cemetery in compliance with all applicable requirements of chapter 441, HRS, chapter 11-22, Hawaii Administrative Rules, and any other applicable laws may apply for a disinterment permit using the services of a mortuary authority or a cemetery authority with which it has a documented business relationship, so long as the mortuary authority or cemetery authority has been trained and registered to participate in the electronic disinterment application and permit system, as determined by the state registrar.

(d) An authorized representative of the United States Department of Defense seeking a permit to disinter the remains of an unknown or unidentified armed forces service member shall submit an application for a disinterment permit pursuant to section 11-118-13. [Eff **OCT 19 2018**] (Auth: HRS §321-9, 321-11, 338-25, 338-25.5) (Imp: HRS §338-25.5)



§11-118-6 Registration and training for the electronic disinterment application and permit system; revocation of registration. (a) Approval to use the electronic disinterment application and permit system shall be granted to a mortuary, mortuary authority, cemetery, or cemetery authority that:

- (1) Applies to use the electronic disinterment application and permit system on a form and in a manner approved by the department;
- (2) Submits a signed user agreement to the department to register for access to the electronic disinterment application and permit system;
- (3) Meets the requirements of section 11-118-5; and
- (4) Completes online, telephone, and/or face-to-face training as required and provided by the department on how to apply for and obtain a disinterment permit using the electronic disinterment application and permit system.

(b) Upon approval to use the electronic disinterment application and permit system and successful completion of training as determined by the department, the department shall register the mortuary, mortuary authority, cemetery, or cemetery authority and provide it with a secure user name and password to access and use the electronic disinterment application and permit system.

(c) Registered users of the electronic disinterment application and permit system shall renew their registration every five years.

(d) Registered users of the electronic disinterment application and permit system shall complete training updates as required by the department.

(e) The department, in its discretion, may revoke its approval to use the electronic disinterment application and permit system for any misuse of the system, any failure to meet requirements, or any other reason as determined by the department. Upon

revocation, the department shall deactivate the secure user name and password assigned to a user. The department, in its discretion, may allow the opportunity to provide a plan of correction in lieu of revocation.

(f) A mortuary, mortuary authority, cemetery, or cemetery authority whose approval to use the electronic disinterment application and permit system has been revoked, may reapply to the department for approval to use the electronic disinterment application and permit system pursuant to this section. [Eff OCT 19 2018] (Auth: HRS §321-9, 321-11, 338-25, 338-25.5) (Imp: HRS §338-25.5)

§11-118-7 Disinterment permit application. (a)

An application for a disinterment permit shall include the following information, if known. If it is unknown, indicate "Unknown" or give the best approximation on the application.

- (1) Decedent's full name;
- (2) Date of death;
- (3) Place of death;
- (4) Decedent's date of birth or age at the time of death;
- (5) Decedent's sex;
- (6) Decedent's race or ethnicity;
- (7) Name of the applicant;
- (8) Relationship of the applicant to the decedent;
- (9) Current location of the remains;
- (10) Intended disposition of the remains, including:
 - (A) Place of burial or other place where the remains will be reinterred or transferred;
 - (B) If the remains are to be cremated, the name of the crematory and the place where the cremated remains are to be kept or sent.
- (11) Name of the person from the mortuary, mortuary authority, cemetery, or cemetery

authority authorized to take charge of the remains upon their disinterment;

- (12) Name of the mortuary, mortuary authority, cemetery, or cemetery authority submitting the application on behalf of the applicant;
- (13) Name of the mortuary, mortuary authority, cemetery, cemetery authority, or other entity that will disinter the remains;
- (14) Other information requested by the state registrar, if known, including:
 - (A) Decedent's spouse's name, if applicable;
 - (B) Decedent's father's name;
 - (C) Decedent's mother's full name prior to first marriage; and
 - (D) Cause of death.

(b) The applicant shall provide the mortuary, mortuary authority, cemetery, or cemetery authority with legal documentation of the applicant's relationship to the deceased and other information required on the application.

(c) The applicant shall attest that the applicant has the authority to disinter the remains. All survivors of equal or higher priority to the applicant, pursuant to section 11-118-4, shall consent in writing to the disinterment.

(d) The applicant shall submit for review:

- (1) Decedent's death certificate if the death occurred out of state;
- (2) Other applicable documentation, if needed by the department to verify the relationship of the applicant to the decedent; and
- (3) The applicant's signature certifying the applicant's authority to disinter the remains and the accuracy of the information provided by the applicant for the application.

(e) A mortuary, mortuary authority, cemetery, or cemetery authority that submits an application on behalf of an applicant shall submit the documentation with the application by uploading copies of the documents in the electronic disinterment application

and permit system and keep the originals for two years after the date of disinterment.

(f) A mortuary, mortuary authority, cemetery, or cemetery authority shall attest that it continues to meet the requirements of section 11-118-5 and it has reviewed and verified the accuracy of the information in the application for a disinterment permit prior to submission of the application to the state registrar.

(g) A mortuary, mortuary authority, cemetery, or cemetery authority shall identify the type of place of burial from which the remains are to be disinterred, e.g. a known, maintained, actively used cemetery or cemetery property, a family burial plot, an unmarked burial site, or other location and shall certify the accuracy of that information.

(h) An application for a disinterment permit is available on the electronic disinterment application and permit system. [Eff **OCT 19 2018**] (Auth: HRS §§321-9, 321-11, 338-25, 338-25.5) (Imp: HRS §§ 338-25, 338-25.5)

§11-118-8 Issuance of disinterment permit. (a) Upon the electronic submission of an application for a disinterment permit to the department, the department may approve or deny the application. Approval is subject to the following:

- (1) The remains shall be under the department's jurisdiction pursuant to sections 11-118-2 and 11-118-3;
- (2) The applicant shall be eligible to apply for a disinterment permit pursuant to section 11-118-4; and
- (3) All requirements of this chapter shall be met.

(b) If approved, the department shall issue a disinterment permit and shall send notification of approval electronically to the mortuary, mortuary authority, cemetery, or cemetery authority.

(c) The mortuary, mortuary authority, cemetery, or cemetery authority shall print or otherwise provide

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the disinterment permit at its office or other location. [Eff **OCT 19 2018**] (Auth: HRS §§ 321-9, 321-11, 338-23, 338-25) (Imp: HRS §§ 338-25, 338-25.5)

§11-118-9 Permit denial, validity, revocation.

(a) The state registrar shall deny a disinterment permit when:

- (1) An applicant submits a substantially incomplete application;
- (2) An applicant is not eligible to apply for a disinterment permit;
- (3) The remains are under the jurisdiction of the department of land and natural resources or some other legal entity;
- (4) Disinterment would be against the interest of the public health; or
- (5) The requirements of this chapter are not met.

(b) A disinterment permit shall be valid for ninety days after the date of issuance. If the disinterment has not occurred before the disinterment permit expires, the applicant may apply for a new disinterment permit. [Eff **OCT 19 2018**] (Auth: HRS §§321-9, 321-11, 338-25.5) (Imp: HRS §338-25.5)

§11-118-10 Fees. (a) The fee to apply for a disinterment permit is \$7.50 for each set of remains and is due with the application, except as otherwise provided by law or in section 11-118-13.

(b) Fees are not transferable or refundable, even if an application is denied.

(c) Value added electronic services provided through the portal manager may incur a separate fee, pursuant to section 27G-2, HRS. [Eff **OCT 19 2018**] (Auth: HRS §§27G-2, 92-28, 321-9, 321-11, 321-11.5, 338-25.5, 338-25.6) (Imp: HRS §§27G-2, 321-11.5, 338-25.5, 338-25.6)



§11-118-11 Requirements for disinterment and filing of permit after disinterment. (a) After receiving a permit to disinter from the state registrar, the mortuary, mortuary authority, cemetery, or cemetery authority that submitted the application for disinterment on behalf of an applicant shall determine that the disposition of the remains is consistent with the intended disposition stated in the application for the disinterment permit.

(b) The mortuary, mortuary authority, cemetery, or cemetery authority shall electronically transmit the date the disinterment occurred to the state registrar no later than seven days after the date of the disinterment of the remains and shall report any discrepancies between the intended disposition and the actual disposition.

(c) The department may revoke its approval to use the electronic disinterment application and permit system by any mortuary, mortuary authority, cemetery, or cemetery authority that fails to comply with this section.

(d) Any discrepancy between the intended disposition of the remains and the actual disposition of the remains may subject the applicant to penalties pursuant to section 11-118-12. [Eff **OCT 19 2018**]
(Auth: HRS §§321-9, 321-11, 338-25.5) (Imp: HRS §338-25.5)

§11-118-12 Penalties. (a) Any person who exposes, disturbs, or removes any remains from a place of burial without a disinterment permit is subject to a fine of not more than \$100, or such higher amount as is authorized by law; provided that an inadvertent exposure, disturbance, or removal of remains is not a violation of this section, so long as the person who inadvertently exposes, disturbs, or removes any remains from a place of burial complies with this chapter.

(b) Any person who presents false information in order to obtain a disinterment permit for which the person is not eligible is subject to a fine of not

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more than \$100, or such higher amount as is authorized by law.

(c) Any person who disposes of remains in a manner inconsistent with a disinterment permit is subject to a fine of not more than \$100, or such higher amount as is authorized by law.

[Eff **OCT 19 2018**] (Auth: HRS §§321-9, 321-11, 338-25.5, 338-30) (Imp: HRS §§338-25.5, 338-30)

§11-118-13 Exception for permit to disinter remains of unknown or unidentified armed forces members. (a) An application for the disinterment of remains of unknown or unidentified armed forces members is subject to the requirements of this chapter, unless otherwise provided in this section, and shall be made by the United States Department of Defense.

(b) The United States Department of Defense shall submit an application for a disinterment permit to the state registrar on a form approved by the state registrar through the electronic disinterment application and permit system or other approved method.

(c) The state registrar shall accept an application from the United States Department of Defense without an application fee.

(d) The United States Department of Defense shall provide legal documentation of its relationship to the deceased and other information required on the application.

(e) The United States Department of Defense shall provide documentation to substantiate that it has the authority to disinter the remains.

(f) The United States Department of Defense shall submit the documentation with the application by uploading copies of the documents in the electronic disinterment application and permit system and keep the originals for two years after the date of disinterment.

(g) To disinter a single set of unknown or unidentified remains, an application shall include the

following information, if known. If it is unknown, indicate "Unknown" or give the best approximation on the application.

- (1) Decedent's full name;
- (2) Date of death;
- (3) Place of death;
- (4) Decedent's date of birth or age at the time of death;
- (5) Decedent's sex;
- (6) Decedent's race or ethnicity;
- (7) Name of the United States Department of Defense agency making the application;
- (8) Relationship of the United States Department of Defense agency to the decedent;
- (9) Current location of the remains;
- (10) Intended disposition of the remains, including:
 - (A) Place of burial or other place where the remains will be reinterred or transferred;
 - (B) If the remains are to be cremated, the name of the crematory and the place where the cremated remains are to be kept or sent.
- (11) Name of the designated United States Department of Defense agency staff authorized to take charge of the remains upon their disinterment;
- (12) Name of the person from the United States Department of Defense who is authorized to initiate disinterment, with a citation to or copy of the law or other documentation that establishes the authority; and
- (13) Other information requested by the state registrar, if known, including:
 - (A) Decedent's spouse's name, if applicable;
 - (B) Decedent's father's name;
 - (C) Decedent's mother's full name prior to first marriage; and
 - (D) Cause of death.

(h) To disinter multiple sets of unknown or unidentified remains, an application shall include the information in subsection (g) and also the following:

- (1) A written plan describing the reason for the disinterment, the method of disinterment, and the intended disposition of the remains, including, but not limited to relocation, removal and transport, or identification;
- (2) A list of the armed forces members whose remains are believed to be in the place of burial but have not yet been identified, along with assigned unknown reference numbers that correspond to each set of remains;
- (3) Copies of death certificates or other written proof of death corresponding to the list of names in subsection (h)(2);
- (4) Information identifying each place of burial that is intended to be exposed or disturbed for the disinterment of the remains;
- (5) Specific date(s) of disinterment, listing the specific place of burial to be disturbed on each date;
- (6) A written plan detailing the proposed disposition of the remains after they have been disinterred, including the anticipated disposition for any remains that cannot be identified; and
- (7) Written authorization from the person from the United States Department of Defense who is authorized to initiate disinterment, with a citation to or copy of the law or other documentation that establishes the authority.

(i) After the disinterment of the remains, the United States Department of Defense shall provide the department with an account of the findings including:

- (1) The name of each armed forces member whose remains are identified, including the unknown reference number assigned to each set of remains before the remains were identified, along with the corresponding

death certificate or other written proof of death and as much of the identifying information required by subsections (g) and (h) as is discovered;

- (2) A written description of action to be taken if the remains cannot be identified; and
- (3) A written report of the relocation of the remains if the intended disposition in subsection (g)(10) has changed.

[Eff. **OCT 19 2018**] (Auth: HRS §§321-9, 321-11, 338-25, 338-25.5, 338-3-25.6, 338-30) (Imp: HRS §§338-25.5, 338-25.6, 338-30)

§11-118-14 Permit to disinter unidentified remains, other than armed forces members, from a known place of burial. (a) If an applicant seeks to disinter one or more sets of unidentified remains that are known to be or are discovered to be in a known place of burial, the applicant shall contact the department of land and natural resources for a determination of whether the remains are under the jurisdiction of the department of land and natural resources. If the department of land and natural resources determines it does not have jurisdiction over the remains, the applicant shall obtain a written statement from the department of land and natural resources that it does not have jurisdiction over the remains, and may proceed to request a permit from the department, as follows:

(b) The applicant shall submit the following to the department;

- (1) A written statement from the department of land and natural resources that it does not have jurisdiction over the remains;
- (2) Documentation that the property owner knows about the remains and has authorized disinterment;
- (3) An application that includes all of the information required by section 11-118-7, to the extent that the information is known;

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- (4) Documented attempts to determine the identity of the remains;
- (5) Documented attempts to notify the next of kin of the remains, including but not limited to published notice in a newspaper(s) of Statewide distribution;
- (6) An estimate of how many sets of remains are located in the burial place;
- (7) A plan for disposition of the remains, once disinterred; and
- (8) Any other information requested by the department.

(c) The department reserves the right to require the applicant to hire professional surveyors, archeologists, or other experts to help determine the appropriateness of disinterment, at the applicant's own expense;

(d) The department reserves the right to request law enforcement involvement or assistance from other appropriate agencies; and

(e) The department reserves the right to deny a permit if any of the requirements of this chapter are not satisfied. [Eff **OCT 19 2018**] (Auth: HRS §§ 6E-43, 6E-43.6, 321-9, 321-11, 338-23, 338-25, 338-25.5) (Imp: HRS §§ 338-25.5)

§11-118-15 Miscellaneous. (a) This chapter shall not apply where a court in the circuit where the remains are located has issued an order allowing for the disinterment of remains.

(b) The department may issue a disinterment permit retroactively in the case of extenuating circumstances, such as a natural disaster, or when an inadvertent exposure, disturbance, or removal has occurred. [Eff **OCT 19 2018**] (Auth: HRS §§ 321-9, 321-11, 338-23, 338-25, 338-25.5) (Imp: HRS §§ 338-25.5)


DEPARTMENT OF HEALTH

Chapter 11-118, Hawaii Administrative Rules, on the Summary Page dated October 31, 2018, was adopted on October 31, 2018, following a public hearing held on February 9, 2018, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island newspapers on January 7, 2018.

The adoption of chapter 11-118 shall take effect ten days after filing with the Office of the Lieutenant Governor.

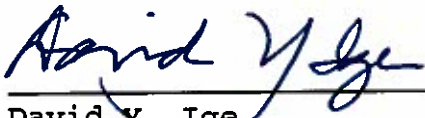
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OFFICE

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Bruce S. Anderson, Ph.D.
Director
Department of Health

APPROVED:



David Y. Ige
Governor
State of Hawaii

Dated: 10-09-2018

APPROVED AS TO FORM:



Deputy Attorney General

Filed

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