

DEPARTMENT OF HEALTH

Repeal of Chapter 11-97, "Home Health Agencies"
and the
Adoption of Chapter 11-97.1, "Home Health Agencies",
Hawaii Administrative Rules

September 16, 2022

SUMMARY

1. Chapter 11-97, Hawaii Administrative Rules, entitled "Home Health Agencies", is repealed.
2. Chapter 11-97.1, Hawaii Administrative Rules, entitled "Home Health Agencies", is adopted.

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 97

HOME CARE AGENCIES

Repealed

§§11-97-1 to 11-97-8 Repealed. [SEP 16 2022]

§11-97.1-1

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 97.1

HOME HEALTH AGENCIES

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§11-97.1-1 Definitions as used in the chapter:

"Administrator" means the person responsible for the administration of the organization of which the home health agency is a part.

"Advance practice registered nurse" or "APRN" means a person having a valid license from the state of Hawaii as an advance practice registered nurse with prescriptive authority or a person employed by the United States Department of Veterans Affairs or "VA" who has an active, current, full, and unrestricted license in another state and who provides care to a VA beneficiary within the scope of their VA employment.

"Clinical manager" means a person having a valid license from the state of Hawaii as a licensed physician, APRN, physician assistant, physical therapist, speech pathologist, occupational therapist,

audiologist, social worker, or registered nurse and responsible to provide oversight of all patient care services and personnel.

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

"Director" means the director of health for the department of health, State of Hawaii, or a duly authorized agent.

"Homebound patient" means a person who because of a condition due to illness or injury is restricted in his ability to leave his place of residence except with the aid of supportive devices such as, crutches, canes, wheelchairs, walkers, use of special transportation, or the assistance of another person; or a person who has a condition which is such that leaving his home is medically contraindicated.

"Home health agency" means a public or proprietary agency, a private nonprofit organization, or a subdivision of such agency or organization which is licensed by the department to provide home health services. A licensed home health agency may provide home health services to a VA beneficiary under the care of a VA physician, VA APRN, VA nurse practitioner, or VA physician assistant practicing within the scope of their VA employment.

"Home health agency clinical manager" means the person responsible and accountable for the functioning of the agency and the services provided.

"Home health aide" means a person who has successfully completed the basic prescribed nurse aide or an equivalent course, with additional training and supervision to prepare the person for this role.

"Home health services" means skilled nursing services and at least one other therapeutic service such as physical therapy, speech language pathology, occupational therapy, medical social services, or home health aide services provided on a visiting basis, in a place of residence used as a patient's home to a homebound patient. Home health services include at least one of the services described herein directly

but may provide the second service and additional services under arrangement with another agency or organization.

"Licensed practical nurse" means a person having a valid license from the state of Hawaii as a licensed practical nurse.

"Nurse practitioner" means a person having a valid license from the state of Hawaii as an advance practice registered nurse.

"Occupational therapist" means a person having a valid license from the state of Hawaii as an occupational therapist.

"Occupational therapy assistant" means a person who has a valid license from the state of Hawaii as an occupational therapy assistant.

"Physician assistant" means a person having a valid license from the state of Hawaii as a physician assistant.

"Physical therapist" means a person having a valid license from the state of Hawaii as a physical therapist.

"Physical therapy assistant" means a person who has a valid license from the state of Hawaii as a physical therapy assistant.

"Physician" means a person having a valid license from the state of Hawaii as a physician or surgeon or a person employed by the VA who has an active, current, full, and unrestricted license in another state and who provides care to a VA beneficiary within the scope of their VA employment.

"Proprietary agency or organization" means a private agency or organization not exempt from income taxation under Section 501C of Internal Revenue Code of 1954.

"Public agency or private non-profit agency" means an agency exempt from income taxation under Section 501C of the Internal Revenue Code of 1954.

"Registered nurse" means a person who has a license from the state of Hawaii as a registered nurse.

"Social worker" means a person who has a license from the state of Hawaii as a social worker and includes social worker, bachelor social worker, and clinical social worker.

"Speech therapist" or "speech pathologist" or "audiologist" means a person who has a license from the state of Hawaii as a speech therapist or audiologist. [Eff. **SEP 16 2022**] (Auth: HRS Sec. 321-11, 38 CFR 17.415, 38 CFR 17.417, 38 CFR 17.419) (Imp: HRS Sec. 321-11)

§11-97.1-2 Legal authorization to operate. A home health agency and, in cases where the home health agency is a part of a larger organization, shall at all times comply with the laws of the state of Hawaii and shall, whenever required by the director, submit to the director evidence of compliance therewith. Such evidence shall include but not be limited to, copies of licenses, certificates, permits, or other authorizations required by the laws of the state of Hawaii. [Eff. **SEP 16 2022**] (Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

§11-97.1-3 License. (a) It is unlawful for any person, to conduct, maintain, operate, or permit to be maintained or operated, or to participate in conducting, maintaining, or operating a home health agency, unless the home health agency is licensed by the director.

(b) Any person, organization or corporation desiring to operate a home health agency shall make application to the director for a license on forms provided by the department. The director shall issue a license if the proposed home health agency meets the requirements under this chapter.

(c) A license, unless sooner suspended or revoked, shall be renewed every two years on date, or within 30 days thereafter. Application for renewal of license shall be made by the home health agency thirty

§11-97.1-3

days prior to the expiration date of the license. If an application for renewal is not filed, such license shall be automatically cancelled as of the expiration date.

(d) Each license shall be issued only for the home health agency named in the application, shall be for a single contiguous geographic location, and shall not be transferable nor assignable to any other agency or person.

(e) The license issued by the director shall be posted in a conspicuous place on the premises of the home health agency.

(f) A home health agency shall notify each patient concerned and the patient's physician, APRN, or physician assistant directly at least thirty days prior to the voluntary surrender of its license or as directed under any order of revocation or suspension of license by the department. The license shall be promptly surrendered to the department when revoked, suspended or when the home health agency terminates services.

(g) Unannounced inspections or visits may be made to a home health agency at any time by authorized staff of the department. [Eff. **SEP 16 2022**]
(Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

§11-97.1-4 Licensure revocation. (a) The director, after due notice and an opportunity for a hearing, may suspend, revoke, or refuse to issue or renew a license to any person because of failure to meet the requirements of this chapter.

(b) Any person affected by the director's decision for denial, suspension, or revocation, may appeal in accordance with the law. [Eff. **SEP 16 2022**]
(Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

§11-97.1-5 Governance and administration. (a) A governing body or designated persons functioning as a governing body shall have full legal authority and

responsibility for the agency's overall management and operation, the provision of all home health services, fiscal operations, review of the agency's budget and its operational plans, and its quality assessment and performance improvement program.

(b) Minutes shall be kept of all meetings of the governing body.

(c) An administrator shall be appointed by and report to the governing body and be responsible for the administration of the home health agency to include but not be limited to the following:

- (1) Responsible for all day to day operations of the home health agency,
- (2) Ensure that a clinical manager is available during all operating hours,
- (3) Ensure that the home health agency employs qualified personnel, including assuring the development of personnel qualifications and policies.

(d) When the administrator is not available, a qualified, pre-designated person, who is authorized in writing by the administrator and the governing body, assumes the same responsibilities and obligations as the administrator. The pre-designated person may be the clinical manager.

(e) A qualified individual shall serve as clinical manager and provide oversight of all patient care services and personnel.

§11-97.1-6 Policies and procedures and standards. (a) A satisfactory statement of policy of the home health agency, including the scope of services, the conditions under which they are offered, and the geographic coverage, shall be available to the department upon request.

(b) Services provided by the home health agency shall be available to any qualified patient in a home setting in the geographic area of the home health agency regardless of race, color, or national origin. Contracts with other agencies to provide services

shall be approved by authorized persons of agencies involved.

(c) The basic services of nursing shall be provided by the home health agency.

(d) Policies governing medical services shall be provided through a governing body or designated persons functioning as a governing body.

(e) Policies governing nursing and other therapeutic services shall be provided through the governing body or an advisory committee which shall include a minimum of at least a practicing physician or APRN or physician's assistant, and a registered nurse, a representative of other professional services such as dietary, occupational therapy, physical therapy, social work, or speech therapy, and community members who are aware of the needs of the community. The policies recommended by such committee shall meet current and acceptable professional practices. Minutes shall be kept of all meetings.

(f) Nursing and other therapeutic service policies shall be established and include but not be limited to:

- (1) Nursing and other therapeutic services provided shall be in accordance with the physician's or APRN's or physician's assistant's written order and plan of treatment.
- (2) The nurses, therapists, social workers, aide, or staff members rendering services shall meet qualifications prescribed in the definitions of this chapter.
- (3) A home health agency provides nursing services, and at least one other therapeutic service such as physical therapy, occupational therapy, or speech therapy consistent with the definition of home health services.
- (4) When a home health agency does not provide all the nursing or therapeutic services specified above,

it shall include in its written policies which govern such services, a plan for identifying, utilizing and cooperating with other resources and facilities including community social agencies for the purpose of providing such services to patients. The home health agency may arrange for the services which it does not provide by written agreements with other licensed home health agencies or by contracts with health professionals who shall meet the requirements of this chapter.

- (g) Medical records.
 - (1) A clinical record for each patient shall be maintained based on standards acceptable to the department;
 - (2) All staff responsible for specific professional aspects of care to a patient shall record in the patient's record information about the services rendered.
- (h) Establishment and review plan of treatment.
 - (1) A home health agency shall establish policies and procedures for assuring that care services to be provided are specified under the plan of treatment ordered, established, and regularly signed by the physician or APRN or physician assistant responsible for the care of the patient.
 - (2) The plan of treatment ordered by the physician or APRN or physician assistant shall be signed by the physician or APRN or physician assistant responsible for the patient and incorporated into the patient's medical record.
 - (3) The total plan shall be reviewed by the attending physician or APRN or

- physician assistant, in consultation with the agency's professional personnel at such intervals as the severity of the patient's condition may require, but not less than once every two months.
- (4) The professional staff shall bring to the attention of the patient's physician or APRN or physician assistant changes in the patient's condition which may indicate the need for altering the treatment plan or for the termination of service or services.
 - (5) Only the attending physician or APRN or physician assistant shall terminate services. Upon termination of services, the physician or APRN or physician assistant shall prepare or approve a written discharge summary which includes reasons for termination of services, the patient's medical condition upon discharge and a summary of the course of the patient's illness.
 - (6) All orders shall be signed by the physician or APRN or physician assistant.
 - (7) When verbal orders are received by the professional nurse or other professional disciplines they shall be signed by the physician or APRN or physician assistant within a reasonable period of time.
- (i) Home health agency shall provide:
- (1) Written job descriptions which specify the qualifications and experience of each category of health

personnel and the type of activity each category of health personnel may perform;

- (2) Written personnel policies to each staff member; and
- (3) A plan for a pre-employment and periodic medical examination, tuberculosis testing and/or chest x-ray and other appropriate tests and immunizations for all home health agency personnel

(j) Home health agency shall provide for all personnel rendering service to patients, a planned program of orientation to the agency's policies and objectives and a continuous in service education program.

(k) Maintenance of records and reports.

- (1) Clinical records, service reports, fiscal reports, job descriptions, personnel reports, personnel policies and rosters, cost accounting data, committee reports, statements of policies, and such other records and reports as may be required shall be kept on file in the agency's office.
- (2) When a home health agency is a subdivision of a parent agency or organization, the fiscal accounting system shall be maintained in such a method to permit the costs of the home health agency to be easily identifiable.
- (3) Home health agency shall keep confidential all medical, nursing, paramedical, therapeutic, personnel, and financial information relating to each patient and make such available only to authorized persons.

(1) A home health agency shall develop, implement, evaluate, and maintain an effective, ongoing, agency-wide, data-driven quality assessment

and performance improvement program that reflects the complexity of its organization and services, involves all services including those services provided under contract or arrangement, focuses on indicators related to improved outcomes, and shall maintain documentary evidence of its quality assessment and performance improvement program.

(m) A home health agency shall follow accepted standards of practice, including the use of standard precautions, to prevent the transmission of infections and communicable diseases.

(n) A home health agency shall provide a periodic evaluation of employee performance.

(o) The director may approve a modification of standards for a home health agency when exceptional circumstances warrant such modification.

[Eff. **SEP 16 2022**] (Auth: HRS Sec. 321-11)
(Imp: HRS Sec. 321-11)

§11-97.1-7 Patients' rights. (a) Be free from verbal, mental, sexual, or physical abuse, including injuries of unknown source, neglect, and misappropriation of property.

(b) Be advised of the state toll free home health telephone hotline, its contact information, its hours of operation, and that its purpose is to receive complaints or questions about local home health agencies.

(c) Be provided written notice of patient's rights and responsibilities.

(d) To have complaints made by a patient, the patient's representative, or the patient's caregiver or family investigated in a timely manner and be informed of the investigation results. [Eff. **SEP 16 2022**]
(Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

§11-97.1-8 Emergency preparedness. A home health agency shall develop and maintain an emergency preparedness plan that must be reviewed and updated at least every two (2) years and includes but is not limited to:

- (1) Addressing patient population, the types of services the agency has the ability to provide in an emergency, and continuity of operations;
- (2) Development and implementation of emergency preparedness policies and procedures based on natural or man made disasters;
- (3) Procedures to follow with on-duty staff and patients to determine services that are needed in the event of an interruption in services during or due to an emergency; and
- (4) Development and maintenance of an emergency preparedness communication plan that includes but is not limited to names and contact information for staff, entities providing services under arrangement, patients' physicians, APRN, or physician's assistant, and volunteers, and a method for sharing information and medical documentation for patients under the agency's care with other health providers to maintain the continuity of care, and a means of providing information about the general condition and location of patients under the agency's care.

§11-97.1-9 Enforcement and remedies. A person who violates any requirement of this chapter shall be subject to administrative proceedings pursuant to HRS Sec. 321-20. [Eff. **SEP 16 2022**] (Auth: HRS Sec. 321-20) (Imp: HRS Sec. 321-20)

§11-97.1-10

§11-97.1-10 Validity. If any provisions of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected thereby. [Eff. **SEP 16 2022**]
(Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

DEPARTMENT OF HEALTH

The repeal of chapter 11-97 and the adoption of chapter 11-97.1, Hawaii Administrative Rules, on the Summary Page dated _____, were adopted on _____, following public hearings held on _____ at _____, after a public notice was published on _____ in the _____.

The repeal of chapter 11-97, Hawaii Administrative Rules and the adoption of chapter 11-97.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIUTENANT GOVERNOR'S OFFICE

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ELIZABETH A. CHAR, M.D.
Director
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APPROVED:

David Y. Ige

DAVID Y. IGE
Governor
State of Hawaii

Date: SEP 06 2022

APPROVED AS TO FORM:

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Deputy Attorney General

JUL 29 2022

Filed