

DEPARTMENT OF HEALTH

Repeal of Chapter 11-148 and
Adoption of Chapter 11-148.1
Hawaii Administrative Rules

August 2, 2021

SUMMARY

1. Chapter 11-148, Hawaii Administrative Rules, entitled "Certification of Adult Foster Homes", is repealed.

2. Chapter 11-148.1, Hawaii Administrative Rules, entitled "Certification of Adult Foster Homes", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 148

CERTIFICATION OF ADULT FOSTER HOMES

REPEALED

§§11-148-1 to 11-148-60 Repealed. [R **AUG 02 2021**]

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 148.1

CERTIFICATION OF ADULT FOSTER HOMES

Subchapter 1 General Provisions

- §11-148.1-1 Purpose
- §11-148.1-2 Definitions

Subchapter 2 Certification Requirements

- §11-148.1-3 Certification required
- §11-148.1-4 Application and documentation for certified caregiver applicant
- §11-148.1-5 Application and documentation for substitute caregiver applicant
- §11-148.1-6 Home study process
- §11-148.1-7 Liability insurance
- §11-148.1-8 Coverage amounts
- §11-148.1-9 Proof of insurance
- §11-148.1-10 Issuance of certificate of approval
- §11-148.1-11 Renewal of certificate of approval
- §11-148.1-12 Provisional certificate
- §11-148.1-13 Denial of application for or renewal of certificate of approval
- §11-148.1-14 Denial of a substitute caregiver application
- §11-148.1-15 Remedies
- §11-148.1-16 Revocation of certificate of approval
- §11-148.1-17 Hearing
- §§11-148.1-18 to 11-148.1-20 (Reserved)

Subchapter 3 Administration of the Adult Foster Home

- §11-148.1-21 Eligibility of individuals to be cared for
- §11-148.1-22 Admission
- §11-148.1-23 Number of individuals to be cared for
- §11-148.1-24 Record of adult with intellectual or developmental disabilities
- §11-148.1-25 Adult foster home record
- §11-148.1-26 Contacts with the foster home
- §11-148.1-27 Surrender of certificate
- §11-148.1-28 Change in information
- §11-148.1-29 to 11-148.1-31 (Reserved)

Subchapter 4 Care of Adult with I/DD

- §11-148.1-32 Member of foster family
- §11-148.1-33 Health
- §11-148.1-34 Emergencies and adverse events
- §11-148.1-35 Diet
- §11-148.1-36 Clothing and personal supplies
- §11-148.1-37 Recreation and social activities
- §11-148.1-38 Training and behavior supports
- §11-148.1-39 Religion
- §11-148.1-40 Accounts of adult with I/DD
- §11-148.1-41 Rights of the adult with I/DD
- §11-148.1-42 Discharge of adult with I/DD
- §§11-148.1-43 to 11-148.1-45 (Reserved)

Subchapter 5 Foster Family and Home Environment

- §11-148.1-46 Background checks
- §11-148.1-47 Training
- §11-148.1-48 References
- §11-148.1-49 Health of foster family
- §11-148.1-50 Income
- §11-148.1-51 Employment
- §11-148.1-52 Absences from the home
- §§11-148.1-53 to 11-148.1-56 (Reserved)

Subchapter 6 Housing and Sanitation

- §11-148.1-57 Requirements
- §11-148.1-58 Equipment and furnishings

§11-148.1-1

§11-148.1-59 Sleeping arrangement
§11-148.1-60 Severability

Historical note: This chapter is based substantially upon chapter 11-148 [Eff 4/29/88; R **AUG 0 2 2021**]

SUBCHAPTER 1

GENERAL PROVISIONS

§11-148.1-1 Purpose. The purpose of this chapter is to establish rules governing adult foster homes. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-2 Definitions. As used in this chapter:

"Adult foster home" shall have the same meaning as defined in section 321-11.2, Hawaii Revised Statutes (HRS).

"Adult with intellectual or developmental disabilities" or "adult with I/DD" means any adult with intellectual or developmental disabilities, age eighteen years or older, who is not related to the certified caregiver and has been deemed eligible for services by the division.

"Adult residential care home" shall have the same meaning as defined in section 321-15.1, HRS.

"Applicant" means any person age twenty-one years or older who applies for a certificate of approval.

"Background check" shall have the same meaning as defined in section 321-15.2, HRS.

"Boarding house" means a private home or commercial facility that provides food and lodging for paying residents. Boarding house recipients are not cared for as a family member and typically do not share in the activities and responsibilities of the operator's family.

"Case management branch" means the department of health, developmental disabilities division, case management branch.

"Certificate of approval" means a certificate issued by the department's certifying agency authorizing the certified caregiver to operate an adult foster home.

"Certified caregiver" shall have the same meaning as defined in section 321-11.2, HRS.

"Certifying agency" means the department of health, developmental disabilities division, certification unit which has the responsibility and authority to establish and enforce standards of condition, management and competence, and to issue certificates as described in this chapter.

"Department" means the department of health.

"Developmental disabilities" shall have the same meaning as defined in section 333F-1, HRS.

"Director" means the director of health.

"Division" means the department of health, developmental disabilities division.

"Dual certification" means an existing licensed child foster home under section 346-17, HRS, who applies for and receives a certificate to operate an adult foster home that is certified specifically for the child with intellectual or developmental disabilities who reaches the age of eighteen years.

"Household member" means all individuals residing in the adult foster home, including the certified caregiver(s).

"Individualized service plan" shall have the same meaning as defined in section 333F-1, HRS.

"Intellectual disability" shall have the same meaning as defined in section 333F-1, HRS.

"Potable water" means water which conforms to the Safe Drinking Water Act standards set forth by the United States Environmental Protection Agency (EPA) and the State of Hawaii.

"Provisional certificate" means a temporary certificate that may be issued by the certifying agency if the certified caregiver is unable to correct

deficiencies within the time frame specified by the certifying agency.

"Related" shall have the same meaning as defined in section 321-11.2, HRS.

"Residency agreement" means an agreement between the adult with I/DD or the legal representative of the adult with I/DD and the certified caregiver that outlines the rights and responsibilities between both parties, including protections that address eviction and discharge processes comparable to those provided under chapter 521, HRS.

"Residential care facility" means a licensed adult residential care home as defined in section 321-15.1, HRS; expanded adult residential care home as defined in section 321-15.1, HRS; developmental disabilities domiciliary home as defined in section 321-15.9, HRS; assisted living facility as defined in section 323D-2, HRS; intermediate care facility for individuals with intellectual disabilities as defined in 42 C.F.R. §440.150; resource family home as defined in section 346-16, HRS; or community care foster family home as defined in section 321-481, HRS.

"Rooming house" means a commercial residential facility which provides living quarters to paying residents apart from those occupied by the rooming house operator. Residents may share facilities such as a kitchen and bathroom, but rooming house recipients are not cared for as a family member and typically do not share in the activities and responsibilities of the operator's family.

"Self-preserve" means the mental and physical capacity to follow instructions and evacuate from a facility safely without human assistance in emergency situations.

"Substitute caregiver" means an individual twenty-one years of age or older approved by the certifying agency to provide care, training, and supervision to the adult with I/DD and who temporarily takes charge of the foster home in the absence of the certified caregiver. [Eff **AUG 02 2021**]
(Auth: HRS §§ 321-9, 321-11.2, 321-11.8) (Imp: HRS §§321-11.2, 321-11.8)

SUBCHAPTER 2

CERTIFICATION REQUIREMENTS

§11-148.1-3 Certification required. An adult foster home shall have a valid certificate of approval or provisional certificate in order to care for adults with I/DD. No person may operate an adult foster home unless certified by the department.
[Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-1.2)
(Imp: HRS §321-11.2)

§11-148.1-4 Application and documentation for certified caregiver applicant. (a) A certified caregiver applicant shall submit a written application on forms prescribed by the certifying agency.

(b) An application is not complete until the certifying agency receives a written application which contains all information and supporting documentation required by this chapter.

(c) Applicants may mail applications and supporting documentation to the certifying agency.

(d) Incomplete applications will not be processed and will be considered closed by the certifying agency after ninety calendar days.

(e) The application shall include:

- (1) A list of all persons who reside in the home;
- (2) An application and any supporting documentation for each substitute caregiver that will provide care in the home, as outlined in section 11-148.1-5, if applicable;
- (3) A physician's statement regarding the applicant's ability to provide care to adults with I/DD;
- (4) A current and accurate floor plan of the applicant's home that has been approved by the respective county building department;

- (5) A fire evacuation plan for the applicant's home that includes the location of exits, planned evacuation routes, fire extinguishers, smoke alarms, and wheelchair ramps, if applicable;
- (6) A signed consent form and all applicable processing fees for each person undergoing a background check so that the department or its designee can conduct a background check in accordance with section 11-148.1-46, which includes fingerprinting and employment history;
- (7) Three personal references;
- (8) Verification of a current tuberculosis clearance for the applicant and all household members, including children, in accordance with current department of health examination procedures and regulations, chapter 11-164.2, Hawaii Administrative Rules (HAR);
- (9) Verification of the applicant's current certification in first aid and cardiopulmonary resuscitation;
- (10) Verification of the applicant's license to practice as a registered nurse or licensed practical nurse; or certification to practice as a certified nurses aid, if applicable; and
- (11) Any other requirements in accordance with departmental policy.

(f) An applicant may withdraw the application at any time during the application process by notifying the certifying agency in writing.

[Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §§321-11.2, 321-15.2, 846-2.7)

§11-148.1-5 Application and documentation for substitute caregiver applicant. (a) A substitute caregiver applicant shall submit a written application on forms prescribed by the certifying agency.

(b) An application is not complete until the certifying agency receives a written application which contains all information and supporting documentation required by this chapter.

(c) Applicants may mail applications and supporting documents to the certifying agency; and

(d) Incomplete applications will not be processed by the certifying agency.

(e) The application shall include:

(1) A physician's statement regarding the applicant's ability to provide care to adults with I/DD;

(2) A signed consent form and all applicable processing fees so that the department or its designee can conduct a background check in accordance with section 11-148.1-46, which includes fingerprinting and employment history;

(3) Verification of the applicant's current tuberculosis clearance, in accordance with current department of health examination procedures and regulations, chapter 11-164.2, HAR;

(4) Verification of the applicant's current certification in first aid and cardiopulmonary resuscitation;

(5) Verification of the applicant's license to practice as a registered nurse or licensed practical nurse; or certification to practice as a certified nurses aid, if applicable; and

(6) Any other requirements in accordance with departmental policy.

(f) An applicant may withdraw the application at any time during the application process by notifying the certifying agency in writing. [Eff **AUG 02 2021**]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §§321-11.2, 321-15.2, 846-2.7)

§11-148.1-6 Home study process. (a) After receiving a completed application for a certificate of

approval, the certifying agency shall review the information submitted and inspect the home to determine its compliance with this chapter.

(b) The certifying agency shall inform the applicant in writing of any areas of noncompliance. If the certifying agency finds any areas of noncompliance, the certifying agency shall give the applicant time to correct the deficiencies that shall not exceed sixty calendar days from the date of the written notice.

(c) An applicant and the home must be in compliance with this chapter before the certifying agency may issue a certificate of approval.

(d) If the applicant fails to correct all deficiencies in the time frame specified by the certifying agency, the certifying agency shall deny the application pursuant to section 11-148.1-13 and inform the applicant in writing.

(e) A record of the home study findings shall be kept on file with the certifying agency.

[Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-7 Liability insurance. (a) Any person who operates an adult foster home shall obtain and maintain the following types of insurance:

- (1) Liability insurance with respect to the operation of the home which meets the requirements of this chapter; and
- (2) Automobile liability insurance, including bodily injury liability coverage for vehicles used to transport adults with I/DD which meets the requirements of this chapter.

(b) The insurance shall be obtained from a company authorized by law to issue such insurance in the State of Hawaii, or the insurance shall meet the requirements of section 431:8-301, HRS, if using an insurance company not licensed by the State of Hawaii.

[Eff **AUG 0 2 2021**] (Auth: HRS §321-11.8) (Imp: HRS §321-11.8)

§11-148.1-8 Coverage amounts. (a) All operators of adult foster homes shall obtain and maintain:

- (1) Liability insurance with respect to their operation of the homes in the amount of \$1,000,000 for each occurrence, and \$2,000,000 in the aggregate; and
- (2) Automobile liability insurance, including bodily injury liability coverage for vehicles used to transport adults with I/DD in with at least \$100,000 per occurrence, and \$300,000 in the aggregate.

(b) Each insurance policy required by this chapter shall contain the following clauses:

- (1) The State of Hawaii and its officers and employees are additional insureds; and
- (2) It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy.

[Eff **AUG 02 2021**] (Auth: HRS §321-11.8)
(Imp: HRS §321-11.8)

§11-148.1-9 Proof of insurance. (a) All operators of adult foster homes shall provide the department with a copy of a certificate of insurance for the home and for vehicles used to transport adults with I/DD which indicates that the home has obtained and maintained liability insurance which meets the requirements of this chapter on an annual basis.

(b) Should the liability insurance coverages be cancelled, limited in scope, or not renewed upon expiration while the adult foster home continues to operate, the operator shall immediately procure replacement insurance that meets the requirements of this chapter and shall promptly provide the department with an updated certificate of insurance.

[Eff **AUG 02 2021**] (Auth: HRS §321-11.8)
(Imp: HRS §321-11.8)

§11-148.1-10 Issuance of certificate of approval. (a) The certifying agency may issue a

certificate of approval after determining that the applicant and the home have met the requirements of this chapter.

(b) The certificate of approval shall specify:

- (1) The name and address of the certified caregiver to whom the certificate of approval is issued;
- (2) The number of adults with I/DD that may live in the home; and
- (3) The period for which the certificate is effective.

(c) Unless revoked, the certificate of approval shall be effective for one year from the date of issuance.

(d) The certificate of approval shall be revoked when:

- (1) The certified caregiver to whom the certificate of approval is issued ceases to operate an adult foster home;
- (2) The certified caregiver no longer lives at the address listed on the certificate of approval;
- (3) The adult foster home accepts more than the number of adults with I/DD for which the home is approved.

(e) The original certificate of approval shall be available for inspection at the adult foster home. The certification of an adult foster home shall not obligate the department to refer adults with I/DD to the home. The certification shall mean only that the certifying agency has evaluated the adult foster home and has determined that the adult foster home meets the requirements of this chapter and section 321-11.2, HRS. [Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-11 Renewal of certificate of approval.

(a) A certificate of approval may be renewed if the certified caregiver:

- (1) Submits to the certifying agency a renewal application on a form and in a manner

prescribed by the certifying agency ninety days prior to the expiration of the certificate of approval;

- (2) Submits a signed consent form and all applicable fees for each person undergoing a background check so that the department or its designee can conduct a background check in accordance with section 11-148.1-46;
- (3) Submits verification of a current tuberculosis clearance for the certified caregiver, substitute caregivers, and all household members, including children, in accordance with current department of health examination procedures and regulations, chapter §11-164.2, HAR;
- (4) Submits proof of liability insurance for the home and for vehicles used to transport adults with I/DD which continue to meet the requirements of this chapter and section 321-11.8, HRS; and
- (5) Continues to meet all the requirements of this chapter and section 321-11.2, HRS;

(b) Before renewing a certificate of approval, the certifying agency shall examine the information submitted and conduct an inspection of the adult foster home to determine compliance with this chapter. The certifying agency may require further information and documentation to determine that the certified caregiver continues to meet the requirements of this chapter and section 321-11.2, HRS.

(c) The certifying agency shall provide the certified caregiver with a copy of the inspection report that shall cite deficiencies, a plan of correction and a time frame for correction not to exceed thirty calendar days from the date of the inspection.

(d) The certifying agency shall issue a certificate of approval after the certifying agency has determined the adult foster home has met the requirements of this chapter.

(e) If cited deficiencies are not corrected within the time frame specified, the certifying agency

may issue a provisional certificate as outlined in section 11-148.1-13. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-12 Provisional certificate. (a) The certifying agency may issue a provisional certificate to a certified caregiver if the certified caregiver is unable to correct deficiencies in the foster home according to an accepted plan of correction, and additional time is needed to complete the corrections.

(b) An initial provisional certificate shall not exceed sixty calendar days. The certifying agency may issue an additional provisional certificate at its discretion for no more than an additional thirty calendar days. The certifying agency shall not issue more than one additional provisional certificate to a certified caregiver. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-13 Denial of application for or renewal of certificate of approval. (a) The certifying agency may deny an application for or renewal of a certificate of approval for any of the following reasons:

- (1) Failure to meet any provision of this chapter;
- (2) Submission of misleading, incorrect, false or fraudulent information;
- (3) An applicant, certified caregiver, substitute caregiver, or household member has a background history that the department finds would pose a risk to the health, safety, or welfare of adults with I/DD; or
- (4) Any other reason that serves the purpose of this chapter or section 321-11.2, HRS.

(b) If the certifying agency denies an application for or renewal of a certificate of approval, the certifying agency shall send written notification by certified mail to the applicant or

certified caregiver, including the reason for the denial.

(c) An individual aggrieved by a decision made pursuant to this section shall have the right to appeal the certifying agency's decision. The decision to deny an application for or a renewal of a certificate of approval shall become final thirty days upon receipt of the notice of denial or revocation unless within those thirty days the applicant requests in writing a hearing in accordance with this chapter. [Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-14 Denial of a substitute caregiver application. (a) The certifying agency may deny an application to be a substitute caregiver for any of the reasons listed in section 11-148.1-13.

(b) If the certifying agency denies a substitute caregiver application, the certifying agency shall send written notification by certified mail to the applicant, including the reason for denial.

(c) An individual aggrieved by a decision made pursuant to this section shall have the right to appeal the certifying agency's decision. The decision to deny a substitute caregiver application shall become final thirty days upon receipt of the notice of denial or revocation unless within those thirty days the applicant requests in writing a hearing in accordance with this chapter. [Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-15 Remedies. (a) If the certifying agency determines that any person is violating any provision of this chapter, section 321-11.2, HRS, or the person's certificate of approval, the certifying agency shall send written notification of violation and order by certified mail to the person. The notice shall specify the alleged violation and the process to request in writing a hearing as outlined in this

chapter. The order may require that the alleged violator do any or all of the following:

- (1) Cease and desist from the violation;
- (2) Follow a plan of correction and correct the violation at the alleged violator's expense;
- (3) Pay a fine not to exceed \$500 per violation;
- (4) Abide by new conditions attached to a certificate of approval. Conditions that the certifying agency may impose on a certificate of approval include but are not limited to:

- (A) Restricting the total number of adults with I/DD based upon the certified caregiver's ability to meet the health and safety needs of the adults with I/DD;
- (B) Restricting the impairment level of adults with I/DD allowed in the home based upon the certified caregiver's ability to meet the health and safety needs of the adults with I/DD;
- (C) Requiring additional caregivers to meet the needs of the adults with I/DD;
- (D) Requiring additional qualifications or training of the certified caregivers or substitute caregivers to meet specific individual care and service needs;
- (E) Requiring additional documentation; or
- (F) Restricting certified caregivers from allowing person on the premises who maybe a threat to an individual's health, safety, or welfare.

(b) The order may also revoke a certificate of approval pursuant to section 11-148.1-17.

(c) Subject to subsection (a), the order shall become final thirty days upon receipt of the notice of denial or revocation unless the alleged violator requests in writing a hearing as outlined in this chapter. [Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-16 Revocation of certificate of approval. (a) The certifying agency may revoke a certificate of approval for any of the following reasons:

- (1) Violation of any provision of this chapter;
- (2) Submission of misleading, incorrect, false, or fraudulent information; Where immediate action is required to comply with the law or protect the health and safety of the adult with I/DD; or
- (3) Any other reason that serves the purpose of this chapter or section 321-11.2, HRS.

(b) The certifying agency shall send written notification of a revocation by certified mail to the certified caregiver, and include the specific reason or reasons for the revocation and the process to request in writing a hearing as outlined in this chapter.

(c) An individual aggrieved by a decision made pursuant to this section shall have the right to appeal the certifying agency's decision. The decision to revoke a certificate of approval shall become final thirty days upon receipt of the notice of denial or revocation unless within those thirty days the applicant requests in writing a hearing in accordance with this chapter. [Eff **AUG 02 2021**]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-17 Hearing. Any hearing conducted under this section shall be conducted as a contested case hearing in accordance with chapter 91, HRS, and chapter 11-1. The director or a delegated representative shall preside over the hearing and issue a written decision to the aggrieved person and the department within sixty calendar days from the date of the hearing. [Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-18 to §11-148.1-20 Reserved.

SUBCHAPTER 3

ADMINISTRATION OF THE ADULT FOSTER HOME

§11-148.1-21 Eligibility of individuals to be cared for. (a) Individuals admitted into the adult foster home shall be deemed eligible by the department to receive division or Medicaid waiver services, as outlined in chapter 11-88.1, HAR.

(b) Individuals with intellectual or developmental disabilities residing in the adult foster home shall be age eighteen or older, unless the home is dually certified as a resource family home for children with intellectual or developmental disabilities pursuant to sections 321-11.2 and 346-17, HRS. [Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2, 346-17)

§11-148.1-22 Admission. (a) The certified caregiver shall verbally notify the certifying agency within twenty-four hours of any admission and provide the certifying agency with a copy of a signed residency agreement within seventy-two hours of admission.

(b) The case management branch shall ensure that the following documents are given to the certified caregiver within seventy-two hours of admission:

- (1) A copy of the most recent individualized service plan for the adult with I/DD that documents that the residential setting was selected by the adult with I/DD among setting options, including non-disability specific settings and a private unit in a residential setting;
- (2) A copy of the results of an annual physical examination of the adult with I/DD made within the last twelve months;
- (3) A copy of current physician orders for all medications and treatments, including supplements and over the counter

- medications, diet, including enteral nutrition for the adult with I/DD;
- (4) A copy of tuberculosis clearance for the adult with I/DD, in accordance with current department of health examination procedures and regulations, chapter §11-164.2, HAR;
 - (5) Pertinent information on the health of the adult with I/DD, including but not limited to known communicable diseases and particular medical or health concerns;
 - (6) Copies of documents relating to guardianship of the adult with I/DD, or conservatorship of property, power of attorney, health care representation, personal representation or any other legal restrictions on the rights of the adult with I/DD, if applicable; and
 - (7) A copy of the most recent nurse delegated care plan, functional behavior assessment and behavior support plan, if applicable for the adult with I/DD.
- (c) The certified caregiver shall:
- (1) Ensure that a residency agreement is in place at the time of admission for each adult with I/DD. Any modification to this provision must be supported by a specific assessed need and justified in the adult with I/DD's individualized service plan;
 - (2) Make the residency agreement available to the developmental disabilities division upon request; and
 - (3) Give a copy of the signed residency agreement to the adult with I/DD or legal guardian at the time of the admission.
- [Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: 42 C.F.R. §441.301)

§11-148.1-23 Number of individuals to be cared for. (a) Except as provided in subsection (b), an adult foster home shall care for no more than two adults with I/DD.

(b) To accommodate residents of a foster boarding home for children with intellectual or developmental disabilities who reach the age of eighteen years, where the home is certified as a foster boarding home for children under section 346-17, HRS, the director of health may waive the two-adult limit for certification of that home as an adult foster home, provided that:

- (1) The total number of foster children with intellectual or developmental disabilities and adults with I/DD, related or unrelated to the certified caregivers, in the dually certified home shall not exceed three; and
- (2) No new adults may be admitted into the home while there are any foster children residing in the home.

(c) An existing adult foster home shall not be given dual certification if the certification as an adult foster home precedes dual certification, unless the certification as a foster boarding home under section 346-17, HRS, is for a specific child, as provided in the department of human services' administrative rules.

(d) The certifying agency reserves the right to limit the number of adults with I/DD that may reside in the adult foster home based on the assessment of the home and certified caregiver. [Eff AUG 02 2021]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2, 346-17)

§11-148.1-24 Record of adult with I/DD. (a)

The record of the adult with I/DD shall be kept by the adult foster home and shall include the following information:

- (1) The name and birth date of the adult with I/DD;
- (2) The adult foster home admission and discharge dates, if applicable, for the adult with I/DD;

- (3) The name of the primary care physician for the adult with I/DD, including the physician's address and telephone number;
- (4) Emergency contact information for the adult with I/DD;
- (5) Copies of annual medical examinations of the adult with I/DD, and other periodic examinations, evaluations, progress notes, or laboratory reports that document the presence of any known allergies, physical disabilities or limitations, specific health needs and communicable conditions, including a tuberculosis clearance, in accordance with current department of health examination procedures and regulations, chapter 11-164.2, HAR;
- (6) Written observations of the adult with I/DD regarding the adult with I/DD's response to medication, treatments, use of any restraint or prohibited restrictive intervention, diet, plan of care; any changes in the condition of the adult with I/DD; indications of illness or injury, behavior patterns including the date, time, and actions taken, if any, recorded monthly or more often as appropriate and immediately when any incident occurs;
- (7) Documentation of medications and treatments administered to the adult with I/DD. Administration of medications and treatments shall be consistent with the physician orders and the medication administration record;
- (8) Physician's signed orders for all medications and treatment given to the adult with I/DD, including supplements and diet, including enteral nutrition;
- (9) Notation of all over the counter medications;
- (10) Recording of the weight of the adult with I/DD at least once a month, or more often as directed by the physician, except in

situations where the adult with I/DD is unable to bear weight;

- (11) A monthly accounting record of the adult with I/DD's money;
- (12) A current inventory of the adult with I/DD's possessions;
- (13) Notation of visits made to the adult with I/DD by their family and others;
- (14) Notation of visits the adult with I/DD makes to their family and others;
- (15) Copies of any adverse event reports involving the adult with I/DD that occur in the adult foster home or while in the care of the certified or substitute caregiver; and
- (16) Residency agreement.

(b) All records concerning the adult with I/DD shall be kept confidential and locked in a secured area and shall be made available only to authorized individuals. Written consent by the adult with I/DD or legal guardian of the adult with I/DD for release of information shall be required for release of records to individuals not otherwise authorized by the department.

(c) A record of the adult with I/DD shall be kept by the adult foster home and shall be made available for inspection by representatives of the department upon request for the purpose of determining compliance with this chapter;

(d) The adult foster home shall provide the department with copies of the adult with I/DD's records:

- (1) Upon the adult with I/DD's change of residence;
- (2) Upon the death of the adult with I/DD;
- (3) When an adult foster home ceases to be certified; or
- (4) At the request of the department.

[Eff **AUG 0 8 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-25 Adult foster home record. (a) The certified caregiver shall maintain an adult foster home record and shall make the record available to the certifying agency upon request.

- (b) The adult foster home record shall include:
- (1) Monthly fire drill reports;
 - (2) Adult foster home inspection reports;
 - (3) Adult foster home certificate of approval;
 - (4) Training certificates for the certified caregiver and substitute caregiver, if applicable;
 - (5) First aid certification for the certified caregiver and substitute caregiver, if applicable;
 - (6) Cardiopulmonary Resuscitation (CPR) certifications for the certified caregiver and substitute caregiver, if applicable; and
 - (7) Admission/discharge forms for each adult with I/DD living in the adult foster home.
- [Eff **AUG 02 2021**]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-26 Contacts with the foster home.

(a) The foster home shall be visited by staff authorized by the department as frequently as needed to ensure:

- (1) The health, safety, and welfare of the adult with I/DD; and
- (2) That the adult foster home continues to meet the requirements for certification.

(b) The certifying agency may conduct an unannounced inspection of a certified adult foster home during or outside regular business hours without prior notice to investigate complaints or suspicion of abuse or neglect or to determine compliance with cited deficiencies.

(c) The certifying agency shall conduct unannounced annual recertification inspections during regular business hours or at intervals determined by

the department. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2, 321-1.9) (Imp: HRS §321-11.2, 321-1.9)

§11-148.1-27 Surrender of certificate. (a) A certified caregiver may voluntarily surrender a certificate of approval to the certifying agency at any time.

(b) If a certified caregiver voluntarily surrenders a certificate of approval, the certified caregiver shall:

- (1) Follow the discharge of adult with I/DD procedures outlined in this chapter;
- (2) Submit in writing, reason(s) for surrendering the certificate of approval and contact information for the person(s) responsible for the closure of the adult foster home; and
- (3) Return the certificate of approval to the certifying agency. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-28 Change in information. (a) The certified caregiver shall notify the certifying agency of any changes in contact information.

(b) The certified caregiver shall notify the certifying agency in writing no less than fourteen days in advance of any change that may affect the caregiver's qualifications for certification, and submit to the certifying agency supporting documentation to prove that the certified caregiver continues to be qualified.

(c) The certified caregiver shall report to the certifying agency in writing within seventy-two hours of any change to the household, which may affect the adult with I/DD, such as, but not limited to: household composition, medical condition, employment, residence, death, and marital status.

(d) In the event of a change for which the certifying agency does not have prior notice, the

certified caregiver shall notify the certifying agency immediately upon learning of the change.

[Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §321-11.2)

§§ 11-148.1-29 to 11-148.1-31 Reserved.

SUBCHAPTER 4

CARE OF ADULT WITH I/DD

§11-148.1-32 Member of foster family. (a) An adult with I/DD shall be cared for as a family member and shall share in the foster family's activities and responsibilities.

(b) The certified caregiver shall be responsible for providing transportation for the adult with I/DD to attend social, recreational, and medical related activities. Before providing transportation for the adult with I/DD, the certified caregiver shall:

- (1) Possess a valid driver's license and have access to an insured vehicle which meets the requirements of this chapter; or
- (2) Submit a written alternative transportation plan to the certifying agency for approval. The transportation plan shall include use of an insured vehicle and a driver who possesses a valid driver's license.

(c) The certified caregiver shall facilitate the adult with I/DD's choice regarding services and supports, and who provides them.

(d) As a member of the family, the adult with I/DD may participate in simple home chores.
[Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-33 Health. (a) The certified caregiver shall be responsible for ensuring that the

adult with I/DD has a complete physical examination by a licensed physician annually and receives follow-up care by other medical or health professionals as needed.

(b) The certified caregiver shall be responsible for ensuring that the physician's or other medical or health professional's orders for the adult with I/DD are followed.

(c) The certified caregiver shall inform physicians and other health professionals of changes in the health status of the adult with I/DD.

(d) The certified caregiver shall keep the case management branch informed of the current health status of the adult with I/DD and notify the case management branch of any significant change in the health status of the adult with I/DD.

(e) The certified caregiver shall be responsible for the safe storage and disposal of the adult with I/DD's medications. Medications must be stored in a locked container or cabinet. Refrigerated medication must be stored in a locked container in the refrigerator.

(f) The adult with I/DD's medication shall not be stored with another person's medication.
[Eff AUG 02 2021] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §321-11.2)

§11-148.1-34 Emergencies and adverse events.

(a) The certified caregiver shall obtain instructions from the case management branch and family or legal guardian regarding procedures to follow in case of sudden illness or accidents involving the adult with I/DD.

(b) If the adult with I/DD has an accident, serious injury, severe illness, or dies, the certified caregiver shall immediately contact:

(1) The adult with I/DD's family or their legal guardian; and

(2) The case management branch.

(c) The certified caregiver shall follow the procedures for reporting adverse events in accordance

with the division's policies and on a form prescribed, by the division. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-35 Diet. (a) The certified caregiver shall provide the adult with I/DD with a well-balanced, nutritious diet that is consistent with their physician's order(s).

(b) The adult with I/DD shall have access to food at any time. Any modification to this provision must be supported by a specific assessed need and justified in the adult with I/DD's individualized service plan. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2, 42 C.F.R. §441.301)

§11-148.1-36 Clothing and personal supplies.
The certified caregiver shall:

- (1) Ensure that the adult with I/DD's clothing is clean, in good condition, and of appropriate size; and
- (2) Provide each adult with I/DD with a comb, toothbrush, and other necessary toiletries. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-37 Recreation and social activities.

- (a) The certified caregiver shall:
- (1) Provide a well-balanced daily program for the adult with I/DD, including appropriate time for rest, regular meal hours, and recreation;
 - (2) Allow and provide access for the adult with I/DD to participate in appropriate and integrated social and recreational activities in the community; and
 - (3) Allow and provide access for the adult with I/DD to have visits with relatives and friends at any time.

(4) Ensure that the adult with I/DD has the freedom and support to control their own schedule and activities.

(b) Any modification to the provisions in subsection (a)(2) to (a)(4) must be supported by a specific assessed need and justified in the adult with I/DD's individualized service plan. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-38 Training and behavior supports.

(a) Training and behavior supports shall be carried out with kindness, understanding, and in accordance with the individualized service plan, behavior support plan, of the adult with I/DD, and the division's policy on positive behavior supports.

(b) No adult with I/DD shall be subjected to any action that would endanger their physical or emotional well-being. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-39 Religion. The religious faith of each adult with I/DD shall be respected and the adult with I/DD shall be afforded the opportunity to attend religious service of their choice.

[Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-40 Accounts of the adult with I/DD.

(a) The certified caregiver shall keep an accurate accounting record of the adult with I/DD's money and any disbursements on an ongoing basis, including receipts for expenditures, and a current inventory of their possessions.

(b) The certified caregiver shall obtain guidance from the case management branch and consult with the adult with I/DD's guardian or conservator, if

necessary, regarding use of the adult with I/DD's personal funds.

(c) No person associated with the operation of an adult foster home shall serve as a trustee for any adult with I/DD.

(d) The certified caregiver may be permitted to become a representative payee under conditions set forth by the Social Security Administration.

(e) The personal property kept by the adult foster home for safekeeping shall be released upon the adult with I/DD's request. If the adult with I/DD is legally incompetent, the personal property shall be released to their legal guardian or responsible agency. This transaction shall be documented in the record of the adult with I/DD.

[Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-41 Rights of the adult with I/DD. The certified caregiver shall ensure that each adult with I/DD:

- (1) Has the right to privacy, dignity, and respect, and freedom from coercion and restraint;
- (2) Is treated with understanding, respect, dignity and individuality, including privacy in treatment and in caring for the personal needs of the adult with I/DD;
- (3) Be free from abuse, neglect, humiliation, harassment, and any action that would endanger the physical or emotional well-being of the adult with I/DD;
- (4) Has personal and medical records kept confidential and subject to release only as provided in this chapter;
- (5) Not be required to perform services for the adult foster home unless agreed to by the adult with I/DD or guardian and documented in the individualized service plan;
- (6) Has the freedom and support to control their own schedule and activities;

- (7) Has a setting that is integrated in and supports full access to community, including opportunities to seek employment and work in integrated settings, engage in community life, control personal resources and receive services in the community to the same degree of access as individuals not receiving Medicaid home and community based services;
- (8) Has the right to select their residential setting from among setting options, including non-disability specific settings and a private unit in a residential setting;
- (9) Retain and use personal clothing and possessions;
- (10) Be assured of privacy for visits by family and friends;
- (11) Has the right to suitable locked storage space;
- (12) Be encouraged and assisted in exercising the right to voice grievances or recommend changes in services;
- (13) Be encouraged to optimize, but not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact; and
- (14) Has these rights explained to them or their guardian, if one is appointed, and a signed acknowledgment shall be kept in the adult with I/DD's record. [Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §§321-11.2, 321-.15.6, 622-57; 42 C.F.R. §441.301)

§11-148.1-42 Discharge of the adult with I/DD.

- (a) An adult with I/DD may be discharged from an adult foster home when:
- (1) The adult with I/DD undergoes physical, behavioral, or mental changes that require services that the adult foster home cannot provide;
 - (2) The certified caregiver undergoes physical, behavioral, or mental changes that leave the

certified caregiver unable to provide the necessary care and supervision;

(3) The adult with I/DD wants to be discharged;
or

(4) The adult foster home wants to discharge the adult with I/DD.

(b) The certified caregiver shall give written notification of the discharge to the adult with I/DD; or their family or legal guardian, if applicable; case management branch; and certifying agency:

(1) In writing, at least forty-five calendar days or sooner by mutual agreement prior to any scheduled discharge or transfer; or

(2) Immediately in the event of an emergency discharge or transfer.

(c) The adult with I/DD or their family or legal guardian, if applicable, shall give the certified caregiver and case management branch notification of the intent to vacate the adult foster home:

(1) In writing, at least twenty-eight calendar days or sooner by mutual agreement prior to any scheduled discharge or transfer; or

(2) Immediately in the event of an emergency discharge or transfer. [Eff AUG 02 2021]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §§ 321-11.2, 321-15; 42 C.F.R. §441.301)

§§11-148.1-43 to 11-148.1-45 Reserved.

SUBCHAPTER 5

FOSTER FAMILY AND HOME ENVIRONMENT

§11-148.1-46 Background checks.

(a) Applicants, certified caregivers, and substitute caregivers shall show evidence of being well-adjusted persons, capable of accepting, understanding, and caring for adults with I/DD and working with the certifying agency.

(b) All adult household members shall be of reputable character and shall not have a criminal history record or background which poses a risk to the adult with I/DD;

(c) The following are subject to background checks conducted by the department or its designee:

- (1) Each applicant;
- (2) Each certified caregiver;
- (3) All substitute caregivers;
- (4) All adult household members; and
- (5) Any direct patient access employee as defined in section 321-15.2, HRS.

(d) A person subject to background checks as provided in subsection (c) may be disqualified as an applicant, certified caregiver, or substitute caregiver, be prohibited from entering an adult foster home, and be prohibited from having any responsibility for caring for adults with I/DD if the person has:

- (1) A felony conviction;
- (2) A misdemeanor or felony conviction related to the use, possession, or distribution of drugs or intoxicating compounds;
- (3) A conviction for a crime involving violence;
- (4) Background information which shows that the individual has been identified as and substantiated to be the perpetrator of adult or child abuse and neglect;
- (5) Any offense described in 42 United States Code § 1320a-7; or
- (6) Any other background history that the department finds would pose a risk to the health, safety, or well-being of an adult with I/DD, considering the nature of the incident, the time elapsed since the incident occurred, and evidence of rehabilitation.

(e) Each person undergoing a background check shall provide written consent and all applicable processing fees to the department or its designee to conduct the background check.

(f) All certified caregivers shall notify the certifying agency immediately of any arrest or

conviction for an offense listed in subsection (d).
[Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2,
321-15.2) (Imp: HRS §§321-11.2, 321-15.2. 846-2.7, 42
U.S.C. §1320a-7)

§11-148.1-47 Training. (a) Applicants, certified caregivers and substitute caregivers shall have current certification in first aid and cardiopulmonary resuscitation.

(b) In accordance with departmental policy, certified caregivers and substitute caregivers must successfully complete a department-approved training program for persons with I/DD.

(c) Applicants must successfully complete additional training as required by the certifying agency. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-48 References. (a) Applicants shall provide three personal references from individuals who:

- (1) Have adequate knowledge of the applicant and the applicant's family background in terms of character and ability to care for adults with I/DD;
- (2) Are unrelated to the applicant;
- (3) Are not the employer of the applicant; and
- (4) Are not employed by the department.

(b) Additional references shall be furnished to the certifying agency upon request.

[Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-49 Health of foster family. (a) All members of the household and substitute caregivers shall be free from disease which may be communicable to others and from physical and emotional conditions which may adversely affect the certified caregiver's ability to care for the adult with I/DD.

(b) The certified caregiver shall submit the following written medical reports to the certifying agency:

- (1) A current medical clearance for the certified caregiver and substitute caregivers completed within the year by a licensed physician or nurse practitioner during the initial application process. Additional medical clearance or other reports may be requested at any time by the certifying agency; and
- (2) A tuberculosis clearance, in accordance with current department of health examination procedures and regulations, chapter §11-164.2, HAR, shall be required for the certified caregiver, substitute caregivers, all household members, including children, at the time of the initial application and annually thereafter. [Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-50 Income. (a) A certified caregiver shall not operate a boarding house, rooming house or residential care facility on the premises.

(b) Business conducted from the home must be in accordance with applicable federal, state, and county law and regulations.

(c) Face-to-face business transactions shall not be conducted on the premises of the adult foster home. [Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-51 Employment. The certified caregiver's employment shall not interfere with the care of the adults with I/DD. A certified caregiver currently employed or contemplating either full-time

or part-time employment shall provide the certifying agency with a copy of the certified caregiver's proposed work schedule. The certified caregiver shall ensure that their work schedule will not conflict with foster care responsibilities and the certified caregiver's ability to respond in emergencies involving the adult with I/DD, and coverage. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-52 Absences from the home. (a) An adult with I/DD shall not be left unattended or unsupervised at any time.

(b) When a certified caregiver is absent from the home because of an emergency, planned vacation, or any other reason, the certified caregiver shall arrange for the care and supervision of the adult with I/DD.

(c) The certified caregiver shall notify the case management branch, certifying agency, adult with I/DD, and family or legal guardian of the adult with I/DD of the certified caregiver's absence:

- (1) In writing, at least two weeks prior to the scheduled absence; or
- (2) Immediately in the event of an emergency. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§§11-148.1-53 to 11-148.1-56 Reserved.

SUBCHAPTER 6

HOUSING AND SANITATION

§11-148.1-57 Requirements. (a) The adult foster home shall be kept in sanitary and safe condition. The adult foster home shall comply with

all applicable state and county housing and sanitation laws.

- (b) The adult foster home shall comply with the following safety standards:
- (1) Approved building plans that meet state and county standards shall be submitted to the certifying agency for any construction and renovation projects on the adult foster home;
 - (2) There shall be an adequate number of bedrooms for all household members;
 - (3) In a shared bedroom designated for two adults with I/DD, the bedroom space in the adult foster home shall be not less than fifty square feet for each adult with I/DD;
 - (4) The home shall have emergency evacuation and disaster preparedness plans;
 - (5) The adult foster home shall have at least two emergency exits;
 - (6) For an adult with I/DD who uses a wheelchair, the adult foster home shall be wheelchair accessible. Access to the adult with I/DD's bedroom, bathroom, corridors, all common family areas, and two exits shall have a clear opening of at least thirty-four inches in width. Wheelchair ramps shall comply with the Americans with Disability Act Accessibility Guidelines (ADAAG) and shall be covered with a non-slip surface. Hand rails and grab bars may be required for safety and shall be ADAAG compliant.
 - (7) The home shall be free from fire hazards. The home shall:
 - (A) Have functional fire extinguishers in good working order and that are in accordance with the manufacturer's specifications;
 - (B) Conduct and document monthly fire drills; and
 - (C) Provide assistance for each adult with I/DD who cannot evacuate on their own.

- (8) Poison and other chemicals shall be clearly labeled and securely stored; and
 - (9) The adult foster home shall submit to the certifying agency evidence of gun registration in accordance with state and county standards. Unloaded firearms must be stored in a locked cabinet, safe, gun vault or storage case. Ammunition should be stored and locked in a location separate from firearms.
- (c) The adult foster home shall comply with the following sanitation standards:
- (1) Hot and cold running water shall be available throughout the adult foster home and the waste from the running water shall be connected to an approved sewage system or other approved method;
 - (2) The home shall have an approved source of potable water supply;
 - (3) The home shall have acceptable facilities for the proper disposal of sewage with all plumbing connected to a public sewage system or other approved method. Where there is an adequate water supply, the adult foster home shall have sanitary flush toilets. In areas where an adequate water supply is not available, a sanitary privy or other approved method shall be used;
 - (4) The home shall have an operable washing machine available for use;
 - (5) The adult foster home shall be free from rodent and insect infestation;
 - (6) The home shall have proper facilities for the disposal of garbage and refuse;
 - (7) There shall be only one kitchen per residence unless approved in accordance with state and county standards;
 - (8) Preparation of food shall be in a clean and sanitary kitchen;
 - (9) All eating and drinking utensils shall be thoroughly washed with dish soap and hot water after each usage; and

(10) Perishable food shall be stored in a refrigerator.

(d) The adult foster home shall be integrated and located in the community and shall not isolate or limit the ability of the adult with I/DD to interact with the broader community. [Eff **AUG 02 2021**]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-58 Equipment and furnishings. (a)

The certified caregiver shall provide each adult with I/DD with:

- (1) A setting that is physically accessible to the adult with I/DD;
- (2) A sleeping or living unit that has an entrance door lockable by the adult with I/DD, with keys distributed only to appropriate members of the household or substitute caregivers;
- (3) Freedom to furnish and decorate their sleeping or living unit;
- (4) Privacy within their sleeping or living unit;
- (5) A choice of roommates, if sharing a unit or room;
- (6) A dresser or closet space;
- (7) A bed;
- (8) Clean, comfortable bedding and a waterproof covering, if necessary;
- (9) Clean linens; and
- (10) Access to a telephone;

(b) Any modification to the provisions in subsections (a)(1)-(a)(5) must be supported by a specific assessed need and justified in the adult with I/DD's individualized service plan.

[Eff **AUG 02 2021**] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-59 Sleeping arrangement. (a) The

sleeping arrangement for an adult with I/DD shall

include suitable light, ventilation, and provision for proper rest and privacy.

(b) No adult with I/DD shall sleep in the same room with:

- (1) Any member of the certified caregiver's family;
- (2) Certified or substitute caregiver; or
- (3) Children.

(c) Household members, substitute caregivers and adults with I/DD shall sleep in approved bedrooms that meet state and county standards.

(d) The bedroom of the adult with I/DD shall be on the same level of the home and in close proximity to the certified caregiver or substitute caregiver's bedroom for care and supervision purposes. If the bedroom of the adult with I/DD is not in close proximity to the certified caregiver's bedroom, a monitoring device may be required.

(e) No adult with I/DD shall sleep in a detached building or in an unfurnished attic, room, basement, hallway, or stairway.

(f) Individual beds shall be spaced at least three feet apart to provide sufficient passageway between beds. [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-60 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff **AUG 0 2 2021**] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)



DEPARTMENT OF HEALTH

The repeal of chapter 11-148 and the adoption of chapter 11-148.1, Hawaii Administrative Rules, on the Summary Page dated _____, following public hearings held on _____, at (1) Department of Health Building, Honolulu, Hawaii; (2) State Capitol auditorium, Honolulu, Hawaii; and (3) Department of Health, State Lab auditorium, Pearl City, Hawaii, after a public notice was published on _____, in the Honolulu Star-Advertiser, Hawaii Tribune Herald, West Hawaii Today, The Garden Island, and The Maui News.

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

EAC

ELIZABETH A. CHAR, M.D.
Director
Department of Health

APPROVED:

David Y. Ige

DAVID Y. IGE
Governor of Hawaii

APPROVED AS TO FORM:

7/23/21

Tara K.C.S. Molnar

Deputy Attorney General

Filed

21 JUL 23 AM 12:23

OFFICE
LIEUTENANT GOVERNOR S

3410

