DEPARTMENT OF HEALTH

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

Amendment and Compilation of Chapter 11-186
Hawaii Administrative Rules

,2019

SUMMARY

1. §11-186-3 is amended.
2. §11-186-5 is amended
3. §11-186-7 is amended.
4. §11-186-15 is amended.
5. §11-186-20 is amended.
6. §§11-186-25 and 11-186-26 are amended.
7. §11-186-30 is amended.
8. §§11-186-35 and 11-186-36 are amended.
9. §11-186-39 is amended.
10. §11-186-42 is amended.
11. §§11-186-44 and 11-186-45 are amended.
12. §§11-186-46 to 11-186-48 are amended.
13. §11-186-51 is amended.
14. §11-186-71 is amended.
15. §§11-186-74 to 11-186-76 are amended.
16. §11-186-82 is amended.
17. §§11-186-85 to 11-186-89 are amended.
18. §11-186-90 is repealed.
19. §11-186-91 is amended.
20. §11-186-99.1 is amended.
21. §11-186-120 is repealed.
22. §11-186-125 is amended.
23. Chapter 11-186 is compiled.

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-186
Hawaii Administrative Rules

,2019

1. Chapter 11-186, Hawaii Administrative Rules, entitled "Certificate of Need Program", is amended and compiled to read as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

CHAPTER 186

CERTIFICATE OF NEED PROGRAM

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§ 11-186-99 Emergency situation
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Historical Note: Chapter 186 of Title 11, Administrative Rules, is based substantially upon the Certificate of Need Rules of the State Health Planning and Development Agency, State of Hawaii. [Eff. 3/4/78; R]

SUBCHAPTER 1

GENERAL PROVISIONS

§ 11-186-1 Scope. The rules in this chapter govern procedure before the state health planning and development agency, the statewide health coordinating council, the review panel, the reconsideration committee, the countywide review committee, and the subarea health planning councils. The rules in this chapter are adopted by the State pursuant to chapter 323D, Hawaii Revised Statutes, to carry out the provisions of chapter 323D, Hawaii Revised Statutes relating to the administration of the certificate of need program by the state health planning and development agency. [Eff. 2/9/81; am 1/21/88; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-2 Construction of rules. The rules in this chapter shall be liberally construed to promote mandatory planning for health care facilities and health care services in the State, in order to promote accessibility for all the people of the State to quality health care services at reasonable cost and to promote the development of health delivery systems that meet the people's health care needs. [Eff. 2/9/81; am 1/21/88; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-1)

§ 11-186-3 Definitions. Whenever used in this chapter and in proceedings brought under this chapter, unless the context requires otherwise:

"Acute" bed services means those inpatient services provided to patients whose average length of stay is usually less than thirty days.

"Acute/long term swing bed" services means those acute or long term services which are provided through beds which have been designated to serve either acute or long term inpatients.

"Acute psychiatric" services means twenty-four-hour inpatient acute care services for mentally disordered patients whose length of stay is usually less than thirty days.

"Administrator" means the administrator of the state health planning and development agency as established in section 323D-11, HRS.

"Agency" means the state health planning and development agency as established in section 323D-11, HRS.

"Applicant" means any person who applies to the agency for a certificate of need.

"Burn center" services means intensive care services staffed by specially trained personnel for acute therapeutic, supportive, and rehabilitative care, including preparation for extensive grafting, for severely burned patients.

"Cardiac catheterization" means a special diagnostic procedure that is used to examine and evaluate the heart and the blood vessels which function to bring blood to, or away from, the heart. Cardiac catheterization includes left or right heart catheterization, angiography, and coronary arteriography.

"Children's orthopedic" services means long-term therapeutic and restorative services to children with orthopedic problems.

"Chronic renal dialysis" services means services for the treatment of irreversible kidney failure involving the removal of waste substance from a patient's blood by hemodialysis or peritoneal dialysis.

"Comprehensive outpatient rehabilitation facility (CORF)" means a comprehensive outpatient rehabilitation facility as defined in 42 Code of Federal Regulations section 485.51.

"Computed tomography" services include diagnostic procedures involving computer analysis of a series of x-ray scans of the head or body resulting in the construction of an image.

"Countywide review committee" means a countywide

review committee established pursuant to section 11-186-45.

"Critical care" services means those services which provide maximum observation and support of vital functions and definitive therapy for patients with acute but reversible life-threatening impairments of single or multiple vital organ systems.

"Diagnostic radiology" services means services for the detection of physical disease and other ill-health conditions through the use of radiant energy including x-rays, cine fluorography, ventriculography and angiocardiology.

"Emergency room" services means services provided in a designated unit within a hospital for the immediate treatment of injury and other types of health emergencies.

"Expenditure minimum for capital expenditures" means $4,000,000 for capital expenditures, $1,000,000 for new or replacement medical equipment and $400,000 for used medical equipment.

"Extracorporeal shock wave lithotripsy (ESWL)" means a non-invasive procedure by which renal and ureteral calculi are pulverized using electrohydraulic shock waves.

"Freestanding emergency care facility" means an establishment, place or facility structurally distinct and separate from a hospital which represents itself either through advertising or name as providing emergency medical care services in life, limb, or function threatening conditions beyond the occasional emergency that occurs in the normal course of any clinical practice.

"Hansen's disease" services means therapeutic, supportive and restorative services for patients with Hansen's disease requiring long-term inpatient services.

"Health care provider" means an individual who is a direct provider of health care (including a physician, dentist, nurse, podiatrist, optometrist, physician assistant, or ancillary personnel employed under the supervision of a physician) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, outpatient facilities, and health maintenance organizations) in

which such care is provided and, when required by State law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration.

"Heart surgery" means a surgical procedure requiring the circulation of the blood by a heart lung machine while the heart or surrounding blood vessels are repaired.

"Home health agency" means a "home health agency" as defined in 42 Code of Federal Regulations section 440.70(d).

"Hospice" means hospice services as defined in 42 Code of Federal Regulations section 418.3.

"Intermediate care facility" (ICF) means an "intermediate care facility" as defined in section 11-94-2, HAR.

"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" means an intermediate care facility for individuals with intellectual disabilities as defined in 42 Code of Federal Regulations section 440.150(a).

"Long term" bed care services means those inpatient services provided to patients who are chronically ill, aged, disabled, or intellectually disabled and whose average length of stay is usually thirty days or more.

"Magnetic resonance imaging (MRI)" means a diagnostic imaging technique that employs magnetic and radio-frequency fields to image body tissues and monitor body chemistry noninvasively.

"Medical/surgical" services include those inpatient diagnostic and treatment services utilizing medical or operative procedures.

"Neonatal intensive care" services means the provision of care for newborns who require prolonged respiratory support, continuous cardiopulmonary support, intravenous therapy, major surgery, or treatment for infections.

"Neurosurgery" means surgery of any part of the nervous system.

"Nuclear medicine" services means the services of a medical specialty that uses radionuclides (elements which give off an emanation which is detectable by

various instruments) for diagnosis and treatment.

"Obstetric" services means those services for the care of women during pregnancy, childbirth, and after delivery, including prenatal care, labor, delivery, and postpartum care.

"Outpatient surgery (surgicenter)" services means services provided to treat a medical condition by surgery in an outpatient or ambulatory surgical center where the patient is not kept overnight.

"Pediatric" services means those inpatient services for the diagnosis and treatment of diseases and conditions of children.

"Psychiatric" services means services for the diagnosis and treatment of mental illness or mental disorder in persons.

"Radiation therapy" services means services for the treatment of physical conditions or illness, primarily cancer, through the use of external ionizing radiation.

"Reconsideration committee" means the reconsideration committee as established in section 323D-47, Hawaii Revised Statutes.

"Rehabilitation" services means inpatient services to restore the ill or disabled person to achieve the fullest physical, mental, social, vocational, and economic usefulness of which the person is capable.

"Review panel" means the review panel established pursuant to chapter 323D, Hawaii Revised Statutes.

"Skilled nursing facility" (SNF) means a "skilled nursing facility" as defined in section 11-94-2, HAR.

"Special treatment facility" means a "special treatment facility" as defined in section 11-98-02, HAR.

"State health services and facilities plan (SHSFP)" means the state health services and facilities plan established pursuant to section 323D-2, Hawaii Revised Statutes.

"Statewide council" means the statewide health coordinating council established pursuant to section 323D-2, Hawaii Revised Statutes.

"Subarea" means a geographical area designated by the agency pursuant to section 323D-2, Hawaii Revised Statutes.

"Subarea council" means a subarea health planning council established pursuant to section 323D-2, Hawaii Revised Statutes.

"Surface ambulance" services means transportation

of a patient in any motor vehicle or watercraft specifically equipped, designed or constructed, and maintained or operated for the purpose of accommodating the medical needs of patients.

"Transplant surgery" services means services for the transplantation of an organ from one person to another person.

"Tuberculosis" services means therapeutic and supportive services for patients with tuberculosis who require long-term inpatient care. [Eff. 2/9/81; am 7/1/82; am 1/21/88; am 1/21/88; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-4 Total capital expenditure. (a) For purposes of computing the amount of the total capital expenditure:

(1) The total cost of all items to be obligated for or purchased within a twelve month period for a program, service, plan, or project, regardless of whether or not the cost of any individual item is in excess of the expenditure minimum, is included in the computation;

(2) The cost of equipment which is not used for diagnosis or treatment, and which does not exceed the expenditure minimum for a single item or for a system, such as office equipment, usual business equipment, and office and waiting room furniture, is exempt from the computation;

(3) The cost of normal inventories of supplies such as glassware, chemicals, drugs, linens, and paper, is exempt from the computation;

(4) In the case of the acquisition of equipment or capital items, the cost of installation and the cost of initial training and instruction attendants to the use of the equipment or capital items are included in the computation; and

(5) In the case of the acquisition of equipment or capital items, the operating costs beyond the cost of installation and the cost of initial training and instruction attendant to

the use of the equipment or capital items are exempt from the computation.

(b) An obligation for a capital expenditure shall be deemed to have been incurred by or on behalf of a health care facility or health maintenance organization:

(1) When an enforceable contract is entered into by the facility or organization or by a person proposing the capital expenditure on behalf of the facility or organization for the construction, acquisition, lease, or financing of a capital asset; or

(2) Upon the formal internal commitment of fund by the facility or organization for a force account expenditure which constitutes a capital expenditure; or

(3) In the case of donated property, the date on which the gift vested.

(c) Studies, surveys, plans, schematic designs, and preliminary designs for a project shall not require a certificate of need unless or until their total cost for the project exceeds the expenditure minimum for capital expenditures.

(d) Final designs or working drawings, regardless of cost, shall require a certificate of need if the facility being designed may result in a total capital expenditure in excess of the expenditure minimum for capital expenditures.

(e) If a single project or the substantial equivalent of a single project is divided into separate components, so that the project or any component does not require a total capital expenditure in excess of the expenditure minimum, the agency may combine the components for purposes of computing the amount of the total capital expenditure and may treat the combined components as a single project. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-43)

§ 11-186-5 Standard categories of health care services. The standard categories of health care services are:

(1) Acute Bed Services

(A) Medical/Surgical

(B) Obstetrics
(C) Pediatrics
(D) Neonatal Intensive Care
(E) Critical Care
(F) Psychiatric
(G) Acute/long term swing

(2) Long Term Bed Services
(A) Psychiatric
(B) Tuberculosis
(C) Hansen's Disease
(D) Children's Orthopedics
(E) Rehabilitation
(F) SNF
(G) ICF
(H) SNF/ICF
(I) ICF/IID
(J) Special Treatment Facility

(3) Non-Bed Services
(A) Emergency Room
(B) Outpatient Surgery (Surgicenter)
(C) Diagnostic Radiology
(D) Computed Tomography Stationary
(E) Computed Tomography Mobile
(F) Nuclear Medicine
(G) Home Health Agency
(H) Surface Ambulance
(I) Extracorporeal Shock Wave Lithotripsy (ESWL)
(J) Magnetic Resonance Imaging (MRI) Stationary
(K) Magnetic Resonance Imaging (MRI) Mobile
(L) Freestanding Emergency Care Facility
(M) Comprehensive Outpatient Rehabilitation Facility

(4) Special Services
(A) Chronic Renal Dialysis
(B) Cardiac Catheterization
(C) Burn Center
(D) Neurosurgery
(E) Heart Surgery
(F) Transplant Surgery
(G) Radiation Therapy
(H) Hospice [Eff. 2/9/81; am 7/1/82; am 1/21/88; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-43)

§ 11-186-6 Change of health care service requiring a certificate of need. (a) The addition or deletion of any standard category of health care service listed in section 11-186-5 is a change of service that requires a certificate of need. If a health care facility proposes the addition or deletion of a health care service that is not clearly included in one of the standard categories, the agency shall determine whether or not the change is a change of service that requires a certificate of need.

(b) Any change of location of a health service is a change of service that requires a certificate of need unless the agency determines in writing that the change of location does not significantly affect the delivery of service to the target group. In making this determination, the agency shall consider:

(1) The distance from the old location to the new location;

(2) The accessibility and acceptability of the new location to the target group; and

(3) Any other factors that the agency deems relevant to an informed determination.

(c) The addition or deletion of a mobile service shall require one certificate of need only.

(d) The termination of services by a provider of health care services that is ceasing its entire operation shall not require a certificate of need. A provider of health care services that is ceasing its entire operation shall provide written notice to the agency at least ten days before the termination of services. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-43)

§ 11-186-7 Change of beds requiring a certificate of need. (a) Each standard bed service category is listed in section 11-186-5(1) and (2). The addition or deletion of any bed service category requires a certificate of need. The increase or decrease in the number of beds in any bed service category requires a certificate of need. The relocation of beds from one physical facility or site to another physical facility or site requires a certificate of need.

(b) Any increase or decrease in the number of beds in any standard bed service category does not

require a certificate of need if it is a temporary change that does not exceed ninety days. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-43)

SUBCHAPTER 2

CONSOLIDATION FOR REVIEW

§ 11-186-10 Deadlines for filing and completion of applications. (a) For purposes of consolidating for review completed applications that are or may be mutually exclusive or that present conflicting claims, the agency shall require that an application for a certificate of need pertaining to any of the following health care services, health care facilities, or equipment affecting the same health service area be filed and completed by the applicant on or before the following deadlines:

(1) Acute bed services involving new construction: the agency's first business day in January, May and September.

(2) Long term bed services involving new construction: the agency's first business day in March, July and November.

(3) Computed tomography, Magnetic resonance imaging and extracorporeal shock wave lithotripsy: the agency's first business day in February, April, June, August, October and December.

(b) In the event that the agency determines that the same application pertains to two or more paragraphs of subsection (a), the agency shall determine the paragraph to which the application substantially belongs and the agency shall assign the application to that paragraph.

(c) Each paragraph of subsection (a) has three or more deadlines. Each deadline is the beginning of a review cycle for agency review of the applications pertaining to the same paragraph. The Agency shall consolidate for review in a review cycle those applications pertaining to the same paragraph that are filed and completed on or before an applicable

deadline. If an application is not filed and completed on or before an applicable deadline, the agency shall not begin the agency review of the application until the next applicable review cycle after the application is filed and completed.

(d) Notwithstanding anything in this section to the contrary, this section shall not apply to an application for a certificate of need that satisfies the requirements of section 323D-45.3, Hawaii Revised Statutes, for required approval or to an emergency application for a certificate of need filed pursuant to section 11-186-99.

(e) Notwithstanding anything in this section to the contrary, this section shall not apply to an application for a certificate of need from any acute inpatient facility located outside the island of Oahu. [Eff. 2/9/81; am 1/21/88; comp] (Auth: HRS § 323D-62)(Imp: HRS §§ 323D-44, 323D-45.3)

SUBCHAPTER 3

CRITERIA FOR AGENCY REVIEWS

§ 11-186-15 Criteria. (a) The agency shall consider the following criteria in the review of an application for a certificate of need:

(1) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, persons with disabilities and other underserved groups, and the elderly, are likely to have access to those services;

(2) In the case of reduction or elimination of a service, including the relocation of a facility or service:

(A) The need that the population presently served has for the service;

(B) The extent to which that need will be met adequately by the proposed relocation or by alternative

arrangements; and

(C) The effect of the reduction, elimination, or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, persons with disabilities, and other underserved groups, and the elderly, to obtain needed health care;

(3) The probable impact of the proposal on the overall costs of health services to the community;

(4) The probable impact of the proposal on the costs of and charges for providing health services by the applicant;

(5) The immediate and long term financial feasibility of the proposal;

(6) The applicant's compliance with federal and state licensure and certification requirements;

(7) The quality of the health care services proposed;

(8) In the case of existing health services or facilities, the quality of care provided by those facilities in the past;

(9) The relationship of the proposal to the state health services and facilities plan;

(10) The relationship of the proposal to the existing health care system of the area;

(11) The availability of less costly or more effective alternative methods of providing service;

(12) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the state health services and facilities plan. [Eff. 2/9/81; am 1/21/88; am and comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-43)

§ 11-186-16 **Repealed.** [R 1/21/88]

SUBCHAPTER 4

FILING AND COMPLETION OF APPLICATIONS

§ 11-186-20 Letters of intent. Any person proposing a project that requires a certificate of need may file a letter of intent with the agency at the earliest possible opportunity. The letter of intent shall describe the proposed project in such detail as may be necessary to inform the agency of the nature and scope of the proposed project. The letter of intent shall include a description of the proposed project, its estimated cost, its location, and its estimated schedule. The agency may require the person proposing the project to file additional information about the project with the agency as the information becomes available during the course of planning for the project. A letter of intent and any information filed with the agency in accordance with this section shall not constitute an application for a certificate of need. [Eff. 2/9/81; am 1/21/88; am and comp] Auth: HRS § 323D-62) (Imp: HRS §§ 323D-12, 323D-52)

§ 11-186-21 Technical assistance. The agency shall provide technical assistance to the applicant in the preparation and filing of the application. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-12)

§ 11-186-22 Filing of application. The applicant for a certificate of need shall file an application with the agency. The application shall be filed on the form prescribed and furnished by the agency. The agency shall not accept for filing any application that is not submitted on the correct form. If the agency inadvertently accepts for filing an application that is not submitted on the correct form, the agency shall return the application to the applicant and require the applicant to submit the application on the correct form. [Eff. 2/9/81; am 1/21/88; comp]

(Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-23 Application forms. The application form prescribed by the agency may vary according to the type of project proposed. The agency may revise or amend the application forms from time to time. An application form may require the applicant to provide any information that is reasonably necessary for an informed review of the application, and the applicant shall provide the information in the form and manner that the agency may prescribe. The agency may require the application to provide supporting documentation for the information submitted in the application. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-24 When to file application. The applicant may file the application at any time during the year, provided that if the agency has established a deadline for the application pursuant to section 11-186-10, then the applicant shall file and complete the application on or before the applicable deadline. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-25 Filing fee for application. (a) There shall be a non-refundable filing fee for each application which shall be the sum of $200 plus .001 of the capital expenditure as defined in section 323D-2, Hawaii Revised Statutes up to $1,000,000 plus .0005 of the capital expenditure as defined in section 323D-2, Hawaii Revised Statutes in excess of $1,000,000.

(b) The applicant shall pay the filing fee when the application is filed and the agency shall accept an application only when such application is accompanied by the filing fee paid in full. [Eff. 2/9/91; am 5/27/00; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-26 Number of copies filed. Unless the agency directs otherwise, the applicant shall file with the agency the original and two copies of the application. In the case of a standard application which has been determined to be complete pursuant to section 11-186-30, HAR, the applicant shall mail copies of the application to members of the reviewing bodies including the subarea health planning council or the countywide review committee, the review panel and the statewide council. The agency shall provide the applicant with the names and mailing addresses of the members of the reviewing bodies. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-27 File number assigned to application. For administrative purposes, the agency shall assign a file number to each application that is filed with the agency. The file number shall indicate the year of the filing and the order of filing within the year. The agency shall not assign the same file number to any other application. A file number shall not be transferred from one application to any other application. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-12)

§ 11-186-28 Separate applications. When the same applicant has more than one proposal, the agency may direct the applicant to file a separate application for each proposal if the agency determines that separate consideration of the proposals may assist the agency in reaching an informed decision on the merits of each proposal. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-12)

§ 11-186-29 Completed application required. The agency requires a completed application for review. The filing of the application with the agency does not by itself mean that the application is complete. [Eff. 2/9/81; comp] (Auth: HRS § 323D-

62)(Imp: HRS § 323D-12)

§ 11-186-30 Determination of completeness.

(a) An application is complete when the agency determines that the application is properly filled out and includes all necessary information.

(b) The agency shall determine if the application is complete within thirty days after the application is filed. If the application is incomplete, the agency shall notify the applicant of the actions or additional information required to complete the application. The applicant shall have sixty days in which to complete the application. The sixty days shall be computed from the date when the agency provides notification to the applicant.

(c) If the applicant fails to complete the application within the sixty days, the agency may dismiss the application without prejudice pursuant to section 11-186-59. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-12)

SUBCHAPTER 5

REVIEW PROCEDURES

§ 11-186-35 Written notification to persons.

(a) When the agency determines that the application is complete, the agency shall provide written notification of the beginning of the period for the agency review of the application to the applicant and to any person who has asked the agency to place the person's name on a mailing list maintained by the agency. The written notification shall include the review schedule for the application.

(b) This section shall not apply to any emergency application for a certificate of need pursuant to section 11-186-99. This section shall not apply to an application for a certificate of need for which the agency has established a deadline pursuant to section 11-186-10, until the beginning of the next applicable review cycle after the application is filed and

completed. [Eff. 2/9/81; am 1/21/88; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-44)

§ 11-186-36 Review schedule. The agency shall prepare a review schedule for the application. The review schedule shall list the dates, times, and locations of the public meetings at which the appropriate subarea council or countywide review committee, the review panel, and the statewide council shall review the application. The review schedule is subject to later revision upon notice to the applicant and to any person who has asked the agency to place the person's name on a mailing list maintained by the agency. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-44)

§ 11-186-37 Length of review period. To the extent practicable, the period for agency review of the application shall not exceed ninety days from the date of notification to the date when the agency files its decision on the merits of the application. The agency may extend the period for agency review beyond the ninety days as provided in section 11-186-41. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-44)

§ 11-186-38 Date of notification. The date of notification is the date on which the agency mails written notification of the beginning of the period for agency review of the application to the applicant pursuant to section 11-186-39 or the date on which the written notification appears in a newspaper of general circulation pursuant to section 11-186-39, whichever date is later. The period for agency review shall begin on the date of notification. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-44)

§ 11-186-39 Method of notification. The agency shall provide written notification of the beginning of the period for agency review of the application to members of the public and third party payers through a newspaper of general circulation in the State. At its discretion, the agency may provide written notification through additional public information channels. The agency shall provide written notification to the applicant by mail. [Eff. 2/9/81; am 1/21/88; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-44)

§ 11-186-40 Additional copies. If the application is completed after it is filed, the agency may direct the applicant to provide the agency with thirty copies of the additional information required to complete the application or, if the additional information resulted in extensive revisions, additions, or deletions to the application, the agency may direct the applicant to provide the agency with thirty copies of the completed application. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-12)

§ 11-186-41 Extension of review period. (a) The agency may extend the period for agency review of the application for an additional sixty days beyond the ninety days if the agency determines that it would not be practicable to complete the review within ninety days. If the review period is extended, the agency shall notify the applicant in writing during the ninety days. The notification shall include a statement of the reason or reasons for the extension.

(b) The agency shall extend the period for agency review fifteen days at the request of the applicant if, during the period for agency review of the application, the agency requests the applicant to provide additional information respecting the subject of the review pursuant to section 11-186-54. If the review period is extended, the agency shall notify the applicant in writing. The extension shall apply to all other applications which have been consolidated for review

with the application for which additional information is required. In that event, the agency shall notify the other applicants in writing of the extension.

(c) The agency may extend the period for agency review for a length of time equivalent to the length of time during which the period for agency review of the application did not run pursuant to section 11-186-59. If the review period is extended, the agency shall notify the applicant in writing.

(d) The agency may extend the period for agency review if the agency and the applicant agree in writing to the extension and the length of the extension. [Eff. 2/9/81; am 1/21/88; comp] (Auth: HRS § 323D-62)(Imp: HRS 323D-44)

§ 11-186-42 Burden of proof. The applicant for a certificate of need shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. [Eff. 2/09//81; am and comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-12)

§ 11-186-43 Order for review. To the extent practicable, each application shall be reviewed in the order in which the agency determined that the application was complete. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-12)

§ 11-186-44 Staff review and reports. The agency staff shall review the file of each application filed with the agency. The agency staff may prepare one or more written staff reports on the application. A staff report may include an analysis of the application, identification of issues and a discussion of their relationship to the applicable criteria for a

certificate of need and any staff recommendations on the application. In the case of applications consolidated for review, a staff report may include a comparative analysis of the applications, identification of issues and a discussion of their relationships to the applicable criteria for a certificate of need, and any staff recommendations of the applications. The staff report shall be made a part of the file of the application. The staff report shall be provided to the applicant, any other persons upon written request, any subarea council or countywide review committee that reviews the application, and to the review panel and the statewide council if the review panel and the statewide council review the application. The agency staff may participate in any public meeting or public hearing held on any application. [Eff. 2/9//81; am and comp] (Auth: HRS Sec 323D-62) (Imp: HRS Sec 323D-12)

§ 11-186-45 Review of completed standard application. (a) The agency shall refer a completed application other than an emergency application to the appropriate subarea council or countywide review committee, the review panel, and the statewide council for review and recommendations.

(b) The agency shall determine the primary target group for the proposal. Prior to the determination, the agency may consult with the chairperson of any subarea council or the chairperson of any countywide review committee.

(1) If the agency determines that the application's primary target group is the population of one subarea, the application shall be referred to the subarea council for that subarea.

(2) If the agency determines that the application's primary target group is the population of two or more subareas in a county, the application shall be referred to a countywide review committee consisting of two members from each subarea council in the county to be appointed by the subarea council.

(3) If the agency determines that the application's primary target group is the entire population of the State, the application shall be referred to each subarea council in the State.

(c) As far as practicable, the application shall be reviewed in the following order:

(1) The appropriate subarea council or countywide review committee shall review the application at one or more public meetings called for the purpose and shall submit any recommendations to the review panel, the statewide council, and the agency.

(2) The review panel shall review the application at one or more public meetings called for the purpose and shall submit any recommendations to the statewide council and the agency.

(3) The statewide council shall review the application at one or more public meetings called for the purpose and shall submit any recommendations to the agency.

(d) Recommendations of the subarea council, the countywide review committee, the review panel, or the statewide council shall be submitted to the agency at least seven days before the period for agency review of the application expires.

(e) Recommendations of the subarea council, the countywide review committee, the review panel, or the statewide council are not binding on the agency. [Eff. 2/9//81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-44, 323D-45)

§ 11-186-45.1 Joint Review. (a) The subarea council or the countywide review committee may join together with the review panel for a joint review of a certificate of need application.

(b) The review panel and the statewide council may join together for a joint review of a certificate of need application. [Eff. 1/21//88; comp] (Auth: HRS § 323D-62) (Imp: SLH 1987, Act 270, § 2)

§ 11-186-46 Location of meetings. (a) The statewide council, the review panel and the reconsideration committee may meet and exercise their powers in any part of the State.

(b) A countywide review committee may meet and exercise its powers in any part of the county.

(c) Each subarea council may meet and exercise its power in its geographical area. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-45)

§ 11-186-47 Right to attend public meeting. Each meeting of the statewide council, the review panel, a countywide review committee, or a subarea council shall be open to the public unless the meeting is closed to the public pursuant to chapter 92, Hawaii Revised Statutes. Any orderly person shall have the right to attend a meeting open to the public; provided that any person who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall be removed from the meeting. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-45)

§ 11-186-48 Appearances. In any proceeding before the statewide council, the review panel, a countywide review committee, a subarea council, or the reconsideration committee, any person may appear on their own behalf or the person may appear 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 statewide council, the review panel, a countywide review committee, a subarea council, or the reconsideration committee may at any time require any person who is appearing in a representative capacity to show their authority to act in that capacity. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-45)

§ 11-186-49 Review panel quorum. A quorum for the review panel to transact business shall consist of a majority of the number of members to which the review panel is entitled. While a quorum is in attendance, the concurrence of a majority of the members in attendance shall make any action of the review panel valid. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-42, HRS 323D-45)

§ 11-186-50 Record of votes. An accurate record of votes and actions taken at any statewide council, review panel, countywide review committee, or subarea council public meeting shall be set forth in the minutes of the meeting. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-45)

§ 11-186-51 Conflicts of interest. (a) No member of a subarea council, a countywide review committee, the review panel, or the statewide council shall vote on any matter respecting an applicant with which the member, the member's spouse, the member's child, or the member's parent has (or within the twelve months preceding the vote, had) any substantial ownership, directorship, officership, employment, prospective employment for which negotiations have begun, medical staff, fiduciary, contractual, creditor, debtor, or consultative relationship.

(b) If such a relationship exists or has existed, the member shall make a written or oral disclosure of the relationship before any action is taken with respect to the applicant by the subarea council, countywide review committee, review panel, or statewide council, to which the member belongs and the member shall make the relationship public in any meeting in which action is to be taken with respect to the applicant.

(c) Where any other conflict of interest exists, a member of a subarea council, countywide review committee, review panel, or statewide council shall be disqualified from voting in the review of an application. 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. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-45)

§ 11-186-52 Repealed. [R 1/21/88]

§ 11-186-53 Repealed. [R 1/21/88]

§ 11-186-54 Request for additional information. At any time during the period for agency review of the application, the agency may request the applicant to provide additional information respecting the subject of the review. If the agency does make such a request, the applicant shall have fifteen days in which to provide the information to the agency, and the period for agency review shall, at the request of the applicant, be extended fifteen days. This extension shall apply to all other applications which have been consolidated for review with the application for which additional information is requested. If the applicant fails to provide the additional information to the agency within the fifteen days, the agency may dismiss the application without prejudice pursuant to section 11-186-59. [Eff. 2/9//81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-55 Technical advisory committees and experts. The agency may call upon technical advisory committees and individuals who have special expertise to provide technical assistance in the review of an application. [Eff. 2/9//81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-56 Notification of status. Upon request, the agency shall provide information about the status of the agency's review and other appropriate information about the review to the applicant and members of the public. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-57 Amendment to application. (a) The applicant may amend the application. The applicant shall file the amendment in writing with the agency along with any other information which the agency may require.

(b) Pursuant to section 11-186-59, the agency may dismiss the application without prejudice if the agency determines that the amendment is a material change in the application, that the amendment necessitates major revisions to the application, and that there is insufficient time remaining in the period for agency review for the agency to make an informed decision on the merits of the application as amended. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-58 Prohibited conduct. (a) No person shall influence or attempt to influence or attempt to influence action on any application by fraud, misrepresentation, or corruption.

(b) No person shall submit or cause to be submitted false statements or information in connection with any application.

(c) No person shall disrupt or interfere with the fair and orderly review of any application.

(d) If any person violates any subsection of this section, the agency may take appropriate action to protect the public interest, including, but not limited to, issuing a verbal or written warning to the person, excluding the person from any public meeting or public hearing on the application, denying any request made by the person in connection with the application, or dismissing without prejudice any application of the person pursuant to section 11-186-59. [Eff. 2/9/81;

comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-59 Dismissal without prejudice. (a) Without reaching a decision on the merits of the application, the agency may dismiss the application for any of the following reasons:

(1) Failure of the applicant to complete the application within the time prescribed in section 11-186-30;

(2) Failure of the applicant to pursue the application;

(3) Failure of the applicant to respond to written agency correspondence addressed to the applicant;

(4) Failure of the applicant to provide any additional information requested by the agency within the time prescribed in section 11-186-54;

(5) An amendment to the applicant, if the amendment meets the criteria prescribed in section 11-186-57; or

(6) Prohibited conduct by the applicant pursuant to section 11-186-58.

(b) Before dismissing the application, the agency shall provide the applicant with written notice and an opportunity of ten days in which to respond, during which the period for agency review of the application shall not run.

(c) If the agency dismisses the application, the agency shall explain in the record the reason or reasons for the dismissal and shall furnish the applicant with a copy of the explanation.

(d) Except as provided in section 11-186-10, dismissal of an application for any of the reasons in subsection (a) of this section shall be without prejudice to the applicant's right to refile the application or to file an amended application. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-60 Withdrawal of application. The

applicant has the right to withdraw the application at any time before the agency files a written decision on the merits of the application or before the agency dismisses the application without prejudice. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

SUBCHAPTER 6

DECISION AND FINDINGS

§ 11-186-70 Decision on the merits.

(a) Unless the application for a certificate of need has been withdrawn or dismissed, the agency shall file a decision on the merits of the application within the required time. The decision shall be in writing and shall include findings of fact and conclusions of law.

(b) On the date that the agency files its decision, the agency shall send the decision to the applicant by certified mail, return receipt requested, and deliver to addressee only. The agency shall send or make available the decision to any other person upon the person's written request.

(c) The decision on the merits of an application, other than an emergency application for a certificate of need, is not a final decision of the agency when it is filed. The decision shall become final after there is an opportunity for any person to request a public hearing for reconsideration of the decision pursuant to section 11-186-82.

(d) When the agency sends or makes available the decision to any person, a written notice shall accompany the decision. The written notice shall state that the decision is not a final decision of the agency when it is filed; that any person may request a public hearing for reconsideration of the decision pursuant to section 11-186-82; that the decision shall become final if no person makes a timely request for a public hearing for a reconsideration of the decision; that if there is a timely request for a public hearing for reconsideration of the decision and after the agency's final action on the reconsideration, the decision shall become final. [Eff. 2/9/81; am 7/1/82; am 1/21/88; comp] (Auth: HRS § 323D-62) (Imp:

HRS § 323D-44)

§ 11-186-71 Failure to act within the required time. A certificate of need shall not be issued or denied solely because the agency failed to file a decision within the required time. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-72 Repealed. [R 1/21/88]

§ 11-186-73 Repealed. [R 1/21/88]

§ 11-186-74 Terms of issuance. If a certificate of need is issued, the certificate of need shall specify terms of issuance, including a description of the nature and the extent of the activity or activities authorized by the certificate of need. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-75 Increase in project cost. (a) In issuing a certificate of need, the agency shall specify in writing the maximum capital expenditure that may be obligated under the certificate of need.

(b) Any increase in the cost of the approved project that exceeds or may exceed the maximum capital expenditure by fifteen per cent or by the expenditure minimum shall require the agency's prior written approval or, if the agency directs, an additional certificate of need. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-43)

§ 11-186-76 Statement of reasons. (a) If the agency's final decision on a certificate of need is inconsistent with a recommendation, the agency shall send to the subarea council, the countywide review committee, the review panel, or the statewide council that made the recommendation a written explanation for the inconsistency.

(b) If the agency's final decision is inconsistent with the goals of the state health plan, the agency shall send a written explanation for the inconsistency to the subarea council or countywide review committee that reviewed the application, the review panel, and the statewide council. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-77 Conditional certification. At its discretion, the agency may issue a conditional certification to an application which, by modification of specific items of the application, may successfully meet the criteria for the issuance of a certificate of need. The agency shall not make the decision subject to any condition unless the condition directly relates to criteria established by law. The agency shall notify the applicant in writing of the modifications required and of the time period within which the modifications are to be made. The agency shall establish a time period not to exceed one hundred fifty days from the date of the conditional certification within which the applicant shall certify in writing to the agency that the required modifications to the application have been made. The agency shall deny any application in which the required modifications have not been made within the time period established by the agency. [Eff. 2/9/81; comp] (Auth: HRS § 323D-46) (Imp: HRS § 323D-46)

SUBCHAPTER 7

POST-DECISION PROCEDURES

§ 11-186-82 Request for reconsideration. (a) Any person may, for good cause shown, request in writing a public hearing before a reconsideration committee for reconsideration of the agency's decision on the merits filed in section 11-186-70. The request shall be in writing and shall include a statement of the nature of the person's interest and a statement of the reasons why the person believes that good cause exists for a public hearing for reconsideration of the decision. The request shall be filed with the committee within ten working days of the decision. The committee shall deny any request for a public hearing for reconsideration that is not timely filed, that fails to show good cause for a public hearing for reconsideration, or that is frivolous.

(b) A request for a public hearing shall be deemed by the committee to have shown good cause, if:

(1) It presents significant relevant information not previously considered by the agency which, with reasonable diligence, could not have been presented before the agency made its decision;

(2) It demonstrates that there have been significant changes in factors or circumstances relied upon by the agency in reaching its decision;

(3) It demonstrates that the agency has materially failed to follow the agency's rules in reaching its decision;

(4) It provides any other basis for a public hearing which the agency determines constitutes good cause; or

(5) The decision of the administrator differs from the recommendation of the statewide council.

(c) If the request for a public hearing for reconsideration is denied, the committee shall file a written explanation for the denial and shall send it to the person who made the request by certified mail, return receipt requested, and deliver to addressee only. The explanation shall include a written notice stating that:

(1) The denial is the agency's final action on the reconsideration; and

(2) The decision which was sought to be reconsidered is the final decision of the

agency.

(d) If good cause has been shown to exist, the committee shall schedule a public hearing for reconsideration of the decision. To the extent practicable, the public hearing shall be held within thirty days after good cause has been shown to exist. Prior to the hearing, the agency shall provide written notice of the hearing to the person who made the request, the parties to the hearing, and to any other persons upon written request. The committee shall file a decision on the reconsideration within forty-five days after the conclusion of the hearing. The committee shall send the decision to the parties to the hearing and the person who requested the hearing by certified mail, return receipt requested, and deliver to addressee only. The committee shall send the decision to any other persons upon written request. A written notice shall accompany the decision. The written notice shall state that:

(1) The decision is the agency's final action on the reconsideration; and

(2) The decision is the final decision of the agency.

(e) The number of members necessary to constitute a quorum to do business shall consist of a majority of all members. When a quorum is in attendance, the concurrence of the majority of the members in attendance shall make any action of the committee valid. [Eff. 2/9/81; am 7/1/82; am 1/21/88 1988; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-47)

§ 11-186-83 Repealed. [R 1/21/88]

§ 11-186-84 Repealed. [R 1/21/88]

§ 11-186-85 Prohibition on transfers. A certificate of need is issued only to the applicant named in the application. The certificate of need shall not be sold, assigned, leased, donated, or

otherwise transferred to any other person [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-86 Effect of decision on future proposals. The issuance or denial of a certificate of need for a specific project in an applicant's long-range development plan shall be without prejudice to any agency action or decision on any future or other application for a certificate of need filed by the same applicant for another project in its long-range development plan. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-87 Periodic monitoring. After a certificate of need is issued, the agency shall periodically monitor the development and progress of the project that is the subject of the certificate of need. [Eff. 2/9//81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-46.2, 323D-53)

§ 11-186-88 Agency's right to inspect. The agency or an authorized representative designated by the agency shall have the right to inspect any facility, site, location, book, document, paper, filed, or other record of the holder of the certificate of need that is related to any project authorized by the certificate of need, in order to monitor and evaluate the holder's compliance with the certificate of need's terms of issuance. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-46.2, 323D-53)

§ 11-186-89 Periodic reports. After a certificate of need is issued, the holder of the certificate of need shall file with the agency such

periodic reports as the agency may from time to time require on the development and progress of the project that is the subject of the certificate of need. The periodic reports shall be in the format designated by the agency, shall contain the information required by the agency, and shall be filed within the deadlines specified by the agency. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-12, 323D-46.2, 323D-53)

§ 11-186-90 Repealed. [R]

§ 11-186-91 Withdrawal of certificate of need. (a) At any time after a certificate of need is issued, the agency may withdraw the certificate of need if the agency determines that:

(1) The holder of the certificate of need is not meeting the timetable specified in the approved application and is not making a good faith effort to meet it;
or

(2) The project being implemented differs substantially from that which was authorized by the certificate of need.

(b) The agency may withdraw at any time a certificate of need if the agency determines that the applicant procured the certificate of need by fraud, misrepresentation, or corruption, or that the applicant submitted or caused to be submitted to the agency false statements or information in correction with the application for the certificate of need.

(c) In any proceeding brought by the agency to withdraw a certificate of need, the agency shall provide notice and an opportunity for a hearing in accordance with chapter 91, Hawaii Revised Statutes. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-46.2) (Imp: HRS § 323D-46.2)

SUBCHAPTER 8

EMERGENCY SITUATIONS

§ 11-186-96 Repealed. [R 1/21/88]

§ 11-186-97 Repealed. [R 1/21/88]

§ 11-186-98 Repealed. [R 1/21/88]

§ 11-186-99 Emergency situation. (a) If an emergency situation is believed to exist, the applicant may file an emergency application for a certificate of need on the form prescribed and furnished by the agency.

(b) For purposes of this section, an emergency situation is a state of affairs involving an actual substantial injury to public health or where there is a clear and present danger of such an injury occurring.

(c) Notwithstanding any other provision of this chapter to the contrary, when the agency determines that the emergency application is complete and before the agency files a decision on the merits of the application, the agency shall make a reasonable effort to consult with and to provide written or oral notification of the application to the chairperson of the statewide council, the chairperson of the review panel, and, in the event that the agency has determined that the application's primary target group is less than the entire population of the State, the chairperson of the appropriate subarea council or countywide review committee, or to an authorized representative of any chairperson.

(d) After consideration of any timely comments or recommendations on the emergency application, the agency shall file a decision on the merits of the application pursuant to section 11-186-70 within ten days after the agency determines that the application is complete. The agency may issue a certificate of need if the agency determines that an emergency situation exists. The agency shall deny the

certificate of need if the agency determines that an emergency situation does not exist, that the proposal is indirectly related to an emergency situation, or that other good cause exists for the denial of the certificate of need.

(e) The decision on the merits of the emergency application in subsection (d) of the section is the final decision of the agency. The decision shall become final upon its filing without an opportunity for any person to request a public hearing for reconsideration of the decision pursuant to section 11-186-82.

(f) Except as provided in section 11-186-10, the agency's denial of a certificate of need under this section is without prejudice to the applicant's right to file a non-emergency application for a certificate of need for the same proposal, on the form prescribed and furnished by the agency. [Eff. 2/9/81; comp] (Auth: HRS § 323D-44) (Imp: HRS § 323D-44)

§ 11-186-99.1 Administrative review of certain proposals. (a) The agency may review and approve, conditionally approve, or disapprove certain applications for certificate of need without referring the applications to the subarea council, the review panel, the statewide council, or the countywide review committee.

(b) Projects eligible for administrative review are:

(1) Bed changes which will have a capital expense of $1,000,000 or less, and which will have an increased annual operating expense of less than $500,000;

(2) Service changes which will have a capital expense of $1,000,000 or less, and which will have an increased annual operating expense of less than $500,000;

(3) Any acquisition of a health care facility or service which will result in lower annual operating expenses for that facility or service;

(4) Any change of ownership, where the change is from one entity to another substantially

related entity;

(5) An additional location of an existing service or facility; or

(6) Any proposal which is determined by the agency not to have a significant impact on the health care system.

(c) An applicant whose proposal meets one or more of the criteria in subsection (b) may submit an application for administrative review and approval.

(d) The agency shall deny any request for administrative review if it determines that: the application does not meet any of the criteria in subsection (b), or that the public interest will be served by requiring the application to go through the standard review process. Any application which is denied an administrative review under this subsection may be resubmitted by the applicant for review under the standard procedure. A denial of administrative review under this subsection does not constitute a certificate of need disapproval.

(e) The agency may approve a certificate of need for any application submitted under this chapter if the agency determines that the application meets one or more of the eligibility criteria in subsection (b), and that the application meets the criteria for certificate of need as established in section 11-186-15(a); and that there is no compelling public interest which will be served by requiring the application to go through the standard review process.

(f) The agency shall disapprove any application submitted under this section if it determines that the application does not meet the criteria for certificate of need established in section 11-186-15(a). The agency shall also disapprove any application for certificate of need, whether it has been submitted for administrative review or standard review, if the application is inconsistent with or contrary to the state health services and facilities plan under section 323D-15, Hawaii Revised Statutes.

(g) A decision under this section shall become final after the time expires for any person to request a public hearing for reconsideration of the decision pursuant to section 11-186-82.

(h) Sections 11-186-35 through 11-186-41, 11-186-44 through 11-186-51, and 11-186-70 shall not apply to

administrative reviews under this section. [Eff. 1/21/88; am and comp] (Auth: HRS § 323D-62) (Imp: SLH 1987, Act 270, § 2)

SUBCHAPTER 9

MISCELLANEOUS PROVISIONS

§ 11-186-120 Repealed. [R]

§ 11-186-125 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. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)