DEPARTMENT OF HEALTH

Repeal of Chapter 11-100, "Adult Residential Care Homes" and
11-101 "Extended Care Adult Residential Care Home"
and the
Adoption of Chapter 11-100.1, "Adult Residential Care Homes",
Hawaii Administrative Rules

July 24, 2006

Summary

1. Chapter 11-100, Hawaii Administrative Rules, entitled "Adult Residential Care Homes", is repealed.

2. Chapter 11-101, Hawaii Administrative Rules, entitled "Extended Care Adult Residential Care Home", is repealed.

3. Chapter 11-100.1, Hawaii Administrative Rules, entitled "Adult Residential Care Homes", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 100.1

ADULT RESIDENTIAL CARE HOMES

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Historical Note: Chapter 11-100.1 is based substantially upon chapters 11-100 and 11-101.
[Eff R SEP 18 2006]

Subchapter 1
General Requirements

§11-100.1-1 Purpose. This chapter establishes minimum standards and requirements for the licensure of adult residential care homes (ARCH) and expanded ARCHs in order to protect the health, safety, welfare and civil rights of the residents residing in the ARCH and expanded ARCH. Services shall be provided in a cooperative manner with the intent to promote the dignity and choice of the resident in a home-like environment. The rules are not intended to intrude on the privacy or infringe on the desire of individuals to provide care or services to another in their own home, but where such services are provided for a fee, the department reserves the right to ensure compliance with this chapter. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.62) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-2 Definitions. As used in this chapter:

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm or pain or mental anguish, or deprivation by an individual, including a caregiver, of goods or services that are necessary to attain or maintain physical, mental and psychosocial well-being. This presumes that instances of abuse of all residents, even those in a coma, cause physical harm, or pain or mental anguish.

"Activities of daily living", or "ADL" means basic services required to be provided by the facility for benefit of residents in order to obtain and maintain a license and shall include, but not be limited to, the following: personal care, shelter, protection, supervision, assistance, guidance or training, planned activities, food service, laundering of personal clothing, recognition of and provision for changes in health status, and arrangement for and transportation to medical and dental offices.

"Adult residential care home", or "ARCH" means any facility providing twenty four hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, personal care services,

protection, and health care services, but who do not need the professional health services of an intermediate, skilled nursing, or acute care facility. It does not include facilities operated by the federal government. There shall be two types of ARCHs:

(1) Type I home for five or less residents; and

(2) Type II home for six or more residents.

"Advanced directive" means a written or oral declaration made by a competent adult, instructing his or her physician to provide, withhold, or withdraw life-sustaining procedures under certain conditions such as a terminal condition or where the resident has a permanent loss of ability to communicate with others due to irreversible brain injury or coma. (An advanced directive is often referred to as a living will.)

"Advanced practice registered nurse", or "APRN" means a registered nurse who is licensed pursuant to chapter 457, HRS.

"Ambulatory" means the ability to move on foot from place to place without human assistance.

"ARCH resident" means a person unrelated to the primary care giver and licensee who resides in an ARCH. Individuals residing in an ARCH require minimal assistance in the activities of daily living, and do not need assistance from skilled, professional personnel on a regular long-term basis.

"Assistive devices" means a physical or mechanical apparatus or equipment required by an individual for ambulation or mobility.

"Cardiopulmonary resuscitation certification", or "CPR certification" means verification that an individual has satisfactorily completed a course provided by a nationally approved source that contains instruction and required participation in an emergency first aid procedure that consists of opening and maintaining a resident's airway, providing artificial ventilation by means of rescue breathing, and providing artificial circulation by means of external cardiac compression.

"Care plan" means a written plan developed by the resident, resident's family, legal guardian or surrogate, case manager, staff of the ARCH or expanded ARCH, and resident's physician or APRN that articulates the overall plan of care to be provided to the resident by the ARCH or expanded ARCH with the purpose of achieving the optimal level of function of the resident.

"Case manager" (as it applies to an expanded ARCH)

means an individual other than the licensee or staff of the expanded ARCH who is licensed in the state as a registered nurse or social worker and possesses the skills and knowledge required to deal with the long term care needs of the geriatric population. This individual shall have the ability to plan, locate, coordinate, and monitor comprehensive services to meet the individual resident's needs based on a comprehensive assessment of the resident.

"Category 3 adult residential care home" means an ARCH which was established and licensed prior to 1986, and was providing only room and board services to individuals that did not require twenty four hour supervision and personal care services, and whose licensee does not meet requirements as set forth in section 11-100.1-8.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

"Comprehensive assessment" means an evaluation which includes, but is not limited to, medically defined conditions and prior medical history, medical status measurement, physical and mental functional status, sensory and physical impairments, nutritional status and requirements, special treatments or procedures, mental psychosocial status, discharge potential, dental condition, activities potential, cognitive status and drug therapy.

"Convenience" means any action taken by the licensee or care giver to control resident behavior or maintain residents with a lesser amount of effort by the licensee or care giver and not in the resident's best interest.

"Day care client" means any person who does not reside in the ARCH or expanded ARCH and requires temporary supervision during the hours that the person's care giver, outside of the ARCH or expanded ARCH, is unavailable. This person requires minimal assistance in the activities of daily living and does not need the professional health services of an intermediate, skilled nursing, or acute care facility. This person does not stay overnight in the ARCH or expanded ARCH but shall be characterized as a resident for purposes of an ARCH's or expanded ARCH's licensed capacity.

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

"DHS" means the department of human services,

State of Hawaii.

"Dietitian" means a person who is registered by the Commission on Dietetics Registration of the American Dietetic Association or is eligible for such registration. "Director" means the director of health, State of Hawaii or designee.

"Discipline" means any action taken by the licensee or care giver for the purpose of punishing or penalizing residents.

"Emergency" means an event or incident occurring while an ARCH or expanded ARCH resident is under the care of a primary care giver or ARCH or expanded ARCH licensee, whereby a resident experiences physical or mental changes which necessitate care or services which cannot be provided by the ARCH or expanded ARCH.

"Expanded ARCH" means any facility providing twenty four hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, personal care services, protection, and health care services, and who may need the professional health services provided in an intermediate care facility or skilled nursing facility. There shall be two types of expanded ARCHs:

(1) Type I home shall consist of five or less residents with no more than two nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department; and

(2) Type II home shall consist of six or more residents with no more than twenty per cent of the home's licensed capacity as nursing facility level residents, provided that more nursing facility level residents may be allowed at the discretion of the department; provided further that the department shall exercise its discretion for a resident presently residing in a Type I or Type II home to allow the resident to remain as an additional nursing facility resident based upon the best interest of the resident. The best interest of the resident shall be determined by the department after consultation with the resident, the resident's family, primary physician, case manager, primary care giver and home

operator.

"Expanded ARCH resident" means a person that meets the requirements of section 321-15.61(a).

"Fire Safety Evaluation System rating", or "FSES" means an assessment conducted by a Life Safety Consultant to ensure compliance with the prescriptive code requirements of the National Fire Protection Association (NFPA) 101 life safety codes.

"First aid certification" means verification that an individual has successfully completed a course that provides instruction on basic first aid principles, including but not limited to rescue breathing procedures.

"Fully ambulatory" means the ability to move on foot from place to place without the use of any mechanical device and/or human assistance.

"Home health agency" means a licensed public or proprietary agency, a private nonprofit organization, or a subdivision of such agency or organization which is primarily engaged in providing direct or indirect skilled nursing services and other therapeutic services under a physician's direction to homebound patients on a part-time or intermittent basis (in a place used as the individual's home). A homebound patient is a person who, because of a condition due to illness or injury, has a restricted ability to leave the place of residence except with the aid of supportive devices including but not limited to, crutches, canes, wheelchairs, walkers, special transportation, or with the assistance of another person; or a person who has a condition which is such that leaving home is medically contraindicated.

"Infection control" means procedures established for the identification, prevention and control of infections.

"Interim care plan" means a care plan developed by a registered nurse for an expanded ARCH resident within forty-eight hours of the expanded ARCH resident's admission to an expanded ARCH. The interim care plan shall identify the immediate needs of the expanded ARCH resident and shall be based on information, including but not limited to physician or APRN progress notes, the hospital discharge summary, and the emergency room discharge. The interim care plan shall provide sufficient information to the licensee or primary care giver and shall set forth a plan to meet the immediate needs of the resident until a comprehensive care plan can be developed within seven days of the expanded ARCH

resident's admission to the expanded ARCH.

"Intermediate care facility", or "ICF" means a facility which provides appropriate care to persons:

(1) Referred by a physician;
(2) Who need twenty four hour a day assistance with the activities of daily living;
(3) Who need care provided by licensed nursing and paramedical personnel on a regular, long-term basis; and
(4) Who do not need twenty four hour a day skilled nursing care.

"Licensee" means the person, group of persons, or entity that holds the license to operate an ARCH or expanded ARCH and who is responsible for the supervision of the ARCH or expanded ARCH and the residents therein.

"Licensed capacity" means the number of residents and the type of residents permitted by the director, pursuant to these rules and chapter 321, HRS, in a particular ARCH or expanded ARCH, and so stated on the particular ARCH's or expanded ARCH's license.

"Licensed nurse" means a person who is either a licensed practical nurse or a registered professional nurse.

"Licensed practical nurse", or "LPN" means a person who is licensed as a practical nurse pursuant to chapter 457, HRS.

"Life safety consultant" means an individual who has experience in conducting fire or life safety inspections of facilities utilizing county and national fire codes and standards.

"Minimal assistance in activities of daily living" means the provision of services including but not limited to, stand-by assistance, set up, verbal cues or prompting, and visual supervision.

"National Fire Protection Association", or "NFPA" means the association that publishes the national fire codes.

"Neglect" means failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness, with complete disregard for negative consequences or negative resident outcome which may arise.

"Nurse aide" means a person who performs a variety of duties relating to patients and patient care under the supervision of a nurse, including but not limited to assisting patients in all activities of daily living. A nurse aide may also assist a nurse by

changing bed linens, delivering messages, and sterilizing instruments, serving and collecting food trays, and helping patients get out of bed, bathe, and dress.

"Nursing facility level of care" means the level of care provided at skilled nursing facilities or at intermediate care facilities.

"Occupational therapist" means a person who is currently registered or eligible for registration by the American Occupational Therapy Association, and who meets the qualifications under chapter 457G, HRS.

"Personal care services" means daily personal attention and care, including but not limited to skin, nails, hair, teeth, and oral hygiene in addition to any therapeutic regimen ordered by the resident's physician or APRN.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

"Physical therapist" means a person who is licensed as a physical therapist under chapter 461J, HRS.

"Physician" means a person who is licensed to practice medicine or osteopathy under chapters 453 or 460, HRS.

"Plan of correction" means a plan developed by the licensee to address deficiencies in the operation of an ARCH or expanded ARCH as detected by the department pursuant to an inspection and/or complaint investigation that shall include preventive measures to ensure compliance with this chapter and chapter 321, HRS, and the time frame in which these corrections shall take place.

"Primary care giver" means the licensee or the individual designated as the primary care giver by the licensee pursuant to section 11-100.1-8.

"Provisional licensure" means a temporary license issued by the department that allows the licensee additional time to correct deficiencies without putting the immediate health, welfare and safety of residents at risk.

"Registered professional nurse" means a person who is licensed as a registered nurse under chapter 457, HRS.

"Regular business hours" means the hours between 7:45 a.m and 4:30 p.m., Monday to Friday, inclusive,

except for state holidays.

"Representative payee" means an individual who meets the requirements of the Social Security Administration to receive a Social Security payment on behalf of a resident of an ARCH or expanded ARCH pursuant to 42 U.S.C. §1605.

"Resident of a category 3 ARCH" means a person unrelated to the primary care giver who resides in the category 3 ARCH, for a fee, and requires room and board which includes a place to sleep, the preparation of meals and laundering of personal clothing. These residents do not require assistance with activities of daily living, and when such care is required, the resident shall be transferred to an appropriate facility.

"Responsible agency" means any public or private agency that has responsibility for the health, welfare, or financial support of the resident.

"Self preservation" means the ability of an ARCH or expanded ARCH resident to ambulate without physical assistance, and the ability of the resident to follow directions and take appropriate action in exiting an ARCH or expanded ARCH in the event of an emergency.

"Skilled nursing" means care and services provided by a licensed nurse.

"Skilled nursing facility", or "SNF" means a health facility which provides skilled nursing and related services to residents who require medical or nursing care, or rehabilitation services, including but not limited to physical therapy, occupational therapy and speech therapy services.

"Social model of care" means the provision of care that promotes the individuality, dignity, choice, independence, and privacy of an ARCH or expanded ARCH resident in a home-like atmosphere and that provides for the inclusion of the resident, the resident's family, and resident's surrogate in the development of the resident's schedule of activities and/or care plan and in all decision-making affecting the resident.

"Social worker" means a person licensed as a social worker pursuant to chapter 467E, HRS.

"Special diet" means a diet ordered by a physician or APRN that is prescribed as part of the medical nutrition therapy of an ARCH or expanded ARCH resident.

"Specialized care" means any care that is identified in the care plan that requires training and monitoring by a registered nurse.

"Staff" means a nurse aide[,] who works in a Type II ARCH, and performs a variety of duties for residents under the supervision of a registered nurse.

"Standard precautions" means guidelines developed by the Center for Disease Control (CDC) which are designed to reduce the risk of transmission of blood borne and other pathogens from both recognized and unrecognized sources of infection, including recommendations to prevent cross contamination between residents.

"Substitute care giver" means an adult who is authorized by the licensee or primary care giver to temporarily take charge of an ARCH or expanded ARCH while the licensee or primary care giver is absent and who possesses the requirements as specified in section 11-100.1-9(a) through (e) as applicable.

"Surrogate" means an individual, other than an ARCH or expanded ARCH resident's agent or guardian, authorized under chapter 327E, HRS, to make a health-care decision for the resident.

"Type I ARCH" means a facility which is licensed for a capacity not to exceed five residents.

"Type II ARCH" means a facility which is licensed for a capacity of six or more residents.

"Tuberculosis clearance" means a negative tuberculin skin test or chest x-ray, which indicates freedom from any infectious or communicable disease.

"Waiver" means an exemption to a rule.

Whenever the singular is used in this chapter it can include the plural. [Eff SEP 18 2008] (Auth: HRS §§321-9, 321-10, 321-11, 321-13, 321-15.6, 321-15.62) (Imp: HRS §§26-13, 321-9, 321-10, 321-11, 321-15.6)

§11-100.1-3 Licensing. (a) No person, group of persons, or entity shall operate an ARCH or expanded ARCH without a license previously obtained under and in compliance with this chapter and chapter 321, HRS.

(1) Any person, group of persons, or entity desiring to operate an ARCH or expanded ARCH shall apply to the department for a license on forms furnished by the department. The department shall issue a license if the applicant and home meet the requirements in this chapter;

(2) A license, when granted, shall be in force for one year, or such other interval of time as may be determined by the department and shall expire at the end of that time unless renewed or extended by the department;

(3) Each license shall be issued to a person, group of persons, or entity by name, for a specific physical facility; any change in licensee requires that the department be notified in order for the department to make a determination as to whether or not a new license shall be issued. The license shall not be transferred under any circumstances. A separate license must be secured for each ARCH or expanded ARCH by submitting an application and obtaining department approval;

(4) The license issued by the department shall be posted in a conspicuous place visible to the public, on the premises of the ARCH or expanded ARCH;

(5) No more than three day care clients shall be allowed in an ARCH or expanded ARCH at any given time as set forth in chapter 17-1424, Hawaii Administrative Rules;

(6) Each ARCH or expanded ARCH must have a primary care giver who is present at the ARCH at all times, unless the primary care giver has secured a substitute care giver to temporarily provide care to the ARCH or expanded ARCH residents;

(7) The primary care giver shall not have activities outside of the ARCH or expanded ARCH, or other responsibilities sufficiently demanding of his/her time and energy that they would interfere with the proper and adequate care of the residents; and

(8) In the event that the primary care giver will be unable to perform his/her duties under this chapter due to his/her anticipated departure from the ARCH or expanded ARCH, the licensee shall ensure that a person qualified under section 11-100.1-8 assumes the duties of the primary care giver prior to the primary care giver's departure from the ARCH or expanded ARCH. The department shall be notified of the change in primary care giver prior to the departure.

(b) Application.

(1) In order to obtain a license, the applicant shall apply to the director upon forms provided by the department and shall provide any information required by the department to demonstrate that the applicant and the ARCH or expanded ARCH have met all of the requirements of this chapter. The following shall accompany the application:

(A) Documented compliance with current county building and zoning codes;

(B) Documented compliance with current fire code requirements;

(C) Documented clearance by sanitation branch of the department of health;

(D) Documented clearance by wastewater branch of the department of health;

(E) Building plans indicating accurate measurements to scale of the entire home;

(F) A written approval to operate an ARCH or expanded ARCH from the owner of the property if the home is rented, leased or on leased land;

(G) Disclosure of ownership or control of the ARCH or expanded ARCH, and a projected annual budget showing the ARCH's or expanded ARCH's expected income and expenditures based on an estimated sixty percent occupancy rate. The financial resources of the owner shall be sufficient to operate the ARCH or expanded ARCH according to standards set forth in this chapter. The owner shall provide upon request evidence as deemed necessary by the licensing agency to establish that fact;

(H) Current written policies covering the ARCH's or expanded ARCH's proposed staffing, visiting hours, emergency plans, access to records, and any other written policies required by this chapter for the type of residents proposed to be admitted;

(I) Documented evidence stating that the licensee, primary care giver, family members living in the ARCH or expanded ARCH that have access to the ARCH or expanded ARCH, and substitute care givers have no prior felony or abuse convictions in a court of law;

(J) Such other information as the department may reasonably require for the purposes of this chapter.

(2) Maximum time period for processing of a complete license application:

(A) The department shall grant or deny an application and inform the applicant of its decision within sixty days of receipt of a complete application. Applications which do not provide all requirements specified in section 11-100.1-3(b)(1) shall be deemed incomplete and returned to the applicant;

(B) If the department does not grant a license or deny an application within sixty days of receipt of the complete application, the application for issuance of a license will be deemed approved on the sixty first day. After the expiration of the sixty days, the department shall issue the license within a month;

(C) Notwithstanding the requirements of paragraph (A), the maximum period of time of sixty days shall be extended indefinitely in the event of a national disaster, state emergency, or union strike, which would prevent the applicant, the agency, or the department from fulfilling application or review requirements in a timely manner;

(c) Denial of licensure. An application for an ARCH or expanded ARCH license may be denied for reasons which include but are not limited to the following:

(1) Failure of the applicant to comply with this chapter or chapter 321, HRS;

(2) Failure of the applicant to provide evidence of and possess financial capability to operate the ARCH or expanded ARCH pursuant to this chapter;

(3) Fraudulent representation or misrepresentation of facts by the applicant; and
(4) Failure of the applicant to provide a satisfactory work history of patient care that would include confirmation that the applicant never abused, neglected or exploited a resident.
(d) Closure.
(1) The licensee shall notify the department in writing at least thirty days prior to an intended closure of an ARCH or expanded ARCH;
(2) The licensee shall notify all residents, guardians, and other responsible agencies, at least thirty days prior to an intended closure of an ARCH or expanded ARCH; and
(3) All residents shall be transferred to appropriate licensed facilities prior to closure.
(e) Inspections.
(1) All ARCHs and expanded ARCHs shall be licensed to ensure the health, safety, and welfare of the individuals placed therein. The department shall conduct unannounced visits, other than the inspection for relicensing, to every licensed adult residential care home and expanded adult residential care home on an annual basis and at such intervals as determined by the department to ensure the health, safety, and welfare of each resident. Unannounced visits may be conducted during or outside regular business hours. All inspections relating to follow-up visits, visits to confirm correction of deficiencies, or visits to investigate complaints of suspicion of abuse or neglect shall be conducted unannounced during or outside regular business hours. Inspections for relicensing may be conducted annually or at intervals determined by the department during regular business hours. Inspections for relicensing shall be conducted with notice, unless otherwise determined by the department.

(2) Following an annual inspection, a list of deficiencies, if any, shall be given to the licensee or primary care giver of the ARCH or expanded ARCH. The licensee or primary care giver of the ARCH or expanded ARCH shall return a plan of correction for the deficiencies cited within ten working days. An acceptable plan for correcting deficiencies shall include the time frame for correction and the preventive measures that will be instituted to ensure compliance with this chapter; and

(3) The department may refuse to renew a license if cited deficiencies are not corrected as per the plan of correction; or a provisional license may be issued for a specified period of time at the discretion of the department for the purpose of giving additional time for correction of deficiencies. Not more than two successive provisional licenses shall be issued to a specific ARCH or expanded ARCH. [Eff SEP 18 2006] (Auth: HRS §91-13.5, §§321-9, 321-10, 321-11, 321-15.6, 321-15.62, Act 202, SLH 2003) (Imp: HRS §§91-14, 91-15, 321-4, 321-10, 321-11, 321-15.6)

§11-100.1-4 Waiver. (a) Every request for a waiver shall be set forth in writing and submitted to the department for approval. The licensee shall submit sufficient information as set forth in subsection (d)(3), to enable the department to make a decision on the request for a waiver.

(1) The department shall not act upon or consider any incomplete requests for waivers. A waiver request shall be deemed complete only when all required and requested information including a reason for the waiver and an alternate plan established to ensure the health, safety, welfare and civil rights of the resident, including resident care and life safety safeguards, is reviewed by the department;

(2) Every request shall be signed by the licensee and shall constitute an acknowledgment and agreement that the licensee will comply with all terms and conditions of the waiver and this chapter;

(3) The department may require the submission of additional information after the request has been submitted. If a request is incomplete or otherwise deficient, processing of the request shall not be completed until such time as the licensee has supplied all required information or otherwise corrected the deficiency;
(4) All waivers shall not be transferrable;
(5) The failure of the department to act on a completed request for a waiver within sixty days of receipt of request, shall be deemed an approval of the request; provided that the licensee acts consistently with the request process; and
(6) A waiver may be granted on a case by case basis when it does not affect the resident's health, welfare, and safety.

(b) The request will be reviewed by the department based on the effect or probable effect the waiver would have on the health, safety and welfare of a resident.

(c) Whenever a request is approved by the department, the department shall issue a waiver authorizing the operation of an ARCH or expanded ARCH pursuant to the conditions specified in the request for the waiver and/or conditions specified by the department. No waiver shall be granted by the department unless the request and the supporting information clearly show that:
(1) Granting the waiver will not endanger the health, safety, or welfare of an ARCH or expanded ARCH resident;
(2) The waiver shall not be transferred to another resident or ARCH or expanded ARCH;
(3) Granting the waiver will not affect the requirements of licensure provided in section 11-100.1-3; and
(4) Granting the waiver will not affect the primary care giver requirements provided in section 11-100.1-8.

(d) Any approved waiver shall be granted within the requirements of this section, for time periods and under conditions consistent with this chapter, and with the following limitations:
(1) The department may issue a waiver for a period not exceeding one year;

(2) The department may revoke the waiver at any time if the waiver creates a threat to the health, safety, or welfare of an ARCH or expanded ARCH resident;

(3) For every waiver granted under this section the department shall require the licensee to submit to the department information on a case by case basis such as:

(A) Resident diagnosis with ability for self preservation, physician or APRN order, training to be provided to licensee, primary care giver or substitute care givers, plan for monitoring, oversight and evaluation of resident status; or

(B) Conditions under which any structural changes to the ARCH or expanded ARCH will be completed, specific time frame for construction completion, and plan to ensure the safety of the ARCH or expanded ARCH residents during construction; and

(C) Process to be undertaken to ensure the health, safety and welfare of ARCH or expanded ARCH residents for staffing changes or training to meet the requirements of this chapter.

(4) For every waiver granted under this subsection the department shall perform a thorough review of known and available means of protecting the health, safety, or welfare of ARCH or expanded ARCH residents to which the waiver applies.

(e) Waiver renewal. No waiver renewal shall be granted except on request therefor. Any such request shall be submitted to the department at least sixty days prior to the expiration of the waiver. The department shall act on a request for renewal within sixty days of the receipt of such request. Any waiver granted pursuant to this section may be renewed on terms and conditions which would be appropriate on initial granting of a waiver, for periods not exceeding one year; provided that:

(1) The request for renewal has met all of the conditions specified in the immediately preceding waiver; and

(2) The renewal, and the waiver issued in pursuance thereof, shall provide for protection of the health, safety, or welfare of the ARCH or expanded ARCH resident in a manner not less than that attained pursuant to the terms of the immediately preceding waiver at its expiration.

(f) If the waiver or renewal is not granted, the department shall, upon request, provide the opportunity for hearing in accordance with chapter 91, HRS.

(g) No waiver shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law. [Eff. SEP 18 2006] [Auth: §§321-9, 321-10, 321-11, 321-15.6, 321-15.62] (Imp. HRS 321-15.6, 321.15.62)

§11-100.1-5 Existing category 3 facilities. No existing category 3 ARCHs shall admit any new residents. Any resident in the category 3 ARCH who develops the need for nurse aide care shall be transferred to an appropriate facility. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §321-15.6)

§11-100.1-6 Licensing fees. Appropriate fees, if any, as determined by the director, shall be charged by the department for obtaining an initial license or obtaining a license renewal. Prior notice of the amount of the fee shall be provided to the licensee. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10) (Imp: HRS §§321-10, 321-11)

§11-100.1-7 General operational policies. (a) General operational policies of an ARCH or expanded ARCH shall be submitted by the applicant in writing to the department prior to licensure and shall include, but shall not be limited to:

(1) Admission policies as specified in section 11-100.1-10;

(2) Types of services to be provided to residents which at a minimum shall include activities of daily living;

(3) A clear definition of the responsibility of the ARCH or expanded ARCH to the ARCH or expanded ARCH resident and the ARCH or expanded ARCH resident's family, legal guardian, surrogate or responsible agency;
(4) Visiting hours;
(5) Emergency measures;
(6) Responsibilities of the primary and substitute care givers, and ARCH or expanded ARCH residents;
(7) Appropriate action to be taken in the event of allegations of mistreatment, neglect, misappropriation of funds or property, procedure for notification of appropriate agencies pursuant to state law;
(8) Infection control procedures;
(9) Written evaluation of any incidents occurring which result in resident injury or illness, review of circumstances leading to the event, and a written plan to prevent a similar situation from recurring; and
(10) Transfer and discharge policies as specified in section 11-100.1-22.

(b) The general operational policies approved by the department shall be explained to the ARCH or expanded ARCH resident and the ARCH or expanded ARCH resident's family, legal guardian, surrogate or responsible agency prior to the ARCH or expanded ARCH resident's admission. A copy of these general operational policies shall be provided to all parties.

(c) A written agreement shall be completed at the time of admission between the licensee or primary care giver of the ARCH or expanded ARCH and the ARCH or expanded ARCH resident and the ARCH or expanded ARCH resident's family, legal guardian, surrogate or responsible agency that sets forth that resident's rights, the licensee or primary care giver of the ARCH or expanded ARCH responsibilities to that resident, the services which will be provided by the licensee or primary care giver of the ARCH or expanded ARCH according to that resident's schedule of activities or care plan, and that resident's responsibilities to the licensee or primary care giver of the ARCH or expanded ARCH. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6, 321-15.61 and 321-15.62) (Imp: HRS §§321-10,321-11, 321-15.6, 321-15.61 and 321-15.62)

Subchapter 2
Type I ARCH

§11-100.1-8 Primary care giver qualifications.
(a) The licensee of a Type I ARCH acting as a primary care giver or the individual that the licensee has designated as the primary care giver shall:

(1) Be a resident of the State of Hawaii;
(2) Be at least twenty-one years of age;
(3) Be at least a nurse aide;
(4) Reside in the Type I ARCH, or employ or otherwise engage by contract a qualified primary care giver in those homes in which the licensee does not reside;
(5) Have completed ARCH teaching modules that are approved annually by the department;
(6) Have at least one year experience working full time or its equivalent providing direct nurse aide care as an employee of a state licensed and approved intermediate care facility, skilled nursing facility, home health agency, or hospital or demonstrate competency equivalence through completion of a program approved by the department;
(7) Have knowledge of and be able to practice the principles of resident care incorporating the concepts of the social model through family and community centered activities and approaches;
(8) Demonstrate to the department sufficient skill in the use of the English language to fully accomplish the objectives of the program and to comply with the requirements of this chapter;
(9) Have achieved acceptable levels of skill and training in first aid, nutrition, cardiopulmonary resuscitation, and appropriate nursing and behavior management as required for care of all residents admitted to the Type I ARCH;
(10) Attend and successfully complete a minimum of six hours of training sessions per year which shall include but not be limited to any combination of the following areas: personal care, infection control, pharmacology, medical and behavioral management of residents, diseases and chronic illnesses,

community services and resources. All inservice training and other educational experiences shall be documented and kept current;

(11) Have knowledge of the availability of community services which may be utilized by the residents, primary care giver, or licensee; and

(12) If it is deemed necessary by the department, be examined by a physician and/or mental health professional as a condition for continued licensure. The examination shall be specifically oriented to determine if the primary care giver is physically and/or mentally capable of caring for the residents;

(b) The applicant of more than one Type I ARCH, in addition to the requirements in subsection (a), shall:

(1) Establish to the department's satisfaction that the applicant possesses the skills and abilities to successfully operate multiple facilities;

(2) Maintain an updated, written staffing plan that assures safety and adequate service administration on a twenty four hour basis in each facility under all circumstances; and

(3) Have a current history of operating a licensed Type I ARCH in compliance with the minimum licensing regulations in the State for one year or more. [Eff SEP 18 2008] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6, 346-224) (Imp: HRS §§321-10, 321-11, 321-15.6, 346-224)

§11-100.1-9 Personnel, staffing and family requirements. (a) All individuals who either reside or provide care or services to residents in the Type I ARCH, shall have documented evidence that they have been examined by a physician prior to their first contact with the residents of the Type I ARCH, and thereafter shall be examined by a physician annually, to certify that they are free of infectious diseases.

(b) All individuals who either reside or provide care or services to residents in the Type I ARCH shall have documented evidence of an initial and annual tuberculosis clearance.

(c) Any individual providing services to the residents who develops evidence of an infectious

disease shall be immediately relieved of any duties relating to food handling or direct resident contact, or both, and shall continue to be relieved of those duties until such time as a physician or APRN certifies it is safe for the individual to resume the duties. Undiagnosed skin lesions, respiratory tract symptoms or diarrhea shall be considered presumptive evidence of an infectious disease.

(d) The primary caregiver or licensee acting as the primary caregiver must be present in the Type I ARCH at all times unless the primary caregiver or licensee acting as the primary caregiver has secured a substitute caregiver to provide temporary coverage for the primary caregiver or licensee acting as the primary caregiver.

(e) The substitute care giver who provides coverage for a period less than four hours shall:

(1) Be at least eighteen years of age;

(2) Have the ability to communicate, read and write in the English language;

(3) Be currently certified in first aid; and

(4) Be trained by the primary care giver to make prescribed medications available to residents and properly record such action.

(f) The substitute care giver who provides coverage for a period greater than four hours in addition to the requirements specified in subsection (e) shall:

(1) Be currently certified in cardiopulmonary resuscitation;

(2) Be able to provide personal care to the residents, including bathing, dressing, transferring, feeding, and transporting residents, and be able to provide care as stipulated in the schedule of activities or care plan;

(3) Have sufficient knowledge and experience in nursing techniques to care for the residents, including taking vital signs, observing for medication efficacy and any untoward reactions;

(4) Be able to provide recreational programs as developed; and

(5) Follow planned menus, prepare and serve meals, including special menus and be able to make appropriate substitutions, as required.

(g) The substitute care giver who provides coverage for a period greater than one month, shall meet the requirements as set forth in section 11-100.1-8(a).

(h) When the primary care giver is planning an absence and the licensee is unable to find a substitute care giver, residents may be temporarily transferred to another appropriate facility licensed by the department, including but not limited to an ARCH or expanded ARCH.

(i) The primary care giver shall give advance notice to residents and the resident's families, legal guardians, or surrogates or responsible agencies if the primary care giver plans to be absent for more than three days. Such advance notice shall be not less than one week except during emergencies. The primary care giver shall have a written plan, approved by the department, for providing resident care during any absence of the primary care giver from the Type I ARCH. This written plan shall also identify the duties and responsibilities of the substitute care giver. This rule does not apply to the primary care giver's short absences for shopping, errands, or other appointments unless the resident's condition requires full-time supervision and is addressed in the resident's schedule of activities or care plan. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-10 Admission policies. (a) Type I ARCHs shall admit residents requiring care as stated in section 11-100.1-2. The level of care needed by the resident shall be determined and documented by that resident's physician or APRN prior to admission. Information as to each resident's level of care shall be obtained prior to a resident's admission to a Type I ARCH and shall be made available for review by the department, the resident, the resident's legal guardian, the resident's responsible placement agency, and others authorized by the resident to review it.

(b) All licensed Type I ARCHs shall admit residents without regard to age, disability, race, color, national origin (including language), sexual orientation, religion or gender.

(c) The licensee has the right to refuse a person for admission if the licensee has made a determination that the Type I ARCH lacks the capability for providing

appropriate care.

(d) The Type I ARCH shall only admit residents at appropriate levels of care. The capacity of the Type I ARCH shall also be limited by this chapter, chapter 321, HRS, and as determined by the department.

(e) Persons requiring an increased level of care may be permitted in a Type I or Type II ARCH if the primary care giver is deemed capable by the department of providing the necessary interim care while awaiting transfer to an appropriate facility.

(f) The resident and the resident's family, legal guardian, surrogate or representative shall be informed at the time of admission of all facility policies and procedures.

(g) An inventory of all personal items brought into the Type I ARCH by the resident shall be maintained.

(h) Residents requiring emergency admission to an ARCH or expanded ARCH, due to removal from their current placement by the department or other state agency and who lack immediate access to a physician or emergency room, and who are unable to provide a report of tuberculosis clearance within one year of admission, may be admitted to the ARCH or expanded ARCH if the resident obtains a chest x-ray indicating freedom from communicable tuberculosis within twenty-four hours after admission. The resident shall obtain a tuberculin skin test within three days after admission, as per departmental procedure. The resident shall also submit to a physical examination within one week after admission unless he or she has done so within three months prior to admission. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6, 42 USC §2000a)

§11-100.1-11 Activities of daily living. The licensee shall provide personal care, shelter, protection, supervision, assistance, guidance or training, planned activities, food service, laundering of personal clothing, recognition of and provision for changes in health status, and arrangement for transportation to medical and dental offices. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-12 Emergency care of residents and disaster preparedness. (a) The licensee shall maintain written procedures to follow in an emergency which shall include provisions for the following:

(1) Arranging for immediate transfer or evaluation by a physician for any resident who becomes acutely ill, injured, or dies;

(2) Arranging for transfer or placement of a resident at an emergency shelter or crisis response unit, as appropriate; and

(3) Response to disasters which would include evacuation, emergency shelters, and food supply, and as directed by the Civil Defense.

(b) The licensee shall maintain a first aid kit for emergency use for each Type I ARCH.

(c) The licensee shall conduct regular quarterly rehearsals of emergency evacuation plans for staff and residents to follow in case of fire, explosion, or other civil emergency occurring in or within the environs of the facility.

(d) Records of disaster evacuation and safety drills shall be available for inspection by the department. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6, 15.61, 15.62) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-13 Nutrition. (a) The Type I ARCH shall provide each resident with an appetizing, nourishing, well-balanced diet that meets the daily nutritional needs and diet order prescribed by state and national dietary guidelines. To promote a social environment, residents, primary care givers and the primary care giver's family members residing in the Type I ARCH shall be encouraged to sit together at meal times. The same quality of foods provided to the primary care givers and their family members shall be made available to the residents unless contraindicated by the resident's physician or APRN, resident's preference or resident's family.

(b) Menus shall be written at least one week in advance, revised periodically, dated, and followed. If cycle menus are used, there shall be a minimum of four weekly menus.

(c) Menus shall accommodate residents' food preferences, cultural and ethnic backgrounds and habits as much as possible, provided nutritional quality is maintained.

(d) Current menus shall be posted in the kitchen and in a conspicuous place in the dining area for the residents and department to review.

(e) Substitutes offered to residents who refuse food served shall be of similar nutritive value and documented.

(f) A minimum of three meals shall be provided at regular intervals in each twenty four hour period. There shall be no more than fourteen hours between a substantial evening meal and breakfast.

(g) There shall be on the premises a minimum of three days' food supply, adequate to serve the number of individuals who reside at the ARCH or expanded ARCH.

(h) The kitchen and food supply shall be accessible to residents who may desire snacks between meals, as appropriate.

(i) Each resident shall have a documented diet order on admission and readmission to the Type I ARCH and shall have the documented diet annually signed by the resident's physician or APRN. Verbal orders for diets shall be recorded on the physician order sheet and written confirmation by the attending physician or APRN shall be obtained during the next office visit.

(j) Each resident shall be provided with sufficient fluids to ensure adequate hydration.

(k) Physician or APRN orders for nutritional supplements including vitamins, minerals, formula meals and thickening agents shall be updated annually or sooner as specified.

(l) Special diets shall be provided for residents only as ordered by their physician or APRN. Only those Type I ARCHs licensed to provide special diets may admit residents requiring such diets.

(m) A business entity operating more than one Type I ARCH, shall utilize a registered dietitian to assist in the planning of menus and provide special diet consultation, as needed. The consultant shall provide special diet training to food preparation staff to ensure competency. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

11-100.1-14 Food sanitation. (a) All food shall be procured, stored, prepared and served under sanitary conditions.

(b) All foods shall be stored in covered containers.

(c) Refrigerators shall be equipped with an appropriate thermometer and temperature shall be maintained at 45°F or lower.

(d) Potentially hazardous food shall meet proper temperature requirements during storage, preparation, display, service, and transportation.

(e) A metal stem thermometer shall be available for checking cold and hot food temperatures.

(f) Toxic chemicals and cleaning agents, such as insecticides, fertilizers, bleaches and all other poisons, shall be properly labeled and securely stored apart from any food supplies.

(g) Rooms used for the stored food and supplies shall be well ventilated.

(h) All persons who prepare food shall wash their hands with soap and water prior to food preparation and cooking.

(i) A kitchen sink with hot and cold running water and soap shall be available for washing dishes, equipment, and utensils.

(j) Potable water from an approved source shall be provided to all fixtures. [Eff SEP 18 2006] (Auth: HRS §§321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-15 Medications. (a) All medicines prescribed by physicians and dispensed by pharmacists shall be deemed properly labeled so long as no changes to the label have been made by the licensee, primary care giver or any ARCH/Expanded ARCH staff, and pills/medications are not removed from the original labeled container, other than for administration of medications. The storage shall be in a staff controlled work cabinet-counter apart from either resident's bathrooms or bedrooms.

(b) Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Medications that require storage in a refrigerator shall be properly labeled and kept in a separate locked container.

(c) Separate compartments shall be provided for each resident's medication and they shall be segregated according to external or internal use.

(d) Appropriate liquid medicine measuring devices shall be available and in use when liquid medicine is made available.

(e) All medications and supplements, such as vitamins, minerals, and formulas, shall be made available as ordered by a physician or APRN.

(f) Medications made available to residents shall be recorded on a flowsheet. The flowsheet shall contain the resident's name, name of the medication, frequency, time, date and by whom the medication was made available to the resident.

(g) All medication orders shall be reevaluated and signed by the physician or APRN every four months or as ordered by the physician or APRN, not to exceed one year.

(h) All telephone and verbal orders for medication shall be recorded immediately on the physician's order sheet and written confirmation shall be obtained at the next physicians visit and not later than four months from the date of the verbal order for the medication.

(i) Only trained staff shall be allowed to make prescribed medications available to residents.

(j) Medication shall be offered only to the resident for whom it is ordered.

(k) Medication errors and drug reactions shall be reported immediately to the physician or APRN responsible for the medical care of the client and shall document observations and action taken in the resident's record.

(l) There shall be an acceptable procedure to separately secure medication or dispose of discontinued medications.

(m) All medications and supplements, such as vitamins, minerals, and formulas, when taken by the resident, shall be recorded on the resident's medication record, with date, time, name of drug, and dosage initialed by the care giver.

(n) Self administration of medication shall be permitted when it is determined to be a safe practice by the resident, family, legal guardian, surrogate or case manager and primary care giver and authorized by the physician or APRN. Written procedures shall be available for storage, monitoring and documentation.

[Eff SEP 18 2008] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-16 Personal care services. (a) Each resident shall be given proper daily personal attention and care including but not limited to skin, nails, hair, teeth, and oral hygiene in addition to any therapeutic regimen ordered by the resident's physician or APRN.

(b) Residents shall be taught and encouraged to perform health, hygiene, and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving and caring for toenails and fingernails as independently as possible and be assisted as necessary.

(c) Primary care givers shall be responsible for proper care of and encourage the use of dentures, eye glasses, hearing aids, braces and prostheses and ambulatory equipment. The resident, family, legal guardian or responsible agency, shall be responsible for any costs involved with purchase and maintenance of the above.

(d) When ordered by a physician, APRN, or psychologist, primary care givers shall provide an appropriate training program for every resident who has problems with elimination. Progress shall be documented for each resident receiving such training.

(e) Residents who are incontinent shall be bathed or cleaned promptly upon voiding and soiling. All soiled items shall be segregated and appropriately stored until they can be properly cleaned.

(f) Residents shall be allowed to select and be dressed appropriately in clean and comfortable clothing at all times.

(g) Residents, and the residents' family members, legal guardians, surrogates and case managers shall be given the opportunity to participate in the planning of resident care and activities.

(h) A schedule of activities shall be developed and implemented by the primary care giver for each resident which includes personal services to be provided, activities and any special care needs identified. The plan of care shall be reviewed and updated as needed.

(i) The primary care giver shall provide the opportunity for each resident to have pneumococcal and influenza vaccines and all necessary immunizations following the recommendations of the Advisory Committee on Immunization Practices (ACIP) or resident's physician or APRN.

(j) Resident(s) manifesting behaviors that may cause injury to self or others shall be assessed by a physician or APRN to determine least restrictive alternatives to physical restraint use, which may be used only in an emergency when necessary to protect the resident from injury to self or to others. If restraint use is determined to be required and ordered by the resident's physician or APRN, the resident and the resident's family, guardian or surrogate, and case manager shall be notified and a written consent obtained. The licensee shall maintain a written policy for restraint use outlining resident assessment processes, indications for use, monitoring and evaluation and training of licensee and substitute care givers. Renewal orders for restraint use shall be obtained on a weekly basis from the resident's physician or APRN based on the assessment, monitoring and evaluation data presented by the primary care giver. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp. HRS §§321-10, 321-11, 321-15.6)

§11-100.1-17 Records and reports. (a) The licensee or primary care giver shall maintain individual records for each resident. On admission, readmission, or transfer of a resident there shall be made available by the licensee or primary care giver for the department's review:

(1) Documentation of primary care giver's assessment of resident upon admission;
(2) Recording of identifying information such as resident's name, social security number, racial extraction, marital status, date of birth, sex, and minister or religious denomination, and information about medical plan or coverage;
(3) Documentation of date of referral and admission, referral agency with address and telephone number, place or source from which admitted, physician, APRN, dentist, ophthalmologist, optometrist, psychiatrist, and all other medical or social service professionals who are currently treating the resident, next of kin, legal guardian, surrogate or other legally responsible agency;

(4) A report of a recent medical examination and current diagnosis taken within the preceding twelve months and report of an examination for tuberculosis. The examination for tuberculosis shall follow current departmental policies;
(5) Copy of advanced directive, as available;
(6) Physician or APRN signed orders for diet, medications, and treatments;
(7) Height and weight measurements taken; and
(8) A current inventory of money and valuables.
(b) During residence, records shall include:
(1) Annual physical examination and other periodic examinations, pertinent immunizations, evaluations, progress notes, relevant laboratory reports, and a report of annual re-evaluation for tuberculosis;
(2) A copy of advanced directives, as available;
(3) Progress notes that shall be written on a monthly basis, or more often as appropriate, shall include observations of the resident's response to medication, treatments, diet, care plan, any changes in condition, indications of illness or injury, behavior patterns including the date, time, and any and all action taken. Documentation shall be completed immediately when any incident occurs;
(4) Entries describing treatments and services rendered;
(5) Entries detailing all medications administered or made available;
(6) All recordings of temperature, pulse, respiration as ordered by a physician, APRN or as may appear to be needed. Physician or APRN shall be advised of any changes in physical or mental status promptly;
(7) Recording of resident's weight at least once a month, and more often when requested by a physician, APRN or responsible agency;
(8) Notation of visits and consultations made to resident by other professional personnel as requested by the resident or the resident's physician or APRN; and
(9) Correspondence pertaining to the resident's physical and mental status.

(c) Unusual incidents shall be noted in the resident's progress notes. An incident report of any bodily injury or other unusual circumstances affecting a resident which occurs within the home, on the premises, or elsewhere shall be made and retained by the licensee or primary care giver under separate cover, and shall be made available to the department and other authorized personnel. The resident's physician or APRN shall be called immediately if medical care may be necessary.

(d) When a resident is transferred, a written transfer summary shall be prepared, and a copy given promptly to the receiving facility, which shall include:

(1) The reason for the transfer;

(2) Evidence of prior notice or the written consent of the resident's family, legal guardian, surrogate or representative;

(3) Current physical and mental status of resident; and

(4) Current diet, medication, and activity orders signed by a physician or APRN.

(e) In the event of an emergency, an oral summary of the resident's condition shall be provided to the receiving facility, followed by a written transfer summary.

(f) General rules regarding records:

(1) All entries in the resident's record shall be written in black ink, or typewritten, shall be legible, dated, and signed by the individual making the entry;

(2) Symbols and abbreviations may be used in recording entries only if a legend is provided to explain them;

(3) An area shall be provided for safe and secure storage of resident's records which must be retained in the ARCH for periods prescribed by state law; and

(4) All records shall be complete, accurate, current, and readily available for review by the department or responsible placement agency.

(g) All information contained in the resident's record shall be confidential. Written consent of the resident, or resident's guardian or surrogate, shall be required for the release of information to persons not otherwise authorized to receive it. Records shall be secured against loss, destruction, defacement,

tampering, or use by unauthorized persons. There shall be written policies governing access to, duplication of, and release of any information from the resident's record. Records shall be readily accessible and available to authorized department personnel for the purpose of determining compliance with the provisions of this chapter.

(h) Miscellaneous records:

(1) A permanent general register shall be maintained to record all admissions and discharges of residents;

(2) When requested, statistical information shall be provided to the department;

(3) When day care clients are permitted in a Type I ARCH, records shall be maintained and include:

(A) Current physical examination and tuberculosis clearance;

(B) Medication and diet or supplement orders;

(C) Emergency information; and

(D) Progress notes, as appropriate.

[Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6, 622-5(7), 622-5(8))

§11-100.1-18 Recreational, rehabilitative programs, and social services. (a) Residents shall be up and out of bed and appropriately dressed daily, unless physician or APRN orders indicate otherwise.

(b) The primary care giver shall provide social and recreational activities for residents on a regular basis and shall encourage participation in activities according to the resident's interests, needs, and capabilities.

(c) Residents shall be encouraged to participate in work, educational, recreational, social, and health activities provided by community agencies.

(d) The primary care giver shall recognize the need for and provide a warm, emotionally accepting atmosphere to residents. Residents shall be included, as much as possible, in all aspects of family and community life to help foster a greater sense of belonging, as relating to the social model.

(e) Visits with relatives and friends shall be encouraged.

(f) The primary care giver shall provide the resident with access to a radio, television and telephone.

(g) The primary care giver shall arrange and provide for appropriate social services through private, public or community resources.

(h) The primary care giver shall arrange or provide means of transportation for residents for:

(1) Visits to physician, APRN and other medical providers;

(2) Transfer to another facility; and

(3) Participation in activities outside the Type I ARCH. [Eff SEP 18 2006] (Auth: HRS §§321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-19 Resident accounts. (a) The conditions under which the primary care giver agrees to be responsible for the resident's funds or property shall be explained to the resident and the resident's family, legal guardian, surrogate or representative and documented in the resident's file. All single transfers with a value in excess of one hundred dollars shall be supported by an agreement signed by the primary care giver and the resident and the resident's family, legal guardian, surrogate or representative.

(b) Individuals associated with the ownership or operation of a Type I ARCH, the licensee, and the primary care giver shall not serve as guardian, power of attorney, or trustee of the resident or resident's estate.

(c) The primary care giver shall be permitted to become a representative payee under conditions prescribed by the Social Security Administration.

(d) An accurate written accounting of resident's money and disbursements shall be kept on an ongoing basis, including receipts for expenditures, and a current inventory of resident's possessions.

(e) The resident's personal property kept by the primary care giver for safekeeping shall be released, upon request, to the resident, or if the resident is incompetent, to the duly appointed legal guardian, surrogate or responsible agency. This transaction shall be documented in writing. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-20 Resident health care standards. (a) The primary and substitute care giver shall provide health care within the realm of the primary or substitute care giver's capabilities for the resident as prescribed by a physician or APRN.

(b) The primary and substitute care giver shall utilize standard precautions in the provision of personal care to the residents.

(c) The primary and substitute care giver shall be able to recognize, record, and report to the resident's physician or APRN significant changes in the resident's health status including, but not limited to, convulsions, fever, sudden weakness, persistent or recurring headaches, voice changes, coughing, shortness of breath, changes in behavior, swelling limbs, abnormal bleeding, or persistent or recurring pain.

(d) When the resident has experienced a significant change in mental or physical well-being, a prompt report shall be made and provided to the resident's physician or APRN, by the primary or substitute caregiver. Any change in physician or APRN orders shall be promptly carried out.

(e) Arrangements shall be made by the primary care giver for annual dental examinations. Arrangements shall be made by the primary or substitute care giver for emergency dental examinations.

(f) Residents shall be accompanied by an adult to emergency rooms and other medical care facilities with all available resident records.

(g) Payment for all medical and dental treatment shall be the responsibility of the resident or responsible agency. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6, 457) (Imp: HRS §§321-10, 321-11, 321-15.6, 457)

§11-100.1-21 Residents' and primary care givers' rights and responsibilities. (a) Residents' rights and responsibilities:

(1) Written policies regarding the rights and responsibilities of residents during the stay in the Type I ARCH shall be established and a copy shall be provided to the resident and the resident's family, legal guardian, surrogate, sponsoring agency or representative payee, and to the public upon request. The Type I ARCH policies and procedures shall provide that each individual

admitted shall:

(A) Be fully informed orally or in writing, prior to or at the time of admission, of these rights and of all rules governing resident conduct. There shall be documentation signed by the resident that this procedure has been carried out;

(B) Be fully informed that interpreter services including but not limited to translation, sign language or visual services will be provided if the resident requires such services. Should the resident require the assistance of an interpreter, the licensee or primary care giver shall attempt to facilitate reasonable accommodations for interpreter services including but not limited to translation, sign language or visual services. The cost for interpreter services shall not be the responsibility of the licensee or primary care giver.

(C) Be fully informed orally and in writing, prior to or at the time of admission, and during stay, of services available in or through the Type I ARCH and of related charges, including any charges for services not covered by the Type I ARCH's basic per diem rate; and

(D) Be given advance written notice, of not less than thirty days, of involuntary transfer or discharges, except in an emergency.

(2) Each resident shall:

(A) Be encouraged and assisted to exercise the resident's rights to vote, voice grievances, recommend changes in policies and services to care givers or outside representatives of the resident's choice, be free from interference, coercion, discrimination, or reprisal;

(B) Be informed of the conditions under which the Type I ARCH may manage the resident's personal financial affairs as detailed in section 11-100.1-18;

(C) Be free from chemical and physical restraints and not be humiliated, harassed, or threatened.

(D) Physical restraints may only be used in an emergency when necessary to protect the resident from injury to self or to others. In such a situation the resident's physician or APRN shall be notified immediately to obtain an assessment for least restrictive alternatives to restraint use. If restraint use is determined to be necessary, written orders shall be obtained from the resident's physician or APRN indicating the form of restraint to be used, the length of time restraint shall be applied, the frequency of use and the alternative care that can be provided to the resident. If a less restrictive alternative to restraint exists, it must be used in lieu of the restraint. The resident's family, legal guardian, surrogate or representative, and case manager shall be notified if no alternative to restraint exists and a written consent shall be obtained for restraint use. The restraint use shall be in compliance with the Type I ARCH's written policy, as approved by the department;

(E) Be treated with understanding, respect, and full consideration of the resident's dignity and individuality, including privacy in treatment and in care of the resident's personal needs;

(F) Have the right to be free from ill treatment, physical punishment, exploitation, neglect, physical or psychological abuse and shall be protected from further potential abuse while an investigation is in progress;

(G) Have the right to an environment free of weapons, illicit drugs or other conditions that may cause the residentto feel unsafe in a Type I ARCH;

(H) Perform services for the Type I ARCH or the primary and substitute care givers only when agreed to by the resident,

resident's family, resident's legal guardian, surrogate or representative, and shall be documented;

(I) Have the right to associate and communicate privately with persons of the resident's choice, and to send and receive the resident's personal mail unopened;

(J) Have the right to refuse visitors;

(K) Have the right to meet with and participate in social, religious, health and community group activities at the resident's discretion, unless medically contra-indicated;

(L) Have the right to refuse to participate in social, religious, or health and community group activities;

(M) Make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;

(N) Manage his or her financial affairs, or be given at least a quarterly accounting of financial transactions made on his or her behalf by the Type I ARCH should the Type I ARCH accept his or her written delegation of this responsibility to the Type I ARCH for any period of time in conformance with state law;

(O) Participate in the planning of his or her schedule of activities, and/or care plan and medical treatment;

(P) Retain and use personal clothing and possessions as space permits, unless doing so:

(i) Would infringe upon the rights of other residents; or

(ii) Is specifically forbidden by written orders of the resident's physician or APRN;

(Q) If married, be assured of privacy for visits by the spouse and, if both are residents in the home, be permitted to share a room if agreeable to both;

(R) Have flexible daily visiting hours and provisions for privacy established;

(S) Have the right to reject living in a particular facility;
(T) Provide the primary care giver with a fourteen day notice when wishing to transfer to another facility;
(U) Have the right to request food preferences and not have dietary restrictions as punishment;
(V) Have the right to locked storage space;
(W) Have their personal and medical records kept confidential and subject to release only as provided in section 11-100.1-17(g); and
(X) Have access to a telephone providing privacy.

(b) Primary care givers' rights and responsibilities:

(1) Written policies regarding primary care givers' rights and responsibilities shall be established and a copy shall be provided to the resident and the resident's family, any guardian, next of kin, surrogate, sponsoring agency or representative payee and to the public upon request;
(2) The primary care giver has the right to:
(A) Be shown consideration and respect that recognizes the dignity and individuality of the primary care giver and the Type I ARCH;
(B) Terminate a resident's agreement for just cause after a written 30 day notice;
(C) Terminate an agreement immediately, after notice to the resident, family member or surrogate, case manager and physician, if the primary care giver finds that a resident creates a serious or immediate threat to the health, safety or welfare of other residents of the Type I ARCH;
(D) Present grievances, file complaints, or provide information to state agencies or other persons;
(E) Refuse to perform services for the resident or the resident's surrogate other than those agreed upon by the resident and the care giver;

(F) Contract with community resources to achieve the highest level of independence, autonomy, interaction and services for residents;
(G) Be able to gain access to resident information, as per the referring agency's policy and procedures, for each resident referred to the Type I ARCH. All information shall be kept confidential;
(H) Refuse to accept a resident if the referral is inappropriate;
(I) Information relating to a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse; and

(3) The primary care giver or licensee shall be responsible for maintaining an environment safe from weapons or illicit drugs.
(4) The primary care giver or licensee shall be responsible for ensuring the health, safety, welfare and civil rights of all residents under their care. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6, 622-57)

§11-100.1-22 Transfer and discharge of residents. (a) Except as provided in subchapter 6 of this chapter, written notice of a resident's transfer to an appropriate facility or discharge to another living arrangement or transfer within the Type I ARCH shall be given no less than thirty days prior to transfer or discharge except in case of an emergency, to the resident, the resident's family, the resident's legal guardian, surrogate or representative, and the case manager when:

(1) Ordered by the resident's physician or APRN;
(2) Physical or mental changes of the resident necessitates services which cannot be provided in the existing Type I ARCH;
(3) Physical or mental changes of the primary care giver resulting in the inability of the primary care giver to provide the service;
(4) Resident wishes to transfer; or
(5) Primary care giver wishes to transfer the resident for just cause.

(b) The licensee or primary care giver of the Type I ARCH shall provide assistance to the resident, resident's family, legal guardian, representative, surrogate or case manager with the transfer.
[Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-23 Physical environment. (a) For all ARCHs, suitability of site, quietness, sanitary features of the immediate environment, accessibility, and proximity to the community to be served shall be considered in licensing a facility.

(b) The Type I ARCH shall be free of excessive noise, dust, or odors and shall have good drainage;

(c) The Type I ARCH shall be provided with adequate means of sewage, garbage, and other refuse disposal, approved potable water supply, and electricity;

(d) The Type I ARCH shall be accessible by emergency medical services and be near a means of public transportation;

(e) Resident living areas shall be designed and equipped for the safety, comfort, and privacy of the resident; and

(f) Any person regularly utilizing the portions of the home designated for residents including but not limited to day care residents, relatives, and visitors shall be considered as residents for purposes of calculating the space requirements of section 11-100.1-23(l)(2) and section 11-100.1-23(m)(3).

(g) Fire prevention protection.

(1) All Type I ARCHs licensed under this chapter shall initially comply, and shall be inspected at least annually by appropriate fire authorities for compliance, with state and county codes, ordinances, and laws;

(2) Fees for fire inspections shall be the responsibility of the licensee;

(3) Type I ARCHs shall be in compliance with, but not limited to, the following provisions:

(A) Fire escapes, stairways and other exit equipment shall be maintained operational and in good repair and free of obstruction;

(B) There shall be a clear and unobstructed access to a safe area of refuge;

(C) Each Type I ARCH shall have a written plan for the safe care and evacuation of residents to areas of refuge in case of emergency. This plan shall be reviewed, and updated as necessary, whenever there is a significant change in the physical or mental condition of a resident or whenever a new resident enters the facility. All personnel shall be instructed in their respective duties in carrying out this plan. The written plan with directional diagrams shall be posted in a conspicuous location within the facility;

(D) A drill shall be held to provide training for residents and personnel at various times of the day or night at least four times a year and at least three months from the previous drill, and the record shall contain the date, hour, personnel participating and description of drill, and the time taken to safely evacuate residents from the building. A copy of the fire drill procedure and results shall be submitted to the fire inspector or department upon request;

(E) There shall be an adequate system of communication to summon help in case of fire or other emergency. This shall include telephone service. Inside stairways shall be provided for communication between floors within the Type I ARCH. All rooms utilized by the Type I ARCH, under the same roof, shall be connected by interior doors. The communication system shall assure prompt contact with care givers;

(F) Smoking shall be permitted only in approved areas where proper equipment and supervision is provided;

(G) Smoke detectors shall be provided in accordance with the most current edition of the National Fire Protection Association (NFPA) Standard 101 Life Safety Code, One and Two Family

Dwellings. Existing Type I ARCHs may continue to use battery operated individual smoke detector units, however, upon transfer of ownership or primary care giver, such units shall be replaced with an automatic hard wiring UL approved smoke detector system;

(H) Fire extinguishers shall be installed in accordance with NFPA 101 Life Safety Code and have a minimum fire extinguisher classification rating as required by the county fire code;

(I) Each resident of a Type I home must be certified by a physician that the resident is ambulatory and capable of following directions and taking appropriate action for self-preservation under emergency conditions, except that a maximum of two residents, not so certified, may reside in the Type I home provided that either:

(i) For each such non-certified resident there must be a responsible adult on the premises of the home at all times that the non-certified resident is present in the home, and there must never be a stairway which must be negotiated for emergency exit by such non-certified resident; or

(ii) Type I homes having residents not so certified shall have a sprinkler system installed throughout in accordance with the National Fire Protection Association (NFPA) Standard 13-D, Sprinkler Systems, One and Two Family Dwellings.

(h) The Type I ARCH shall maintain the entire facility and equipment in a safe and comfortable manner to minimize hazards to residents and care givers.

(1) Housekeeping:

(A) A plan including but not limited to sweeping, dusting, mopping, vacuuming, waxing, sanitizing, removal of odors and cleaning of windows and screens shall be made and implemented for routine periodic cleaning of the entire Type I

ARCH and premises;

(B) After discharge of any resident, the bed, bed furnishings, bedside furniture and equipment shall be thoroughly cleansed prior to subsequent resident admission;

(C) Floors in resident areas shall be cleaned at least once daily;

(D) All walls, ceilings, windows and fixtures shall be kept clean; and toilets and lavatories shall be cleaned and deodorized daily.

(2) Temperature control:

(A) Temperature and humidity shall be maintained within a practical comfort range by heating, air conditioning, or other means in accordance with residents' needs and desires; and

(B) Any heating apparatus or appliances, or open flame in stoves, water heaters and fireplaces shall conform to UL standards as they existed on the date of adoption of this chapter.

(3) All Type I ARCHs shall comply with applicable state laws and rules relating to sanitation, health, infection control and environmental safety;

(4) Water supply. Hot and cold water shall be readily available to residents for personal washing purposes. Temperature of hot water at plumbing fixtures used by residents shall be regulated and maintained within the range of 100°-120°F.

(i) All construction or alterations shall comply with current county building, land use and fire codes and ordinances in the state. The Type I ARCH licensed for wheelchair residents shall be accessible to and functional for the residents at the time of licensure.

(1) Windows:

(A) A habitable room shall have an aggregate window area of not less than one-tenth of the gross floor area;

(B) In bedrooms occupied by residents in wheelchairs, window sills may not be higher than forty four inches, or as stipulated by the current county building codes; and

(C) Windows in residents' rooms shall have adequate means of insuring privacy.

(2) Windows shall have screens having no less than sixteen meshes per inch.

(3) Doors:

(A) Two exit doors shall be included which are remote from each other and shall be provided for each floor or separate building where residents reside. For residents with assistive devices, doorways shall be wide enough to allow passage and access;

(B) When multiple locking devices are used on exits, a maximum of two locking mechanisms for egress shall be allowed;

(C) Sliding doors and folding doors shall not be used as exit doors, but where used in service areas not utilized by residents, shall be of light material and easy to handle;

(D) Provision for the free passage of handicapped residents, including wheelchair residents, to rooms, toilets, corridors, and exits shall be maintained at all times; and

(E) Each occupied room shall have access to required exits.

(4) Lighting:

(A) Appropriate lighting fixtures adequate in number shall be provided for the comfort of residents and care givers; and

(B) Residents' rooms shall have artificial light adequate for reading at bedside. This lighting shall be at least thirty foot candles at normal reading height;

(5) In multi-level homes there shall be an inside enclosed stairway. Ramps shall not exceed a slope of more than one inch per foot and shall be provided with non-slip material. Elevators, stairways and ramps and handrails shall comply with current county building codes;

(6) In Type I ARCHs, bedrooms, hallways, and corridors shall be large enough to allow passage, access and be comfortable for residents with assistive devices. Type I ARCHs shall establish a performance criteria

for safe evacuation and exit from the facility meeting the standards and requirements as set forth by the Uniform Building Code (UBC) and NFPA 101 (with utilization of the FSES rating).

(7) At least one toilet, lavatory and bathtub or shower shall be conveniently located and provided for each floor occupied by residents for sleeping;

(8) Toilets, bathtubs and showers shall have provisions for individual privacy;

(9) Bathrooms shall have non-slip surfaces in tubs and showers;

(10) For Type I ARCHs with wheelchair residents, walk-in showers flush with the floor shall be provided. Showers shall have a minimum floor area of sixteen square feet arranged and located to accommodate both the resident and the care giver providing personal care. The shower entrance shall be at least thirty two inches wide. Adjacent floor areas shall be protected from the water which could constitute an unsafe area;

(11) Handrails and grab bars shall be at a height of thirty two to thirty four inches from the floor for residents' use in the hallways and bathrooms.

(12) Floors shall be nonabrasive, slip resistant, flush at doorways and be of material which do not retain odors.

(j) Waste disposal:

(1) Every Type I ARCH shall provide a sufficient number of watertight receptacles, acceptable to the department for rubbish, garbage, refuse, and other matter. These receptacles shall be kept closed by tight fitting covers; and

(2) Disposal of infectious waste shall be in compliance with Hawaii Administrative Rules chapter 104, Management and Disposal of Infectious Waste.

(k) Storage space for resident's luggage and other bulky items and equipment shall be provided and located in a safe and convenient place.

(l) An enclosed dining area within the Type I ARCH shall be provided for residents which shall be apart from sleeping quarters but may be in continuity to the living room area. The following shall prevail:

(1) At least one table with twenty nine inches clearance between floor and lower edge shall be provided to allow for those residents using wheelchairs;
(2) Dining space allotment shall not be less than twenty square feet per resident capacity;
(3) Residents shall be served meals in dining rooms unless they are temporarily confined to their bedrooms; and
(4) Safe supportive chairs shall be provided in accord with each resident's need;
(m) Family or living room:
(1) Provisions shall be made for at least one conveniently located enclosed area for recreational, social and activity needs of the residents within or contiguous to the facility;
(2) The family room shall be equipped with reading lamps, tables, chairs and other appropriate furnishings for the use and comfort of the residents but shall not include beds; and
(3) The living room space allotment shall not be less than thirty square feet per resident.
(n) Outdoor areas accessible to the residents shall be made safe for use by the resident.
(o) Bedrooms:
(1) General conditions:
(A) Bedrooms shall be at or above grade level;
(B) There shall be an adequate number of rooms provided for immediate family members as well as residents;
(C) Family members shall not sleep in residents' bedrooms;
(D) Bedrooms shall not be used for recreation, cooking, dining, storage, bathrooms, laundries, foyers, corridors, lanais, and libraries;
(E) Access from each bedroom to a bathroom, toilet, corridor, central utility, or other area shall be arranged to avoid passing through another bedroom;
(F) Bedrooms shall be conveniently located near adequate toilet and bathing facilities appropriate in number, size, and design to meet the needs of the residents;

(G) All occupants of any bedroom shall be of the same sex except for designated semi-private rooms which may be occupied by a mixed sex couple if the primary care giver and both residents agree to the living arrangements; and

(H) Type I ARCH licensed for a person in a wheelchair shall provide an accessible route to and into all sleeping rooms, bathrooms, common areas and exits.

(2) Floor space:

(A) Minimum usable floor space allowable shall be seventy square feet per bed in a multiple resident bedroom and eighty square feet per bed in a single resident bedroom, excluding toilet, closets, lockers, alcoves, and vestibules. The number of residents shall be limited to a maximum of two;

(B) Beds shall be placed at least three feet apart in multiple occupant bedrooms;

(C) In all Type I ARCHs and those undergoing construction or renovation, closet space for residents shall be provided within the bedroom, allowing a minimum of thirty inches in width, twenty inches in depth, and five feet in height per person exclusive of bedroom space; and

(D) Hanging clothes rods and shelves shall be adjusted as necessary.

(3) Bedroom furnishings:

(A) Each resident shall be provided for their individual use, a clean bed including spring with mattress, at least thirty six inches wide, of sufficient length and proper height for the resident and to permit an individual in a wheelchair to get in and out of bed unassisted;

(B) Each bed shall be supplied with a comfortable mattress cover, a pillow, pliable plastic pillow protector, pillow case, and an upper and lower sheet. A sheet blanket may be substituted for the top sheet when requested by the resident; and

(C) A suitable bedspread shall be used on each resident's bed.

(p) Miscellaneous:
(1) Conveniently located space for personal care items and for equipment, such as crutches and wheelchairs, shall be provided;
(2) Walkers, wheelchairs, canes, crutches and bedside rails shall be provided by the resident;
(3) Equipment for bedside care shall be stored in resident's bedside stand or other adjacent enclosed space;
(4) There shall be adequate provision for privacy when caring for resident or when requested by the resident and an individual bath sheet blanket shall be used when bed baths are given; and
(5) Signaling devices approved by the department shall be provided for resident's use at the bedside, in bathrooms, toilet rooms, and other areas where residents may be left alone. In Type I ARCHs where the primary care giver and residents do not reside on the same level or when other signaling mechanisms are deemed inadequate, there shall be an electronic signaling system.
(q) All construction, additions, alterations:
(1) Drawings and specifications for all new construction or additions, alterations or repairs to existing buildings shall be submitted to the department for review prior to construction;
(2) While final authority to approve the construction and fire safety features of such building rests with county agencies and fire marshals, if construction drawings and specifications are submitted to the department, the department shall promptly review such submittals and make every effort to advise the applicant of features which appear nonconforming; and
(3) Minor alterations which do not affect structural integrity, fire, safety, or which do not change functional operation, or increase beds or services over that for which the ARCH is licensed may be submitted by freehand drawings or sketches.

(r) Facilities shall be maintained in accordance with provisions of state and local zoning, building, fire safety and health codes. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§§11-100.1-24 to 11-100.1-50 (Reserved).

Subchapter 3
Type II ARCH

§11-100-1-51 Applicability. In addition to the requirements in Subchapter 1 Type I ARCH, the following requirements shall apply to Type II ARCHs. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-52 Primary care giver requirements. The licensee of a Type II ARCH facility acting as the administrator or the individual that the licensee has designated as the administrator, in addition to the requirements in section 11-100.1-8(a), shall:

(1) Have at least two years experience, in a management capacity, in the areas of housing, health care and personal care services or any combination thereof;
(2) Have knowledge of generally acceptable accounting principles;
(3) Have training or experience in supervisory management;
(4) Have knowledge of purchasing of large volumes of food and meal preparation, as appropriate;
(5) Have knowledge of infection control procedures in relation to resident care, personnel and handling of large volume of laundry, as appropriate; and
(6) Be accountable for providing training for all facility personnel in the provision of resident care in conjunction with the principles of the social model.

[Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6)(Imp: HRS §§321-9, 321-10, 321-11, 321-15.6)

§11-100.1-53 Personnel and staffing requirements. (a) Personnel policies shall be developed and maintained indicating staff orientation and in service training, job descriptions, staff qualifications, job requirements for each class of employees, code of conduct and other pertinent personnel information.

(b) All Type II ARCHs shall have available an administrator to provide direct overall management and oversight of staff and residents.

(c) All Type II ARCHs shall have available a registered nurse to provide direct management and oversight of residents and direct care staff. The registered nurse shall provide assessments of residents with appropriate training and oversight of staff to ensure that resident needs are met.

(d) An adequate number of qualified staff, as determined by the department, shall be on duty twenty-four hours a day.

(e) At least one staff member of each shift shall be a nurse aide.

(f) There shall be a designated and properly trained person to make prescribed medications available and to perform treatments under the general supervision or direction of a licensed nurse or who meets the requirements as set forth in section 11-100.1-8(a).

(g) No staff shall work more than two consecutive eight hour shifts within a twenty four hour period.

(h) The administrator, primary care giver and substitute care givers shall attend and successfully complete a minimum of six hours of training sessions per year which shall include but not be limited to personal care, infection control, pharmacology, medical and behavioral management of residents, diseases and chronic illnesses, community services and resources. All inservice training and other educational experiences shall be documented and kept current.

(i) All in service training and other educational experiences for employees and primary and substitute care givers shall be documented and kept current. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-54 General operational policies. In addition to the requirements in section 11-100.1-7, the Type II ARCH shall have general operational policies on the following topics:

(1) Nursing services, delegation and staffing pattern/ratio;
(2) Medication administration;
(3) Drug storage, disposal, safety and quality control;
(4) Medical emergencies, outlining situations or circumstances which would warrant contacting a registered nurse, physician or emergency medical personnel;
(5) Use of restraints, outlining assessment processes, indications for use, monitoring and evaluation;
(6) Resident rights, including system for administering resident funds and covered and non-covered items;
(7) Meal planning, food purchase, meal preparation and service, and referral and use of consultant registered dietitian;
(8) Abuse, neglect, and exploitation of residents, process for reporting and investigation;
(9) Resident assessment indicating assessment process, care plan development, evaluation and prevention of negative outcomes. Procedures will also identify process for referral and follow-up when changes in resident status occur; and
(10) Storage and disposal of hazardous and infectious waste. [Eff SEP 18 2006]
(Auth: HRS §§321-9, 321-10, 321-11, 321-15.6)
(Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-55 Nutrition and food sanitation. In addition to the requirements in section 11-100.1-13 the following shall apply to all Type II ARCHs:
(1) A registered dietitian shall be utilized to assist in the planning of menus, and provide nutritional assessments for those residents identified to be at nutritional risk or on special diets. All consultations shall be documented;
(2) All consultant dietitians shall provide special diet training for food preparation staff and ensure staff competency; and

(3) All Type II ARCHs shall be in compliance with Hawaii Administrative Rules Chapter 11-12.

[Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§11-100.1-56 Physical environment. (a) In addition to the requirements in section 11-100.1-23 , all Type II ARCH shall satisfy the requirements of this section.

(b) Type II ARCH that was licensed prior to 1986 and cannot fully comply with the current county building and fire codes shall continue to be licensed as long as all residents are ambulatory and the ownership remains the same unless the director determines that failing to meet the requirements of these rules would jeopardize the health and safety of the residents in the Type II ARCH.

(c) Except as provided in subsection (a), Type II ARCHs shall be in compliance with the requirements for Group I occupancies as defined in the Uniform Building Code and as detailed in applicable chapters of the NFPA 101 Life Safety Code adopted by reference by the state fire code and respective county fire codes. Compliance shall include but are not limited to the following:

(1) All exits in Type II ARCHs shall be lighted from sunset to sunrise and under other conditions required by applicable provisions of the state and county fire codes;

(2) Night lighting shall be provided in hallways and bathrooms; and

(3) An approved secondary source of power (generator or battery operated) for emergency lighting of exits shall be operational at all times.

(d) The number of occupants in bedrooms shall be limited to a maximum of four.

(e) There shall be:

(1) One toilet for each eight occupants;

(2) One bathtub or shower for each fourteen occupants; and

(3) One lavatory for each ten occupants.

(f) A utility area shall be provided to wash and clean garbage containers and for storing garbage, trash, and solid waste.

(g) Storage space shall be provided for janitor's supplies and equipment.

(h) If bedpans are used, suitable bedpan flushing attachments to existing toilets must be available and used.

(i) A preventive maintenance program shall be developed and documented. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6) (Imp: HRS §§321-10, 321-11, 321-15.6)

§§11-100.1-57 to 11-100.1-77 (Reserved).

Subchapter 4
Expanded ARCH

§11-100.1-78 Applicability. In addition to the requirements in Subchapter 1 Type I ARCH and Subchapter 2 Type II ARCH, the following requirements will apply to expanded ARCHs. [Eff SEP 18 2006](Auth: HRS §§321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: §§321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

§11-100.1-79 Purpose. The purpose of this subchapter is to establish a category of ARCHs qualified to serve nursing facility level residents. [Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

§11-100.1-80 Licensing. (a) In addition to the requirements in section 11-100.1-3(a), every applicant for an expanded ARCH license shall be licensed as an ARCH and shall have been operating satisfactorily for a minimum of six months prior to applying for expanded ARCH licensure.

(b) Each expanded ARCH shall be inspected prior to licensure to determine its capability for accommodating residents who are not capable of self-preservation.

(c) Prior to determining eligibility of an applicant, all existing waivers in the ARCH shall be subject to review by the department.

(d) Policies and procedures shall be developed by the licensee to meet the provisions of this chapter.

(e) At no time shall the total bed capacity of the expanded ARCH exceed the licensed capacity under the original ARCH license. [Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

§11-100.1-81 Minimum structural requirements. (a) In addition to the requirements in section 11-100.1-23 and section 11-100.1-56, the expanded ARCH shall satisfy the requirements of this section.

(b) All signaling devices shall be approved by the department and installed at bedside, in bathrooms, toilet rooms, and other areas where expanded ARCH residents may be left alone. All such signaling devices shall be approved by the department. In expanded ARCHs where the primary care giver and expanded ARCH residents do not reside on the same floor or when other signaling mechanisms are deemed inadequate, electronic signaling systems shall be installed.

(c) Every interior door, when locked, shall permit opening from the outside with the use of a common tool or implement.

(d) Door locks or other devices shall not be installed to restrict the free movement or use of exits by the expanded ARCH residents.

(e) There shall be interior stairways in a multi-story structure.

(f) If swimming pools are located on expanded ARCH property, there shall be a solid pool cover with a key lock approved by the department or a fence six feet in height which completely encloses the pool. The pool cover shall be locked onto the pool or the gate to the pool shall be locked at all times unless the pool is being used, in which case, proper supervision of expanded ARCH residents shall be provided to assure resident safety. [Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, §11-100.1-83,321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

§11-100.1-82 Primary care giver requirements.
(a) In addition to requirements in section 11-100.1-8(a) this section shall apply.

(b) The primary care giver shall be approved by the department to provide special diets.

(c) The licensee shall provide staff on duty twenty four hours of each day sufficient and trained to meet the needs of expanded ARCH residents and to carry out the responsibilities based on the expanded ARCH resident's care plan.

(d) The licensee shall submit a plan, which must be approved by the department detailing the process by which the expanded ARCH will arrange for the services of a registered nurse and case manager, the role and responsibilities of the registered nurse, case manager, and care givers and how training of the primary and substitute care givers will be ensured.

(e) Licensees shall submit the name of the trained substitute care givers at the time of application and as changes occur.

[Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

§11-100.1-83 Personnel and staffing requirements.
In addition to the requirements in subchapter 2 and 3:

(1) A registered nurse other than the licensee or primary care giver shall train and monitor primary care givers and substitutes in providing daily personal and specialized care to residents as needed to implement their care plan;

(2) The licensee of a Type I expanded ARCH shall provide a primary care giver who shall:
   (A) Reside in the expanded ARCH or employ or otherwise engage by contract a qualified primary care giver in those homes in which the licensee does not reside; and
   (B) Be a nurse aide or licensed nurse.

(3) The licensee of a Type II expanded ARCH shall provide primary care givers who shall be at least a nurse aide or licensed nurse who may reside in the expanded ARCH;

(4) A substitute care giver who is trained by the primary care giver with the assistance of the registered nurse or case manager and meets

the requirements as set forth in section 11-100.1-9, shall take charge of an expanded ARCH during an expanded ARCH primary care giver's absence or inability to perform regular duties; and

(5) Primary and substitute care givers shall have documented evidence of successful completion of twelve hours of continuing education courses per year on subjects pertinent to the management of an expanded ARCH and care of expanded ARCH residents.

[Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

§11-100.1-84 Admission requirements. (a) Licensees of an expanded ARCH shall admit nursing facility level residents as determined and certified by the resident's physician or APRN.

(1) A Type I expanded ARCH shall provide services to no more than two nursing facility level residents at any one time provided that more nursing facility level residents may be allowed at the discretion of the department; and

(2) A Type II expanded ARCH shall provide services to nursing facility level residents not to exceed twenty percent of the licensed capacity, provided that more nursing facility residents may be allowed at the discretion of the department;

provided further that the department shall exercise its discretion for a resident presently residing in a Type I or Type II home to allow the resident to remain as an additional nursing facility resident based upon the best interest of the resident. The best interest of the resident shall be determined by the department after consultation with the resident, the resident family, primary physician, case manager, primary care giver and home operator.

(b) Upon admission of a resident, the expanded ARCH licensee shall have the following information:

(1) A current physician's report on the expanded ARCH resident's physical examination and diagnosis, including mental, functional, and

behavioral status;
(2) Orders for diet, medication, specialized care, or activities signed by the physician;
(3) Evidence of compliance with the department's uniform tuberculosis policy;
(4) Evidence of current immunizations for pneumococcal and influenza as recommended by the ACIP; and a written care plan addressing resident problems and needs.[Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1,321-15.6, 321-15.61, 321-15.62)

§11-100.1-85 Transfer and discharge of expanded ARCH residents. (a) All transfers and discharges of expanded ARCH residents shall be coordinated with the resident, resident's family or surrogate, resident's case manager, primary care giver or licensee and resident's physician or APRN. The licensee or primary care giver shall assist with the transfer or discharge.

(b) If the licensee requests transfer of the expanded ARCH resident, a written request stating the reason for the transfer shall first be made to the resident, resident's family or surrogate, resident's case manager and physician or APRN no less than thirty days prior to the desired date of transfer.

(c) Thirty days written notice shall not be required for emergency transfers, discharges, or if mutually agreed upon by resident, licensee, and case manager.

(d) If the resident, resident's family or surrogate wishes to have the resident transferred, notice of no less than fourteen days shall be provided to the primary care giver. [Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

§11-100.1-86 Fire safety. (a) A Type I expanded ARCH shall be in compliance with existing fire safety standards for a Type I ARCH, as provided in section 11-100.1-23(b), and the following:

(1) Locking devices for room doors shall be readily opened by the occupant from inside the room without the use of a key or special knowledge. Push button locks shall automatically pop open upon turning of the doorknob;
(2) Resident's sleeping room doors shall be self closing;
(3) Fire drills shall be conducted and documented at least monthly under varied conditions and times of day;
(4) Hard wired smoke detectors shall be approved by a nationally recognized testing laboratory and all shall be tested at least monthly to assure working order;
(5) In the residents' area, a hard wired smoke detector shall be located in the hallway outside of the resident sleeping rooms and also in the living/activity room. Hard wired or battery operated smoke detectors, or both, shall also be located in all resident sleeping rooms;
(6) In a one-story structure, a hard wired smoke detector shall separate the expanded ARCH resident area from the care giver's living area; and
(7) In a multi-story home, a hard wired smoke detector shall be in the care giver's living area or hallway outside the sleeping rooms and at the top of the interior stairway landing.

(b) Type II expanded ARCHs shall be in compliance with the requirements for Group I occupancies as defined in the Uniform Building Code and as detailed in applicable chapters of the NFPA 101 Life Safety Code adopted by reference by the state fire code and respective county fire codes. [Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

§11-100.1-87 Personal care services. (a) The primary care giver shall provide daily personal care and specialized care to an expanded ARCH resident as indicated in the care plan. The care plan shall be developed as stipulated in section 11-100.1-2 and

updated as changes occur in the expanded ARCH resident's care needs and required services or interventions.

(b) The expanded ARCH shall provide an ongoing program of recreational and social activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, psycho-social well being of each resident, and shall be documented in the care plan.

(c) The primary care giver shall, in coordination with the case manager, make arrangements for each expanded ARCH resident to have:

(1) Annual physical and dental examinations;

(2) Pneumococcal and influenza vaccines and any necessary immunizations following the recommendations of the Advisory Committee of Immunization Practices (ACIP); and

(3) Visits to the physician every four months or more frequently to ensure adequate medical supervision.

(d) The primary care giver shall have twenty four hour access to a physician or APRN and case manager. Except for an emergency, whenever the primary care giver observes a significant change in the health status of the expanded ARCH resident, the primary care giver shall promptly notify the resident's physician or APRN and case manager. The primary care giver shall record this action in the expanded ARCH resident's progress notes.

(e) The primary care giver with the assistance of the case manager shall provide training to all substitute care givers and ensure that all services and interventions indicated in the expanded ARCH resident's care plan are provided to expanded ARCH residents by the substitute care giver. [Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321.15.62)

§11-100.1-88 Case management qualifications and services. (a) Case management services shall be provided for each expanded ARCH resident to plan, locate, coordinate and monitor comprehensive services to meet the individual resident's needs based on a comprehensive assessment. Case management services shall be provided by a registered nurse who:

(1) Possesses a bachelor's degree in nursing and current license to practice in the State of Hawaii; and

(2) Has at least two years experience with client care coordination responsibilities and possesses knowledge and skills pertaining to the long term care needs of the geriatric population. The department may allow substitution of two additional years of client care coordination experience for a bachelor's degree.

(b) When the care plan goal cannot be met by the registered nurse, a social worker shall be available to the resident and primary care giver for areas that include, but are not limited to, counseling, access to community services, financial matters, and behavior management. These services shall be provided by a social worker who:

(1) Possesses a master's degree in social work and current license to practice in the State of Hawaii; and

(2) Has at least two years experience with client care coordination responsibilities and possesses knowledge and skills pertaining to the long term care needs of the geriatric population. The department may allow substitution of two additional years of client care coordination experience for a master's degree.

(c) Case management services for each expanded ARCH resident shall be chosen by the resident, resident's family or surrogate in collaboration with the primary care giver and physician or APRN. The case manager shall:

(1) Conduct a comprehensive assessment of the expanded ARCH resident prior to placement in an expanded ARCH, which shall include, but not be limited to, physical, mental, psychological, social and spiritual aspects;

(2) Develop an interim care plan for the expanded ARCH resident within forty eight hours of admission to the expanded ARCH and a care plan within seven days of admission. The care plan shall be based on a comprehensive assessment of the expanded ARCH resident's needs and shall address the medical, nursing, social, mental, behavioral, recreational, dental, emergency care, nutritional,

spiritual, rehabilitative needs of the resident and any other specific need of the resident. This plan shall identify all services to be provided to the expanded ARCH resident and shall include, but not be limited to, treatment and medication orders of the expanded ARCH resident's physician or APRN, measurable goals and outcomes for the expanded ARCH resident; specific procedures for intervention or services required to meet the expanded ARCH resident's needs; and the names of persons required to perform interventions or services required by the expanded ARCH resident;

(3) Review the care plan monthly, or sooner as appropriate;

(4) Update the care plan as changes occur in the expanded ARCH resident care needs, services and/or interventions;

(5) Promote continuity of care and appropriate integration and utilization of services necessary to implement the care plan;

(6) Coordinate care giver training, hospital discharge, respite, home transfers and other services as appropriate. Facilitate, advocate and mediate for expanded ARCH residents, care givers and service providers to ensure linkages and provision of quality care for the optimal function of the expanded ARCH resident;

(7) Arrange and participate in the expanded ARCH resident's case conferences. Ensure that the expanded ARCH resident, resident's family or surrogate, expanded ARCH resident's physician and the primary care giver are represented at the case conferences;

(8) Have face-to-face contacts with the expanded ARCH resident at least once every thirty days, with more frequent contacts based on the resident's needs and the care giver's capabilities;

(9) Provide ongoing evaluation and monitoring of the expanded ARCH resident's status, care giver's skills, competency and quality of services being provided;

(10) Conduct comprehensive reassessments of the expanded ARCH resident every six months or sooner as appropriate;

(11) Make arrangements with a case manager and/or registered nurse who meets the requirements of this subchapter (a) to provide coverage in the event that the case manager takes leave or is unable to provide services as required in this chapter; and
(12) Inform the department of any change in quality of services being provided to the expanded ARCH resident.

Case management services shall be subject to all applicable state regulations.

(d) The department in collaboration with the expanded ARCH resident family or surrogate may require a change in case management services when it has been determined through review of resident records, care plans and interventions that the case manager is unable to provide adequate services as outlined in this subchapter.

(e) When a change in case management services occurs, the new case manager shall perform a comprehensive reassessment of the expanded ARCH resident, review the care plan and make necessary amendments. The expanded ARCH resident, resident's family or surrogate, physician or APRN and primary care giver shall be notified if a change in case management services is contemplated. [Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

§11-100.1-89 Medications. In addition to the requirements in subchapter 2 and subchapter 3, the following shall apply to an expanded ARCH:

(1) Injectable medications shall be administered by a licensed nurse, unless physician orders permit an expanded ARCH resident to self-inject. The registered nurse case manager may delegate this task according to rules established by the Board of Nursing. The licensee or primary care giver shall maintain written policies and procedures outlining this responsibility; and
(2) The primary care giver shall obtain training, relevant information, and regular monitoring from the expanded ARCH resident's physician, a home health agency, or a registered nurse

case manager for any and all specific medications that the expanded ARCH resident requires. [Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

§11-100.1-90 Expanded ARCH resident's rights. In addition to the resident's rights in section 11-100.1-21, the expanded ARCH resident shall have the right to:

(1) Be fully informed, orally and in writing, prior to or at the time of admission, of individual rights and responsibilities and of all rules governing expanded ARCH resident conduct. There shall be documentation that a copy of this document has been received, acknowledged, and signed by the expanded ARCH resident, expanded ARCH resident's family, legal guardian, surrogate or representative. Should the resident require the assistance of an interpreter, the licensee shall ensure that interpreter services including but not limited to translation, sign language or visual services are provided;

(2) Immediate transfer effected through the case manager, when the expanded ARCH resident's health and safety is threatened, which shall trigger a waiver of the thirty day minimum notice requirement for transfers or discharges;

(3) Immediate transfer effected through the case manager, when the expanded ARCH resident's health and safety is threatened, which shall trigger a waiver of the fourteen day minimum notice requirement for transfers, requested by the resident, the resident's family or surrogate;

(4) Choose a primary physician or APRN and case manager; and

(5) Be afforded privacy curtains or screens when required to share a room with another resident. [Eff SEP 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.61, 321-15.62)

Subchapter 5
Professional Misconduct

§11-100.1-91 Professional misconduct. (a) The department shall take action, as specified in subchapter 6, against any licensee, primary care giver or substitute care giver who is guilty of misconduct or employs or houses any persons guilty of misconduct that has been brought to the department's attention.

(b) Misconduct includes, but is not limited to, the following:

(1) Procurement of license by fraud or misrepresentation;
(2) Gross negligence;
(3) Repeated negligent acts;
(4) Mental or clinical incompetence;
(5) Any conduct that has endangered or is likely to endanger the health, safety, or welfare of the residents;
(6) Habitual intemperance in the use of alcohol or drugs;
(7) Conviction of a crime which is substantially related to the qualifications, functions, or duties of an individual providing care to residents;
(8) The conviction of a felony or misdemeanor, or petty misdemeanor involving moral turpitude, dishonesty, or corruption, whether or not the act is committed in the course of the individual's activities as one providing care to residents. The department may order a license to be suspended, limited or revoked, or may decline to issue a license when the time for appeal has elapsed, or when the judgment of conviction has been confirmed on appeal;
(9) Violation of any law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substances;
(10) Violating or attempting to violate, directly or indirectly, or assisting in, or abetting in, the violation of, or conspiring to violate any provision or term of chapter 321, HRS, this chapter, or any lawful order of the department;
(11) Making or giving false statement of information in connection with an application for issuance of a license;

(12) Aiding or abetting an unlicensed person to operate an ARCH or expanded ARCH as defined by chapter 321, HRS, and this chapter; and

(13) Conduct or character likely to deceive or defraud the public. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6, 321-15.61, 321-15.62) (Imp: HRS §§321-9, 321-10, 321-11, 321-15.6, 321-15.61, 321-15.62)

Subchapter 6
Administrative Enforcement

§11-100.1-92 Enforcement. (a) If the department determines that any person has violated any provision of this chapter, any provision of chapter 321, HRS, or any term or condition of a license issued pursuant to this chapter, the department shall do one or more of the following:

(1) Issue an order assessing an administrative penalty for any past or current violation; or

(2) Require compliance immediately or within a specific time.

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

(c) Any order issued under this chapter shall become final, unless not later than twenty days after receipt of the notice of order by certified mail, the alleged violator requests in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after receipt of the notice of order by certified mail unless the alleged violator requests in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon

request for a hearing, the director or director's designee shall require that the alleged violator appear before the director for a hearing at a time and place specified in a notice of hearing and answer the charges complained of.

(d) Any hearing conducted under this section shall be conducted as a contested case hearing under chapter 91, HRS. If after a hearing held pursuant to this section, the director or the director's designee finds that the violation or violations have occurred, the director or the director's designee shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders. If, after the hearing on an order or penalty contained in a notice, the director or the director's designee finds that no violation has occurred or is occurring, the director or the director's designee shall rescind the order or penalty or both.

(e) Nothing in this section shall be construed to limit other penalties provided elsewhere.

[Eff SEP 18 2008] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6, 321-15.7, 321-15.61, 321-15.62, 321-20) (Imp: HRS §§321-9, 321-10, 321-11, 321-15.6, 321-15.7, 321-15.61, 321-15.62, 321-20)

§11-100.1-93 Emergency procedures. (a) If the department determines that the licensee, primary care giver, staff or other household member has subjected a resident to abuse, neglect, or financial exploitation, the department at its discretion may order the immediate discontinuance of the ARCH or expanded ARCH and revoke the license issued pursuant to this chapter. The order shall be immediately effective and shall designate the date for the discontinuance of the ARCH or expanded ARCH. The department shall provide written notice of the order to the licensee by certified mail prior to the date of discontinuance. The department may assist in the coordination and arrangement for orderly transfer and discharge of residents.

(b) The department shall provide an opportunity for a hearing within twenty four hours after service of the order. If a hearing is not provided as requested, a stay in the department's decision will be provided until a hearing can be conducted.

(c) Any hearing conducted under this section shall be conducted as a contested case hearing under chapter 91, HRS. If after a hearing held pursuant to this section, the director finds that the violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders as may be appropriate. If, after the hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty or both. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6, 321-15.7, 321-15.61, 321-15.62) (Imp: HRS §§321-9, 321-10, 321-11, 321-15.6, 321-15.7, 321-15.61, 321-15.62)

§11-100.1-94 Penalties. In addition to any other action to enforce these rules, the director may initiate procedures for invoking penalties as provided in chapter 321, HRS. [Eff SEP 18 2006] (Auth: HRS §§321-9, 321-10, 321-11, 321-15.6, 321-15.7, 321-15.61, 321-15.62, 321-18) (Imp: HRS §§321-9, 321-10, 321-11, 321-15.6, 321-15.7, 321-15.61, 321-15.62, 321-18)

§11-100.1-95 Severability. If any provision of this chapter or the application thereof to any person or circumstance 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 18 2006] (Auth: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.7, 321-15.61, 321-15.62) (Imp: HRS §§321-1, 321-9, 321-10, 321-11, 321-15.1, 321-15.6, 321-15.7, 321-15.61, 321-15.62)

§11-100.-96 Transition. Adult residential care homes licensed at the time of adoption of these rules shall have a period of nine months to institute required changes or requirements as set forth in this chapter.

DEPARTMENT OF HEALTH

The repeal of chapter 11-100 and chapter 101, and the adoption of chapter 11-100.1 Hawaii Administrative Rules, on the Summary Page dated JUL 24 2006, following public hearings held on April 15, 2003 via video conferencing at (1) Kakuhihewa State Office Building, Kapolei, Hawaii; (2) Keoni Ana Building, Honolulu, Hawaii; (3) Hilo State Office Building, Hilo, Hawaii; (4) Lihue State Office Building, Lihue, Hawaii; and (5) Wailuku Judiciary Building, Wailuku, Hawaii, after a public notice was published on March 12 and 14, 2003 in the West Hawaii Today, Hawaii Tribune, Maui News, Garden Island and Honolulu Advertiser.

The repeal of chapters 11-100 and 11-101, Hawaii Administrative Rules, and the adoption of chapter 11-100.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

CHIYOME LEINAALA FUKINO, M.D.
Director
Department of Health

APPROVED:

LINDA LINGLE
Governor
State of Hawaii

Date: SEP - 6 2006

APPROVED AS TO FORM:

Deputy Attorney General

Filed:

'06 SEP -7 P12:48

LIEUTENANT GOVERNOR
STATE OF HAWAII