DEPARTMENT OF HEALTH

Adoption of Chapter 800
Hawaii Administrative Rules

NOV 13 2018

SUMMARY

Chapter 800, Hawaii Administrative Rules, entitled Regulation of Home and Community-Based Case Management Agencies and Community Care Foster Family Homes is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 800

REGULATION OF HOME AND COMMUNITY-BASED CASE MANAGEMENT AGENCIES AND COMMUNITY CARE FOSTER FAMILY HOMES

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SUBCHAPTER 1

PURPOSE, DEFINITIONS, AND EXCEPTIONS

§11-800-1 **Purpose.** The purpose of this chapter is to establish the administrative provisions for the department to license home and community-based case management agencies and certify community care foster family homes.

(1) Licensed home and community-based case management agencies will be able to provide case management services to individuals in community care foster family homes, or medicaid recipients in expanded adult residential care homes, and assisted living facilities; and

(2) Certified community care foster family homes will be able to provide, for a fee, living accommodations and other related services to clients with nursing facility level of care needs who are placed by licensed home and community-based case management agencies. [Eff NOV 13 2018] (Auth: HRS §§321-9, 321-11, 321-481 to 321-483, 346-14) (Imp: HRS §§321-481 to 321-483)

§11-800-2 **Definitions.** As used in this chapter: "Abuse" means actual or imminent physical injury, psychological abuse, or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment, as further defined in section 346-222, Hawaii Revised Statutes (HRS).

"Administrator" means the person who is responsible for the daily management and operation of a case management agency and its compliance with professional and licensing requirements.

"Adult abuse perpetrator check" means a search to determine whether an individual is

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known to the department as a perpetrator of abuse as defined in section 346-222, HRS, by means of a search of the individual's name and birth date in the department's adult protective service file.

"Adverse event" means any incident or event that may have quality of care implications for clients, including but not limited to:

(1) All bodily injuries sustained by the client, regardless of cause or severity;
(2) All medication errors;
(3) Major and unresolved conflicts between the client and the primary caregiver, substitute caregivers, contracted personnel, or other household members, as applicable;
(4) The whereabouts of the client are unknown; or
(5) Any protective service reports or investigation involving the client or the facility in which the client is residing.

"Assisted living facility" means an assisted living facility as defined in section 321-15.1, HRS.

"Authorized agent" means a person, institution, organization, or agency authorized by the department of health to issue licenses to home and community-based case management agencies and to monitor these agencies for license compliance and quality assurance. The authorized agent shall perform these functions for the department of health and shall not at the same time function as a home and community-based case management agency or as the owner or operator of a residential care facility as defined in this section.

"Case management" means the process of continuous assessment of the service needs of the client in a community care foster family home, expanded adult residential care home, or assisted living facility, the development, review, and updating, as necessary, of the client's service plan, and the locating, coordinating, and monitoring of an integrated and comprehensive combination of services

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necessary to cost effectively maintain and support, and ensure the welfare of the client in the community, on a twenty-four hour basis. Case management is intended to assist the client to access needed care and services on a timely basis and to prevent inappropriate institutionalization through a thorough consideration of community-based alternatives.

"Case manager" means an individual other than and not related to the caregiver that locates, coordinates, and monitors comprehensive services to meet a client's needs.

"Certificate of approval" or "certificate" means the certificate issued by the department which authorizes a person, agency, or organization to operate a community care foster family home.

"Client" means an individual who receives home and community-based case management services to reside in a community care foster family home, expanded adult residential care home, or assisted living facility.

"Community care foster family home" or "home" means a home as defined in section 321-481, HRS.

"Department" means the department of health, its designee when the context of the rule refers to community care foster family homes, or its authorized agent when the context of the rule refers to home and community-based case management agencies.

"Designee" means a person, institution, organization, or agency authorized by the department of health to issue certificates of approval to community care foster family homes and to monitor these homes for certificate compliance and quality assurance. The designee shall perform these functions for the department of health and shall not at the same time function as a home and community-based case management agency or as the owner or operator of a residential care facility as defined in this section.

"Expanded adult residential care home" 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.

"Home and community-based case management agency" or "case management agency" means a person, agency, or organization that is licensed by the department to locate, coordinate, and monitor comprehensive services to meet the needs of clients whom the case management agency serves in community care foster family homes or medicaid waiver service recipients in expanded adult residential care homes, or assisted living facilities.

"Homemaker services" means those tasks performed by the caregiver that healthy individuals would do for themselves, including but not limited to laundry, shopping, meal preparation, and keeping the client's room safe and sanitary. Housekeeping activities that do not directly pertain to the client, such as household maintenance and overall house cleaning, are not homemaker services.

"License" means an approval issued by the department or its authorized agents for a person,
agency, or organization to operate as a home and community-based case management agency.

"Licensed practical nurse" or "LPN" means an individual licensed as a practical nurse by the State of Hawaii, pursuant to chapter 457, HRS.

"Nurse aide" or "NA" means an individual who has successfully completed an approved nurse aide course, or has passed an approved equivalency test, or an individual who has one year of full-time employment as a nurse aide under the supervision of a registered nurse in a hospital, skilled nursing facility, intermediate care facility, or home health agency.

"Nursing facility level of care" means the level of care provided at skilled nursing facilities where the resident would require daily skilled nursing services on more than one shift per day or daily restorative skilled

rehabilitative services or a combination of skilled nursing and rehabilitative services; or at intermediate care facilities where the resident would require intermittent skilled nursing, a daily skilled nursing assessment, and twenty-four hour supervision.

"Personal care" means assisting with activities of daily living such as ambulating, mobility, transfer and lifting, positioning and turning, bowel and bladder care, toileting, bathing, dressing, grooming, feeding, exercise, medication assistance, range of motion, and maintenance of health records.

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

"Primary caregiver" or "caregiver" means the individual who is directly responsible for the supervision and care of the client.

"Reassessment" means the formal review of a client's status to determine if the client's situation and functioning have changed since the initial or most recent assessment. The reassessment measures the progress toward the goals established in a service plan and ensures the client's continued appropriateness for services through a community care foster family home, expanded adult residential care home, or assisted living facility.

"Registered nurse" or "RN" means an individual who is licensed as a registered nurse in the State of Hawaii, pursuant to chapter 457, HRS.

"Residential care facility" means a community care foster family home, an expanded adult residential care home, or an assisted living facility.

"Respite services" means temporary care in a residential care facility or other facility licensed by the State to care for individuals with nursing facility level care needs, to allow the primary caregiver relief from the care giving duties.

"Service plan" means a written plan that is based upon a comprehensive assessment of the client, including a review of the client's

health, functional, psychosocial, and financial situations, which specifies the type, provider, amount, duration and frequency of services necessary to maintain the client in the community as a cost-effective alternative to institutionalization.

"Substitute caregiver" means an individual who is trained and identified in the service plan to provide daily personal care to clients in the absence of the primary caregiver. [Eff NOV 13 2018] (Auth: HRS §§321-9, 321-11, 321-15.1, 321-15.62, 321-481 to 321-483, 346-14, 346-222) (Imp: HRS §§321-481 to 321-483)

§11-800-3 **Penalty**. Any person violating section 321-481 to 321-483 and 321-485, HRS, or this chapter shall be fined not more than $500 per each separate violation. Each day of each violation shall constitute a separate violation. An appeal of the department's actions shall not stay the imposition of a fine. [Eff NOV 13 2018] (Auth: HRS §§321-1.4, 321-11; 321-15.7, 321-485) (Imp: HRS §321-485)

§11-800-4 **Severability**. If any section, subsection, paragraph, subparagraph, or clause of this chapter is for any reason held to be unconstitutional or invalid, the remaining portions of this chapter shall not be affected. [Eff NOV 13 2018] (Auth: HRS §§321-9, 321-11, 321-481 to 321-483, 321-485) (Imp: HRS §§321-481 to 321-483, 321-485)

§11-800-5 **Exceptions**. Exceptions to the requirements of this chapter may be made at the discretion of the department. [Eff NOV 13 2018] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

SUBCHAPTER 2

GENERAL REQUIREMENTS FOR

LICENSURE AND CERTIFICATION

§11-800-6 **Required license or certificate of approval.** (a) Any person, agency, or organization that wants to engage in locating, coordinating, and monitoring comprehensive services to residents in community care foster family homes, or medicaid waiver service recipients in expanded adult residential care homes and assisted living facilities, shall obtain a license from the department.

(b) Any person, agency, or organization that wants to operate a home as a community care foster family home to provide, for a fee, twenty-four hour living accommodations, including personal care and homemaker services for adults who have nursing facility level of care needs and are not related to the person providing the care, shall obtain a certificate of approval from the department.

(c) To be licensed as a home and community-based case management agency, a person, agency, or organization shall:

(1) Comply with all applicable requirements in this chapter;

(2) Not have had a previous license or certificate to provide social or health care services that was revoked within twelve months of the current application for a license, except that this restriction shall not apply if the revocation was successfully appealed; and

(3) Not be certified or licensed to operate a:

(A) Community care foster family home;

(B) Adult residential care home;

(C) Expanded adult residential care home; or

(D) Assisted living facility.

(d) To be certified as a community care foster family home, a person, agency, or

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organization shall:

(1) Comply with all applicable requirements in this chapter; and

(2) Not have had a previous license or certificate to provide social or health care services that was revoked within twelve months of the current application for a certificate of approval, except that this restriction shall not apply if the revocation was successfully appealed.

(e) The department shall provide orientation to applicants, which shall include but is not limited to the following, as appropriate:

(1) The licensure or certification processes and requirements;

(2) The services of home and community-based case management agencies and community care foster family homes; and

(3) The roles and responsibilities of case management agencies and caregivers in the provision of services to clients.

[Eff NOV 13 2018] (Auth: HRS §§321-481 to 321-483, 321-485, 346-14) (Imp: HRS §§321-481 to 321-483, 321-485, 346-14)

§11-800-7 **Application.** (a) Any person, agency, or organization that wants to be licensed as a home and community-based case management agency shall submit the following to the department:

(1) A signed application form provided by the department;

(2) A written statement of services to be provided;

(3) Information relating to the applicant's organization and administration;

(4) A signed financial statement that describes the policies and procedures governing internal controls of financial matters and includes information on revenues and expenses for the previous fiscal year related to services provided;

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(5) Information on the number of staff members and the staff members' duties, educational backgrounds, and work experiences; and

(6) Background check documents, as provided in section 11-800-8.

(b) Any person, agency, or organization that wants to be certified as a community care foster family home shall:

(1) Submit the following to the department:

(A) A signed application form provided by the department;

(B) Documentation to verify that the primary caregiver is a resident in the home that is to be a community care foster family home and is a NA, a LPN, or a RN with at least one year of experience in a home setting;

(C) Background check documents, as provided in section 11-800-8; and

(2) Have a family system in the home that has the capacity to meet the certification requirements and to provide services as a community care foster family home. This determination shall be made through:

(A) A psychosocial assessment by the department, including but not limited to physical and mental disabilities, problem solving skills, coping strategies, and anger management that would prevent or limit the individuals from meeting the daily needs of clients on a twenty-four hour basis; and

(B) A standardized tool that relates to the care and needs of clients shall be utilized for the psychosocial assessment;

The assessment shall be updated when changes occur in the caregiver's household or the client's situation that may impact the life, health, safety, or welfare of, or the

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provision of services to, the client.

(c) The date of application shall be the date the department receives all required forms and information necessary for the department to make a disposition, including but not limited to:

(1) Background check information required under section 11-800-8; and

(2) Department of human services' decision regarding a request for exemption made pursuant to section 11-800-8(e). [Eff NOV 13 2018] (Auth: HRS §§321-481 to 321-483, 321-485, 346-14) (Imp: HRS§§321-481 to 321-483, 321-485, 346-14)

§11-800-8 **Background checks.** (a) As a condition for licensure or certification, the operator, employees, and new employees of the case management agency, or primary and substitute caregivers and other adults residing in a home, except for clients, shall:

(1) Be subject to criminal history record checks in accordance with section 846-2.7, HRS;

(2) Be subject to adult protective service perpetrator checks if the individual has direct contact with a client; and

(3) Provide consent for the department to obtain other criminal history record information for verification and information regarding adult protective service perpetrator status.

(b) New employees of the case management agency shall be fingerprinted within five working days of employment, for the purpose of complying with the requirements of this section.

(c) The department shall make a name inquiry into the criminal history records for the first two years a case management agency is licensed or a home is certified and annually or biennially thereafter depending on the licensure status of the case management agency or

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certification status of the home.

(d) The department may, unless an exemption has been granted by the department:

(1) Deny a license if:

(A) A case management agency operator, employee, or new employee has been convicted of a crime other than a minor traffic violation involving a fine of $50 or less;

(B) The department finds that the criminal history record of a case management agency operator, employee, or new employee poses a risk to the life, health, safety, or welfare of a client;

(C) A case management agency operator, employee, or new employee is a perpetrator of abuse as defined in section 346-222, HRS; or

(D) The holder of or an applicant for a license, or an employee of the agency has a certificate of approval to operate a community care foster family home, or a license from the department of health to operate an adult residential care home, expanded adult residential care home, or an assisted living facility;

(2) Deny a certificate of approval if:

(A) A caregiver, substitute caregiver, or other adult residing in the community care foster family home, except for adults receiving care, has been convicted of a crime other than a minor traffic violation involving a fine of $50 or less;

(B) The department finds that the criminal history record of a caregiver, substitute caregiver, or other adult residing in the home, except for adults receiving care, poses a risk to the life, health, safety, or welfare of a client; or

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(C) A caregiver, substitute caregiver, or other adult residing in the community care foster family home, except for adults receiving care, is a perpetrator of abuse as defined in section 346-222, HRS.

(e) The results of a background check made pursuant to section (a) shall be exempt from consideration by the department if an exemption has been granted by the department. Requests for exemptions must be:

(1) Submitted by the applicant for licensure or certification, case management agency, or home;

(2) In writing, on forms provided by the department; and

(3) Received by the department no later than seven days after the date of the notification that the individual:

(A) Has a conviction for a crime other than a minor traffic violation involving a fine of $50 or less;

(B) Has a criminal history record that poses a risk to the life, health, safety, or welfare of a client; or

(C) Is a perpetrator of abuse as defined in section 346-222, HRS.

[Eff NOV 13 2018] (Auth: HRS §§321-15.2, 321-481 to 321-483, 321-485, 346-14) (Imp: HRS §§321-15.2, 321-481 to 321-483, 321-485)

§11-800-9 **Disposition of application.** (a) The department shall dispose of an application for a license or a certificate of approval by the sixtieth day from the date of application.

(b) An evaluation of the application will be carried out by the department and may include, but is not limited to, one or more of the following:

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(1) Review of forms, documents, and information submitted as required under section 11-800-7;
(2) Review of administrative, fiscal, personnel, and client case records; and
(3) Service site visits to carry out one or more of the following activities:
(A) Inspect the premises;
(B) Interview clients; and
(C) Interview and observe individuals providing services to clients.

(c) A standardized evaluation tool shall be used to determine whether the applicant is in compliance with the requirements for licensure or certification.

(d) The department shall dispose of the application by taking one of the following actions:
(1) A person, agency, or organization shall be determined eligible for a license or a certificate of approval when the department clearly establishes through its evaluation and records that the person, agency, or organization meets all of the applicable requirements established in this chapter for licensure or certification; or
(2) A person, agency, or organization shall be determined ineligible for a license or a certificate of approval when the department establishes through its evaluation and records that the person, agency, or organization does not meet the requirements established in this chapter. [Eff NOV 13 2018] (Auth: HRS §§321-481 to 321-483, 321-485, 346-14) (Imp: HRS §§91-13.5, 321-481 to 321-483, 321-485, 346-14)

§11-800-10 **Issuance of license or certificate of approval.** (a) The department shall issue a license to a home and community-

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based case management agency that is valid for:

(1) One year; or

(2) Two years, when the case management agency meets the following requirements:

(A) Has been in operation and licensed for at least one year as a home and community-based case management agency;

(B) Is in full compliance with all licensing requirements;

(C) Has had no major changes in the organizational structure or in the case management agency's policies and procedures regarding case management services;

(D) Operator, employees, and new employees have no criminal history record, or adult protective service perpetrator history that pose a risk to the life, health, safety, or welfare of clients; and

(E) Has had no complaints that were investigated and confirmed, and resulted in the development and implementation of a corrective action plan.

(b) The license shall:

(1) Specify the name and address of the case management agency and be accompanied by a statement outlining the type of activities the case management agency is licensed to provide;

(2) Be non-transferable; and

(3) Be conspicuously posted on the premises of the case management agency.

(c) The department shall issue a certificate of approval to a community care foster family home that is valid for:

(1) One year; or

(2) Two years, when the home meets the following requirements:

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(A) Has been certified and in operation for at least one year as a community care foster family home;
(B) Is in full compliance with all certification requirements;
(C) Has had no changes in the household composition;
(D) Has had no changes in the structure of the home;
(E) The caregivers and other adult household members, except for clients receiving services, have no criminal history record, or adult protective service perpetrator history that pose a risk to the life, health, safety, or welfare of clients; and
(F) Has had no complaints that were investigated and confirmed, and resulted in the development and implementation of a corrective action plan.

(d) The certificate of approval shall:
(1) Specify the name and address of the home and be accompanied by a statement outlining the type of activities the home is certified to provide;
(2) Be non-transferable; and
(3) Be conspicuously posted on the premises of the home. [Eff NOV 13 2018] (Auth: HRS §§321-481 to 321-483, 321-485, 346-14) (Imp: HRS §§321-481 to 321-483, 321-485, 346-14)

§11-800-11 **Monitoring and investigation.** (a) The department shall monitor case management agencies and homes for compliance with applicable requirements in this chapter and quality assurance:
(1) Annually when a case management agency or home has a one-year license or certificate;
(2) Biennially when a case management

agency or home has a two-year license or certificate; or

(3) Upon receipt of a complaint that a case management agency or home is in violation of applicable requirements in this chapter.

(b) Monitoring may include but is not limited to unannounced visits to review service delivery sites, records and files, and interviews with clients.

(c) The case management agency or home that is being monitored shall provide the department access to all records, files, and other materials concerning compliance with the requirements for licensure or certification.

(d) Any case management agency or home shall be subject to investigation by the department at any time and in the manner, place, and form as determined by the department.

[Eff NOV 13 2018] (Auth: HRS §§321-481 to 321-483, 321-485, 346-14) (Imp: HRS §§321-481 to 321-483, 321-485, 346-14)

§11-800-12 **Reporting changes.** The case management agency or home shall immediately report to the department changes that may affect the case management agency's or home's ability to comply with the applicable requirements of this chapter. Changes to be reported include but are not limited to changes:

(1) That may pose a risk to the life, health, safety, or welfare of the client;

(2) In the criminal history record and adult protective service perpetrator history of the operator or any employee of the case management agency, or the primary caregiver, substitute caregiver, or other adults in the home, except for clients receiving care;

(3) In the organizational structure of the case management agency;

(4) In the household composition or

structure of the home; and

(5) In the service delivery site. [Eff NOV 13 2018](Auth: HRS §§321-481 to 321-483, 321-485, 346-14) (Imp: HRS §§321-481 to 321-483, 321-485, 346-14)

§11-800-13 **Renewal of license or certificate of approval.** (a) A license or certificate shall be renewed annually or biennially when the requirements of section 11-800-10(a)(2) or 11-800-10(c)(2) are met.

(b) At least ninety days prior to the expiration date of a current license or certificate, the case management agency or home shall apply to the department for renewal of the license or certificate, as appropriate.

(c) The renewal application shall include, as applicable:

(1) A completed application form provided by the department;

(2) A current list of all:

(A) Employees and subcontractors of the case management agency, including information about their duties, educational backgrounds, and work experiences; or

(B) Individuals residing or providing direct services to clients in the home, including information about their responsibilities and training;

(3) Background check documentation as provided in section 11-800-8; and

(4) Descriptions of any major changes in policies and procedures, organizational structure of the case management agency, location of the service delivery site, structure of the home and household composition since the last license or certificate was issued.

(d) The department shall evaluate the renewal application as provided in section 11-800-9, to determine whether the case management agency or home is in compliance with the applicable requirements of this chapter.

(e) The department shall dispose of the renewal application by taking one of the following actions:

(1) The case management agency or home shall be determined eligible for a renewal of its license or certificate when the department clearly establishes through its evaluation that all of the applicable requirements of this chapter have been met. A license or certificate shall be issued as provided in section 11-800-10; or

(2) The case management agency or home shall be determined ineligible for a renewal of its license or certificate when the department determines through its evaluation that the applicable requirements for licensure or certification have not been met.

(A) The renewal application shall be denied and the case management agency or home shall be informed of this decision in writing; and

(B) The department shall follow the requirements of section 11-800-14.

(f) A case management agency or home whose application for a license or certificate renewal was denied because it did not comply with all of the requirements for licensure or certification may reapply for a renewal of its license or certificate if:

(1) Its current license or certificate was not revoked;

(2) It has corrected all deficiencies identified by the department; and

(3) There is at least ninety days remaining on its current license or certificate.

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[Eff] (Auth: HRS §§321-481 to 321-483, 321-485, 346-14) (Imp: HRS §§321-481 to 321-483, 321-485, 346-14)

§11-800-14 **Corrective action and sanctions.**

(a) When the department determines that a case management agency or home has failed or is unable to comply with all of the applicable requirements of this chapter, the department shall notify the case management agency or home in writing of the specific areas of noncompliance and may do one or more of the following:

(1) Establish a specific time frame for the correction of each area of noncompliance;

(2) Require submission of a written corrective action plan from the case management agency or home that addresses each area of noncompliance; or

(3) Suspend the admission of new clients by the case management agency or home.

(b) When the identified areas of noncompliance are not corrected within the time specified in an accepted plan of correction, the department may do one or more of the following:

(1) Require the transfer of clients to another case management agency or residential care facility;

(2) Revoke the license or certificate; or

(3) Levy a fine as provided in section 11-800-3.

(c) A license or certificate shall be immediately revoked when there is noncompliance, as determined by the department, which poses an imminent and serious risk to the life, health, safety, or welfare of a client.

(d) Upon revocation of a license or certificate:

(1) A case management agency shall:

(A) Immediately notify its clients and the residential care facilities in which the clients are provided services of the suspension or revocation;

(B) Cease providing case management services immediately after existing clients have been:

(i) Discharged from the program;

(ii) Transferred to another case management agency;
(iii) Hospitalized; or
(iv) Placed in a nursing facility;

(2) A home shall:
(A) Immediately notify its clients or the clients' legal representatives, and the clients' case managers of the suspension or revocation; and
(B) Comply with appropriate provisions of section 11-800-43.

(e) A revoked license or certificate may be reinstated if the department deems that the case management agency or the home is willing and able to comply with applicable licensing or certification requirements only when a new application for a license or certificate is submitted to the department and the application is approved.

(f) An appeal of the department's actions shall not stay the suspension or revocation of the license or certificate. [Eff and comp 2/7/05 NOV 13 2006] (Auth: HRS §§321-18, 321-20, 321-481 to 321-483, 321-485, 346-14) (Imp: HRS §§321-481 to 321-483, 321-485, 346-14)

§11-800-15 **Appeal.** (a) When the department's decision is to deny or revoke a license or certificate, or to levy a fine under this chapter, the department shall:

(1) Provide a written notice to the person, agency, or organization whose license or certificate is to be denied or revoked, or is being fined, by certified or registered mail to the last known address as may be shown in the application, license, or certificate of approval; and
(2) Include in the notice a statement of the reasons for the proposed action and information that the applicant, licensee, or certificate holder has the right to appeal the decision to the director of the department, in

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writing, no later than thirty days after the date of the notice of the proposed action.

(b) Upon receiving a timely written appeal, the director of the department shall give notice of and an opportunity for a hearing before a hearing officer.

On the basis of the evidence presented at the hearing, the hearing officer shall make the final decision of the department as to whether the application, license, or certificate shall be denied or revoked, or a fine levied.

(c) At any hearing provided for by this section, the applicant, licensee, or certificate holder may be represented by counsel and shall have the right to call, examine, and cross-examine witnesses. Evidence may be received even though inadmissible under rules of evidence applicable under court procedures.

(d) The hearing officer's decision shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to the last known address as shown on the application, license, or certificate.

(e) Filing an appeal shall not stay the department's denial, suspension, or revocation of a license or certificate, or levying of a fine. [Eff NOV 13 2018] (Auth: HRS §§321-481 to 321-483, 321-485, 346-14) (Imp: HRS §§321-20, 321-481 to 321-483, 321-485, 346-14)

§11-800-16 **Confidentiality of applicant and recipient information.** (a) All information relating to individuals who apply for or receive home and community-based case management and community care foster family home services shall be confidential.

(b) Case management agencies and homes licensed or certified under this chapter will:

(1) Have written policies and procedures that relate to confidentiality and

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privacy rights of applicants and recipients;
(2) Safeguard all confidential information about applicants and recipients of services;
(3) Inform clients about their confidentiality practices;
(4) Respect client privacy rights; and
(5) Provide training to all employees, and for homes, other adults in the home, on their confidentiality policies and procedures and client privacy rights.

(c) Information about an applicant or recipient shall not be used or disclosed unless:
(1) The applicant, recipient, or a legal representative of the applicant or recipient has authorized in writing the use or disclosure of the information; or
(2) The use or disclosure is specifically permitted under applicable federal or state rules or regulations. [Eff NOV 13 2018] (Auth: HRS §§321-481 to 321-483, 321-485, chapter 323B, 346-14) (Imp: HRS §§346-14)

§§11-800-17 to 11-800-20 (Reserved).

SUBCHAPTER 3

HOME AND COMMUNITY-BASED CASE MANAGEMENT

AGENCY REQUIREMENTS

§11-800-21 **Personnel.** (a) The case management agency shall be responsible for:

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(1) Having sufficient personnel to provide case management services to the client in a residential care facility, as provided in this subchapter;
(2) Locating, selecting, assigning, supervising, and training case management staff;
(3) Maintaining individual personnel files on all staff assigned to provide case management services to clients. The personnel files shall provide evidence of:
    (A) Current Hawaii professional licenses, as applicable;
    (B) Appropriate education and work experience;
    (C) Current job description;
    (D) Documentation of current blood borne pathogen and infection control training and cardiopulmonary resuscitation training for personnel in direct contact with a potential or current client;
    (E) Current tuberculosis clearance that complies with department guidelines, for personnel in direct contact with a potential or current client;
    (F) Current valid driver's license and access to an insured vehicle, as applicable;
    (G) Orientation to the case management program, including operational procedures, agency policies and procedures, and case management responsibilities;
    (H) A signed statement indicating the employee's understanding of the case management agency's background check policies; and

    (I) Current background checks and signed

statements, as provided in section 11- 800-7.1; and

(4) Designating and authorizing an acting administrator who shall be responsible for the operation of the program in the absence of the regular administrator. The department shall be notified in writing when the designation is made, including the name and the period during which the acting administrator shall be in charge. The acting administrator shall be:

(A) A staff member of the agency;

(B) Qualified to carry out the responsibilities of an acting administrator;

(C) In compliance with personnel requirements for licensure, as applicable; and

(D) Assigned when the regular administrator is unable to perform the administrator's regular duties for one or more days.

(b) The case management agency shall have staff with a minimum of one year experience providing care coordination for elderly or disabled individuals in home and community-based settings, including but not limited to:

(1) The development and review of service plans; and

(2) Locating, coordinating, and monitoring comprehensive services to maintain and support individuals in the community.

(c) The case management agency shall employ qualified staff to provide case management services.

(1) Case managers shall be a registered nurse or a social worker.

(A) A registered nurse shall have:

(i) Fulfilled the State's licensing requirements for nurses; and

(ii) At least two years experience

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with client care coordination responsibilities in the United States;

(B) A social worker shall have:

(i) Fulfilled the State's licensing requirements; and

(ii) One year of experience with client care coordination responsibilities in the United States;

(2) Case managers shall have:

(A) Knowledge of current professional case management practices, standards, responsibilities, and procedures;

(B) Knowledge of the problems and needs of the targeted population, including social, health, and psychosocial factors affecting optimal functioning of clients and their support systems;

(C) Knowledge of client's rights, state and federal laws, and regulations, such as those relating to health services, confidentiality, and consent issues for the targeted populations; and

(D) The skills and abilities to provide case management services as provided in these requirements. [Eff NOV 13 2018] (Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

§11-800-22 **Administrative requirements.** (a) The case management agency shall have written policies and procedures that are consistent with the applicable requirements of this chapter and that relate to:

(1) Overall program management, including administrative, personnel, quality assurance such as continuous quality

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improvement, risk management, fiscal, assignment of an acting administrator when the regular administrator is absent, and program reporting requirements;

(2) Compliance with all applicable federal and state laws, including but not limited to those:
  (A) Pertaining to adult and child protective services reporting; and
  (B) Prohibiting discrimination against any person, on the grounds of race, color, national origin, religion, creed, sex, age, marital status, handicap, or arrest and court records;

(3) Having an alcohol and drug-free workplace;

(4) Services to clients, including the standards and requirements for application, eligibility, admission, waitlisting, suspension, discharge, transfer, and readmission;

(5) Case management service responsibilities, such as but not limited to:
  (A) Assessment;
  (B) Development and authorization of service plans;
  (C) Service coordination;
  (D) Monitoring;
  (E) Reassessment procedures;
  (F) Client record and documentation requirements;
  (G) Client budgetary procedures; and
  (H) Confidentiality and client rights;

(6) Access to case management agency and client records upon request by the department or the department's designee; and

(7) Cooperation with the department when immediate removal of clients is necessary.

(b) The case management agency shall cooperate with the department when it is being

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evaluated for compliance with the licensing requirements, or the quality, adequacy, and timeliness of services provided to clients. [Eff NOV 13 2018](Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

§11-800-23 **Contracting with residential care facilities.** The case management agency shall not enter into any agreement or contract with a residential care facility:

(1) If the residential care facility is a community care foster family home or expanded adult residential care home and the primary caregiver, substitute caregiver, owner of the property, holder of the certificate or license, or any other adult in the facility, except for clients, is related in any way to a paid or unpaid member of the staff or officer of the case management agency; or

(2) That requires the residential care facility to accept the case management agency's clients exclusively. [Eff NOV 13 2018](Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

§11-800-24 **Application for case management services.** The case management agency shall:

(1) Provide information to individuals and agencies regarding its case management services, eligibility criteria, and its application, admission, and other processes;

(2) Utilize a standardized intake tool to request pertinent applicant information to determine eligibility for case management services;

(3) Ensure that all eligibility requirements for the placement of an individual with nursing facility level of care needs in a residential care

facility are met prior to the individual's admission;

(4) Use a standardized assessment tool to assess the applicant's needs prior to being accepted as a client of the case management agency. This assessment shall include social and nursing evaluations that review the individual's health, functional, psychosocial, and financial situations and options for residential care; and

(5) Provide information about and referral to other community resources, as appropriate. [Eff NOV 13 2018](Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

§11-800-25 **Service plan.** (a) The service plan shall be based upon comprehensive assessments of the individual by appropriate case managers.

(b) The case management agency shall develop and authorize a service plan prior to the individual's admission to a residential care facility.

(c) The service plan shall be written in a language that is understandable to the individual, the individual's family, the individual's legal representative, and the primary and substitute caregivers.

(d) The service plan shall:

(1) Identify the problems and needs of the client, including any need to purchase specialized medical equipment and supplies;

(2) Establish realistic measurable goals to be attained for each problem identified in the social and nursing assessments;

(3) Identify specific interventions and tasks to be implemented to address each problem and to ensure achievement of the goals specified in the service plan;

(4) Identify specific types of services needed, the number of units,

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duration, and the frequency of service provision;

(5) Specify the service provider or providers, primary and substitute, formal or informal, medicaid waiver or non-waiver, needed to address each problem and achieve each goal to safely maintain and support the client in a residential care facility;

(6) Be agreed to by the client or the client's legal representative;

(7) Establish the frequency of case manager contacts, with a minimum frequency of once a month face-to-face contacts with the client;

(8) Be reviewed, updated, and authorized, minimally once every six months or sooner when changes occur, to reflect the client's current status and needs; and

(9) Include a transportation plan to meet the non-medical transportation needs of the client as provided in section 11-800-41(b)(5).

(e) The case management agency shall ensure that a current service plan is in place when a client moves from one residential care facility to another, and that if the client is moved into another community care foster family home, that the home has a current certificate.

(f) When a client chooses to transfer from one case management agency to another, a new service plan shall be developed by the new case management agency chosen by the client. [Eff NOV 13 2018] Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

§11-800-26 **Service coordination.** (a) The case management agency shall promote continuity of client care, appropriate integration, and utilization of services by:

(1) Authorizing, locating, and arranging for services necessary to implement the

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client's service plan;

(2) Providing caregivers, prior to the admission of the client, with all necessary forms, records, and information about the client and the client's service plan to ensure timely and quality service delivery;

(3) Assuring that the caregivers have the necessary skills to implement the service plan;

(4) Referring clients to the primary caregiver who, based on the case management agency's determination, has the ability to meet the health, welfare, and psychosocial needs of the individual, including care needs identified in a service plan;

(5) Conducting or coordinating caregiver training as necessary to ensure that the caregivers are skilled to care for the clients in their residential care facilities;

(6) Coordinating hospital discharge, respite, home transfers, transfers between case management agencies, and other services as appropriate;

(7) Using only appropriately licensed or certified residential care facilities;

(8) Advocating for clients;

(9) Facilitating and mediating the resolution of conflicts that may arise between clients and service providers;

(10) Arranging and participating in client care conferences, as appropriate; and

(11) Assisting the client or the client's family with obtaining a legal representative, such as a guardian, when necessary and appropriate.

(b) When two clients are served by different case management agencies and may possibly reside in the same residential care facility, the quality of services and compatibility of the clients who may share the residential care facility shall be ensured.

(1) Each client's case management agency shall:

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(A) Obtain a written consent from its client for the release of the client's information for the purposes of this section;

(B) Share and discuss its client's assessment and service plan with the case management agency for the other client for the purpose of ensuring the quality of services and compatibility of the clients;

(C) Keep the shared information confidential and use it only for the purpose of this section; and

(D) Not use or disclose the information obtained for this section except as allowed under section 11-800-13.1;

(2) Placement of the two clients together shall occur only after all parties, including both case management agencies, the primary caregiver of the residential care facility in which the placement shall be made, and both clients, have agreed to the placement; and

(3) Any person who fails to safeguard confidential information or who violates rules governing the confidential nature of applicant and recipient information may be prosecuted for a violation as provided in 321-20, HRS. [Eff NOV 13 2018](Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

§11-800-27 **Service monitoring**. (a) The case management agency shall provide continuing, regular contact with the client, caregiver, and other service providers to ensure that:

(1) Services are being provided in accordance with the service plan and continue to meet the client's needs;

(2) The caregiver and residential care facility environment continue to meet the client's needs;

(3) Sufficient progress is made towards achieving desired goals and outcomes; and

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(4) All of the client's rights, as provided in section 11-800-50, are met.

(b) The service monitoring process shall include:

(1) Face-to-face contact with the client at least once a month, with more frequent contacts depending on the client's condition and the caregiver's capability. The frequency of this contact shall be specified in the service plan;

(2) Regular RN monitoring of the client who has a medically complex condition, as determined by a physician or RN. The frequency of this monitoring shall be specified in the service plan;

(3) Ongoing evaluation of the client's response to and satisfaction with services provided and follow-up as needed;

(4) Ongoing evaluation of the appropriateness, timeliness, adequacy, and quality of services, caregivers, and home-like environment provided;

(5) Ongoing evaluation of the caregiver's status, behavior, and skills competency; substitute caregiver coverage and skills competency; and other caregiver responsibilities, such as child care or employment, to identify areas that may necessitate case management intervention;

(6) Assessment for, review, and follow-up activities on all reports of unusual occurrences involving the client, such as adverse events and inappropriate or lack of client supervision;

(7) Follow-up activities to assure that substandard care and unsafe practices or conditions have improved, or to arrange for alternative placement, as provided in section 11-800-44;

(8) Assurance that a qualified caregiver is physically available to the client twenty- four hours a

day, seven days a week;

(9) Facilitating and documenting conflict resolution of client complaints or grievances about services, service providers, as well as conflicts between contracted personnel and the client;

(10) Monitoring and documenting continued medicaid eligibility for medicaid waiver service recipients; and

(11) Reporting to the department any concerns the case management agency may have about the home in which a client has been placed, including but not limited to:

(A) Changes in the composition of the household; and

(B) Inappropriate activities on the premises. [Eff 2/11/02, am and comp 2/7/05](Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

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§11-800-28 **Reassessment.** (a) The case management agency shall conduct face-to-face reassessments every six months or sooner, as appropriate, and shall use standardized assessment tools to reevaluate the client's:

(1) Diagnosis, health, functional, psychosocial, financial, and environmental needs; and

(2) Compliance with the client's service plan.

(b) The case management agency shall have the client's physician re-certify the client's level of care on an annual basis or more frequently as needed. The medicaid medical consultant shall approve the re-certification for the client who is a medicaid recipient. [Eff 2/11/02, am and comp 2/7/05](Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

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§11-800-29 **Reduction and termination of services.** The case management agency shall reduce or terminate its services to a client, as appropriate, when:

(1) Friends or relatives of the client express willingness and are able to care for the client without charge;

(2) A service provider refuses to provide requested services or the service provider's contract is canceled and no other options are available;

(3) The client no longer needs nursing facility level of care;

(4) The client or the client's legal representative chooses institutional care in lieu of community-based services;

(5) The client's case manager determines that the services necessary to assure the health and welfare of a client cannot be provided through placement in a residential care facility. Termination can occur after another viable alternative has been arranged for the client;

(6) The client moves out of the State of Hawaii;

(7) The client or the client's legal representative voluntarily requests termination from the program; or

(8) The client dies. [Eff and comp 2/7/05] (Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

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§11-800-30 **Grievance.** The case management agency shall have policies and procedures by and through which a client may present grievances about the operation or services of the case management agency. The policies shall include a provision that a client may choose to present any grievance directly to

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the department. The case management agency shall:

(1) Inform the client or the client's legal representative of the grievance policies and procedures and the right to appeal in a grievance situation;

(2) Provide a written copy of the grievance policies and procedures to the client or the client's legal representative, which includes the names and telephone numbers of the individuals who shall be contacted in order to report a grievance;

(3) Obtain signed acknowledgments from the client or the client's legal representative that the grievance policies and procedures were reviewed; and

(4) Ensure that operators of residential care facilities serving the case management agency's clients are aware of and comply with the case management agency's policies and procedures for clients' grievances. [Eff NOV 13 2018] (Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

§11-800-31 **Records.** (a) The case management agency shall maintain individual client records in a manner which ensures legibility, order, and timely signing and dating of each entry in black ink.

(b) Client records shall be kept in detail to:

(1) Permit effective professional review; and

(2) Provide information for necessary follow-up and care for the client.

(c) Client records shall contain:

(1) Information relating to the client's status regarding application, eligibility, termination, admission, suspension, transfer, or discharge activities;

(2) Information documenting the case management agency's efforts to

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find an appropriate match between a residential care facility and the individual applying for case management services;

(3) Information documenting the case management agency's assessment, service planning, service coordination, monitoring, and reassessment activities;

(4) The initial skill competency of caregivers to perform the tasks necessary for implementation of each service plan and care of clients. Updates shall be documented as appropriate;

(5) All information and actions taken in response when changes occur in a client's behavior and functioning which may necessitate more or less services or other types of intervention and update of the service plan; and

(6) Written documentation of the case management agency's:

(A) Assessment of all verbal and written reports regarding the client received from the residential care facility, other agencies, or from the client's family or legal representative;

(B) Use of the assessment to determine what action, if any, is needed;

(C) Actions undertaken, based on the reports and assessment; and

(D) Final disposition of the situation reported, as applicable. [Eff 2/11/02, am and comp 2/7/05 NOV 13 2018] (Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

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§11-800-32 **Fiscal requirements**. (a) The case management agency shall have adequate resources to finance the operating costs of administration, maintenance, personnel, and to conduct its programs, including the provision of case management services in accordance with this chapter.

(b) The case management agency shall maintain fiscal records, documents, and other evidence that sufficiently and properly reflect all funds received, and all direct and indirect expenditures of any nature related to the case management agency's operation.

(c) All fiscal related material shall be maintained by the case management agency in accordance with generally accepted accounting principles, in a form conducive to sound and efficient fiscal management and audit. [Eff NOV 13 2018](Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

§11-800-33 **Insurance requirements**. The case management agency shall obtain, maintain, and keep in force through an insurance company authorized to do business in the State, or that meets the requirements of section 431:8-301, HRS, if using an insurance company not authorized to do business in the State, the following liability insurance, as appropriate:

(1) General;
(2) Automobile; and
(3) Errors and omissions.

(b) All policies shall contain an endorsement that such insurance may not be canceled except upon thirty calendar days written notice to the State. [Eff NOV 13 2018] (Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

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§11-800-34 **Quality assurance.** (a) The case management agency shall have internal policies and procedures for continuous quality improvement. The program shall include at least annual monitoring of the case management agency's compliance with licensing requirements, and plans for corrective action measures and their implementation dates, as appropriate.

(b) The case management agency shall have internal risk management policies and procedures that provide for ongoing monitoring and assessment of reports of adverse events, and analysis for trends in adverse events. The policies and procedures shall require:

(1) All service providers serving the client to verbally report adverse events to the case management agency within twenty-four hours of the occurrence;

(2) A written report to be sent to the case management agency within seventy-two hours, excluding weekends and holidays, following the verbal report required in paragraph (1);

(3) An evaluation of each report of adverse event by the case management agency to determine the appropriateness of actions taken and completion of the report and follow-up process;

(4) A copy of the original report and a summary to be provided to the department of the case management agency's evaluation of any report of adverse events and any action taken by the case management agency, including adjustments to the client's service plan, as appropriate. The original report and summary shall be received by the department within seventy-two hours, excluding weekends and holidays, after the case management agency receives a written report of an adverse event; and

(5) Quarterly assessment of reports of adverse events by the case management agency to determine trends and to

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document preventative actions taken when significant trends are noted.

(c) The case management agency shall have policies and procedures requiring all service providers serving the client to inform the case management agency of any changes occurring in the client's behavior and functioning that may necessitate a change and update of the client's service plan.

(1) The case management agency shall require a verbal report from all service providers serving the client within twenty-four hours of the occurrence of any of the following:

(A) Changes in the client's condition requiring emergency treatment;

(B) Hospitalization of the client;

(C) Environmental changes or disasters affecting the delivery of services to the client; and

(D) Death of the client.

If any of the preceding events also constitutes an adverse event, the requirements of subsection (b)(1) shall be apply.

(2) A written report shall be sent to the case management agency within seventy-two hours, excluding weekends and holidays, following the verbal report required in paragraph (1).

(3) The case management agency shall have procedures for handling reports required in paragraph (1).

(d) The case management agency shall be subject to investigation by the department at any time. The investigation may be announced or unannounced and may include, but is not limited to, one or more of the following:

(1) Reviews of administrative, fiscal, personnel, and client records;

(2) Inspection of service sites;

(3) Service site visits to interview clients and to observe personnel and subcontractors providing services; and

(4) Interviews with case management personnel and service sub-contractors. [Eff 2/11/02, am and comp 2/7/05 NOV 13 2018] (Auth: HRS §§321-481, 321-482, 321-485, 346-14) (Imp: HRS §§321-481, 321-482, 321-485, 346-14)

§§11-800-35 to 11-800-38 (Reserved).

SUBCHAPTER 4

COMMUNITY CARE FOSTER FAMILY HOME REQUIREMENTS

§11-800-39 **Operation of a community care foster family home.** Any person, agency, or organization that wants to operate a home as a community care foster family home shall obtain a certificate of approval from the department. The person, agency, or organization shall:

(1) Not have had a previous certificate or license to provide residential, social, or health care services that was revoked and not successfully appealed within twelve months of the current application for a certificate of approval to operate a community care foster family home; and

(2) Comply with all applicable requirements set forth in this chapter. [Eff NOV 13 2018] (Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-40 **Contracting with case management agencies.** A home shall not enter into any agreement or contract with a case management agency:

(1) If the primary caregiver, substitute caregiver, owner of the property, holder of the certificate, or any other adult in the home, except for

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clients, is related in any way to a paid or unpaid member of the staff or officer of the case management agency; or

(2) That requires the home to accept the case management agency's clients exclusively. [Eff NOV 13 2018] (Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-41 **Personnel and staffing.** (a) The primary caregiver shall:

(1) Reside in the community care foster family home;
(2) Be a NA, LPN, or RN;
(3) Have at least one year of experience in a home setting as a NA, LPN, or RN; and
(4) Have a substitute caregiver who will assume caregiving responsibilities in the absence of the primary caregiver.

(b) The primary caregiver and substitute caregiver shall meet the following requirements:

(1) The primary caregiver must be at least twenty-one years old, and the substitute caregiver shall be at least eighteen years old;
(2) Have no physical or mental disabilities that would prevent their being able to meet the daily needs of clients on a twenty-four hour basis;
(3) Be able to communicate, read, and write in the English language;
(4) Cooperate with the department to complete a psychosocial assessment of the caregiving family system in accordance with section 11-800-7 (b)(2);
(5) Provide non-medical transportation through possession of a valid Hawaii driver's license and access to an insured vehicle, or an alternative

approved by the department.

(A) When the caregiver does not have a valid driver's license, does not have access to an insured vehicle, or both, a written alternative transportation plan shall be submitted to the department for approval;

(B) The transportation plan may include but is not limited to the use of a handivan, taxi, or a substitute driver;

(C) When a substitute driver is used, the substitute driver shall:

(i) Have a valid driver's license;

(ii) Have a current tuberculosis clearance;

(iii) Provide a signed statement indicating no conviction record that may place the client at risk of harm; and

(iv) Use an insured vehicle;

(6) Comply with all applicable federal, state, and county laws, ordinances, rules, regulations, and regulatory requirements, including but not limited to statutes that prohibit discrimination against any person, on the grounds of race, color, national origin, religion, creed, sex, age, marital status, or handicap;

(7) Have a current tuberculosis clearance that meets department guidelines; and

(8) Have documentation of current training in blood borne pathogen and infection control, cardiopulmonary resuscitation, and basic first aid.

(c) The primary caregiver shall attend twelve hours, and the substitute caregiver shall attend eight hours, of in-service training annually which shall be approved by the department as pertinent to the management and care of clients. The primary

caregiver shall maintain documentation of training received by all caregivers, in the caregiver file in the home.

(d) The substitute caregiver who provides three or more hours of services per day to a client shall, at a minimum, be a NA.

(e) The primary caregiver shall identify all qualified substitute caregivers, approved by the department, who provide services for clients. The primary caregiver shall maintain a file on the substitute caregivers with evidence that the substitute caregivers meet the requirements specified in this section.

(f) The primary caregiver shall maintain a file on all adult household members who are not substitute caregivers with evidence that they have current:

(1) Tuberculosis clearances that meet department of health guidelines; and

(2) Background checks.

(g) The primary and substitute caregivers shall be assessed by the department for competency in basic caregiver skills and specific skill areas needed to perform tasks necessary to carrying out each client's service plan. The documentation of training and skill competency of all caregivers shall be kept in the client's, case manager's, and caregiver's current records with the current service plan.

(h) The primary caregiver shall ensure that all substitute caregivers are approved by the department prior to providing services and shall provide a verbal and written report of all substitute caregiver changes, including additions, terminations, and replacements, to the department.

(i) The primary caregiver shall notify the department of any dependent household members or changes in household composition.

(j) When the primary caregiver will be absent or unable to perform regular duties, and clients are present, the primary caregiver shall:

(1) Report the situation to the clients' case management agencies verbally and in writing prior to the planned

absence or being unable to perform caregiving duties. Unplanned absences or events that prevent the primary caregiver from performing regular duties must be reported within twenty-four hours of occurring;

(2) Assure that a substitute caregiver is available and capable of managing all client care and any event occurring in the home; and

(3) Authorize all substitute caregivers to permit entrance by case management agency and department staff, with or without prior notice, for the purpose of client monitoring, investigation, and quality assurance review. [Eff NOV 1 ? 2018] (Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-42 **Client eligibility requirements.** (a) To be admitted to the community care foster family home, the individual shall:

(1) Be certified by a physician as requiring nursing facility level of care. The medicaid agency medical consultant shall certify the individual who is a participant in a federally funded medicaid program;

(2) Voluntarily choose to enter a community care foster family home;

(3) Have a physical examination by a physician within thirty days prior to admission or within seven days after admission;

(4) Have a tuberculosis clearance issued within twelve months prior to admission.

(A) An adult protective service client may be admitted for emergency reasons without a current tuberculosis clearance, provided that the process to obtain a clearance is begun within three days after being admitted to the home;

(B) All tuberculosis clearances shall comply with testing procedures established by the department of health;

(5) Be placed and provided ongoing case management services by a home and community-based case management agency; and

(6) Be a recipient of supplemental security income, if eligible for such benefit.

(b) Notwithstanding subsection (a) to the contrary, the department, in consultation with the department of human services, and in its discretion, and considering the past admission history and current client mix of the community care foster family home, may allow two private-pay individuals to be cared for in the same community care foster family home after considering the following relevant factors:

(1) The community care foster family home is certified for three beds;

(2) The operator of the three-bed community care foster family home has had a vacant medicaid bed for at least six months; provided that the operator shall not transfer out a medicaid or private-pay client from the community care foster family home in order to accept a private-pay individual;

(3) The two private-pay individuals are in a relationship with each other as a married couple or in a civil union and one of the private-pay individuals is currently residing in the community care foster family home for at least six months;

(4) The department, in its discretion, determines that no other adult residential care home, expanded adult residential care home, or healthcare facility within the area has an available opening and is capable of providing care to both private-pay individuals;

(5) There are no medicaid recipients seeking placement in the community care foster family home that the married or civil union private-pay individuals are seeking to occupy; and

(6) If the legal relationship of the marriage or civil union of the individuals ceases to exist, including but not limited to as a result of death or divorce, one of the two private-pay beds shall immediately, upon the death or the effective date of divorce, become a medicaid bed. [Eff NOV 13 2018](Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-43 **Client care and services.** (a) The home shall care for not more than two adults at any one time, who are unrelated to the foster family, or if certified by the department for three beds, shall care for not more than three adults, pursuant to the requirements under section 321-481, HRS.

(b) One bed in each home shall be reserved for medicaid recipients, or if certified by the department for three beds, two beds shall be reserved for medicaid recipients, unless the requirements for two private pay individuals under section 321-481, HRS, are met.

(c) Care and services provided to the client shall:

(1) Be appropriate to the age and condition of the client and provided in a home-like environment;

(2) Be based on care directions from the client to the maximum extent possible, with monitoring by the case management agency when the client is not capable of providing care directions;

(3) Be based on the caregiver following a service plan for addressing the client's needs. The RN case manager

may delegate client care and services as provided in chapter 16-89-100;

(4) Include the provision of personal care, homemaker, and respite services as appropriate;

(5) Include the caregiver observing the following provisions of care:

(A) Appropriate, safe techniques, and infection control procedures; and

(B) Encouragement of client independence as much as possible; and

(6) Include recreation and social activities, which shall:

(A) Be arranged and provided, in accordance with the service plan, in or outside the home according to the client's interests, needs, and capabilities; and

(B) Include access by the client to radio, television, telephone, internet. [Eff NOV 13 2014] (Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-44 **Client transfer and discharge.** (a) The transfer and discharge of the client may occur when:

(1) The home is unable to meet the needs of the client;

(2) The primary caregiver and the client notify the case management agency of intended transfers or discharges;

(3) A minimum of three weeks advance notice is given prior to any transfer or discharge to:

(A) The home and the case manager, when the transfer or discharge is initiated by the client or the client's legal representative; or

(B) The client and the client's legal representative, when the transfer or discharge is

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initiated by the case management agency or the home;

(4) Three weeks advance notice shall not be required:

(A) For emergency transfers or discharges;

(B) When the transfer or discharge is mutually agreed upon by the client or the client's legal representative, the home, and the case manager; and

(C) When a transfer is required because a home's certificate has been revoked.

(b) All transfers and discharges will be coordinated with the client, the client's legal representative, if applicable, the case management agency, and the home.

(c) The home caregivers shall cooperate with the case management agency and the department when immediate removal of the client is necessary.

(d) The immediate removal of the client shall be ordered when the case management agency or the department determines there is imminent danger to the life, health, safety, or welfare of the client.

(e) When the client is relocated, the home caregivers shall not obstruct the relocation process and shall cooperate with the appropriate case management agencies in the relocation process. Such cooperation shall include but not be limited to:

(1) Identifying and preparing for removal of the medications, insurance documents, clothing, safeguarded personal funds, valuables, and all other belongings of the client; and

(2) Providing access to the client's file during relocation and return of the file to the case management agency upon relocation.

(f) A home that will voluntarily close must notify the department in writing ninety days prior to the voluntary closure. [Eff NOV 13 2018] (Auth: HRS §§321-481, 321-483,

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321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-45 **Grievance.** The community care foster family home shall have policies and procedures by and through which a client may present grievances about the operation or services of the home. The policies shall include a provision that a client may choose to present any grievance directly to the department of health. The home shall:

(1) Inform the client or the client's legal representative of the grievance policies and procedures and the right to appeal in a grievance situation;

(2) Provide a written copy of the grievance policies and procedures to the client or the client's legal representative, which includes the names and telephone numbers of the individuals who shall be contacted in order to report a grievance; and

(3) Obtain signed acknowledgments from the client or the client's legal representative that the grievance policies and procedures were reviewed. [Eff NOV 13 2018](Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-46 **Fire safety.** (a) The home shall conduct, document, and maintain a record, in the home, of unannounced fire drills at different times of the day, evening, and night. Fire drills shall be conducted at least monthly under varied conditions and shall include the testing of smoke detectors.

(b) The home shall assure that:

(1) The client who is bed bound or unable to make independent decisions about individual safety shall have a designated person available at all times capable of evacuating the client; and

(2) All caregivers have been trained to implement appropriate emergency procedures

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in the event of a fire. [Eff NOV 13 2018] (Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-47 **Medication and nutrition.** (a) A licensed practical nurse or a registered nurse shall administer medications that are to be injected, unless physician orders permit a client to self-inject. The registered nurse may delegate the administration of medication as provided in chapter 16-89, section 16-89-100.

(b) The caregivers shall obtain training, relevant information, and regular monitoring from the client's physician, a home health agency, as defined in chapter 11-97, or a Registered Nurse for all medication that the client requires.

(c) Medication errors and drug side effects shall be reported immediately to the client's physician, and the case management agency shall be notified within twenty-four hours of such occurrences, as required under section 11-800-50(b). The caregivers shall document these events and the action taken in the client's progress notes.

(d) Use of physical or chemical restraints shall be:

(1) By order of a physician;

(2) Reflected in the client's service plan; and

(3) Based on an assessment that includes the consideration of less restrictive restraint alternatives.

(e) The caregivers shall obtain specific instructions and training regarding special feeding needs of clients from a person who is registered, certified, or licensed to provide the instructions and training. [Eff NOV 13 2018] (Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-48 **Client account.** (a) The

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home shall maintain a written accounting of the client's personal funds received and expended on the client's behalf by the home.

(b) Personal funds and valuables of the client handled by the home for safekeeping shall not be:

(1) Commingled with those of the home, the primary or substitute caregivers, other household members, or other clients; or

(2) Used as the home funds or petty cash. [Eff NOV 13 2018](Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-49 **Physical environment.** (a) The home shall include:

(1) Bathrooms with non-slip surfaces in the tubs and or showers, and toilets adjacent or easily accessible to sleeping rooms;

(2) Grab bars in bath and toilet rooms used by the client, as appropriate;

(3) A common living area, which is adequate for socialization and the recreational needs of the client;

(4) Wheelchair accessibility to sleeping rooms, bathrooms, common areas and exits, as appropriate;

(5) An operating Underwriters Laboratory approved smoke detector and fire extinguisher in appropriate locations; and

(6) A means of unobstructed travel from the client's bedroom to the outside of the dwelling at street or ground level.

(b) Client bedrooms shall:

(1) Have a bedside curtain or screen to ensure privacy when a room is shared by the client and another person;

(2) Be limited to two clients, both of whom shall consent to the arrangement; and

(3) Be in close proximity to the primary

or substitute caregiver for timely intervention for nighttime needs or emergencies, or be equipped with a call bell, intercom, or monitoring device approved by the case management agency.

(c) Housekeeping requirements shall include the following:

(1) The primary or substitute caregiver shall follow appropriate preventative maintenance procedures for equipment and devices used in the care of clients;

(2) The primary or substitute caregiver shall follow infection control procedures and proper procedures for disinfecting equipment and devices used in the care of clients; and

(3) The home shall be maintained in a clean, well ventilated, adequately lighted, and safe manner.

(d) When there are intended changes to the home, the department shall be notified prior to the changes occurring.

(1) The certificate holder shall ensure that the minimum physical environment requirements as specified in this section are met; and

(2) A new home assessment is required when changes occur to the structure or address of the home.

(e) The home shall have policies regarding smoking on the property that:

(1) Prohibit smoking in enclosed living and recreational areas used by clients; and

(2) Identify designated areas that may be used for purposes of smoking.[Eff NOV 13 2018](Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-50 **Quality assurance.** (a) The home shall have documented internal emergency management policies and procedures for emergency situations that may affect the

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client, such as but not limited to:

(1) Sudden illness or accident;
(2) Death;
(3) Violent acts or abuse;
(4) Natural disasters;
(5) Fire; and
(6) Power and telephone outage.

(b) Adverse events shall be reported.

(1) A verbal report to the case management agency responsible for the client shall be made within twenty-four hours of the occurrence; and

(2) A written report shall be sent to the case management agency within seventy-two hours, excluding weekends and holidays, following the verbal report required under paragraph (1).

(c) The home shall inform the case management agency of any changes occurring in the client's behavior and functioning that may necessitate a change and update of the client's service plan. A verbal report shall be made to the case management agency serving the client within twenty-four hours of the occurrence of any of the following:

(1) Changes in the client's condition requiring emergency treatment;
(2) Hospitalization of the client;
(3) Environmental changes or disasters affecting the delivery of services to client; and
(4) Death of the client.

If any of the preceding events also constitutes an adverse event, the requirements of subsection (b) shall be met.

(d) The home shall cooperate at all times with the case management agency serving a client that it has placed in the home. Such cooperation shall include providing the case management agency access to the home and the client at any time requested by the case management agency.

(e) The home shall be subject to investigation by the department at any time.

The investigation may be announced or unannounced and may include but is not limited to, one or more of the following:

(1) Reviews of administrative, fiscal, personnel, and client records;
(2) Inspection of service sites;
(3) Service site visits to interview clients and to observe personnel and subcontractors providing services; and
(4) Interviews with community care foster family home caregivers and other adults in the home, and service subcontractors. [Eff NOV 13 2018] (Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-51 **Insurance requirements**. (a) The home shall obtain, maintain, and keep in force through an insurance company authorized to do business in the State, or that meets the requirements of section 431:8- 301, HRS, if using an insurance company not authorized to do business in the State, the following liability insurance, as appropriate:

(1) General;
(2) Automobile; and
(3) Errors and omissions.

(b) All policies shall contain an endorsement that such insurance may not be canceled except upon thirty-calendar-days written notice to the State. [Eff NOV 1 . 2018] (Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-52 **Fiscal requirements**. (a) The home shall have adequate resources to finance its services in accordance with this chapter.

(b) The home shall maintain fiscal records, documents and other evidence that sufficiently and properly reflect all funds received, and all direct and indirect expenditures of any nature related to the home's operation.

(c) All fiscal related material shall be maintained by the home in accordance with generally accepted accounting principles, in form conducive to sound and efficient fiscal management and audit. [Eff NOV 13 2018] (Auth: HRS §§321-481, 321-483, 321-485, 346-14)

(Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-53 **Client rights.** (a) Written policies and procedures regarding the rights of the client during the client's stay in the home shall be established and a copy shall be provided to the client, or the client's legal representative, and made available to the public when requested.

(b) These policies and procedures relating to the home shall provide that each client in the home shall:

(1) Be fully informed, prior to or at the time of admission, of these rights and of all rules governing the client's conduct in the home. There shall be documentation signed by the client or the client's legal representative that this procedure has been carried out;

(2) Have the right to reside in the home of the client's choice;

(3) Be fully informed, prior to or at the time of admission, and during the client's stay, of services available in or through the home and related charges;

(4) Be given a minimum of three weeks advance notice of transfers or discharges, except in emergencies;

(5) Be encouraged and assisted to exercise the client's rights, including the client's grievance rights, and to recommend changes in policies and services to the primary caregiver or outside representatives of the client's choice, free from restraint, interference, coercion, discrimination, or retaliation.

(A) The client shall be assisted in contacting individuals or agencies of the client's choice by the case management agency; and

(B) The client may present grievances to the department;

(6) Be fully informed of the conditions under

which the home may manage the client's personal financial affairs;

(7) Not be humiliated, harassed, or threatened, and be free from physical and chemical restraints. Physical and chemical restraints may be used as specified in section 11-800-47(d);

(8) Have the client's personal and medical records kept confidential;

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

(10) Not be required to perform services for the home unless agreed to by the client and documented;

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

(12) Have the right to meet with and participate in activities of social, religious, and community groups at the client's discretion;

(13) Retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other clients;

(14) If married, be assured of privacy for visits by the spouse and, if both are clients in the home, be permitted to share a room, with written consent of both clients;

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

(16) Shall not have dietary restrictions used as punishment; and

(17) Have a right to be free from abuse.

[Eff NOV 13 2015 2/11/02, am and comp 2/7/05](Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§11-800-54 **Records.** (a) Each home shall maintain an administrative notebook including but not limited to:

(1) Emergency procedures and an evacuation map;

(2) Appropriate program policies and procedures; and

(3) A list of applicable community resources.

(b) The home shall maintain separate notebooks for each client in a manner that ensures legibility, order, and timely signing and dating of each entry in black ink. Each client notebook shall be a permanent record and shall be kept in detail to:

(1) Permit effective professional review by the case management agency and the department; and

(2) Provide information for necessary follow-up care for the client.

(c) The content of each client notebook shall be consistent with standards established by the department and shall contain:

(1) Client's vital information;

(2) Client's current individual service plan, and when appropriate, a transportation plan approved by the department;

(3) Current copies of the client's physician's orders;

(4) Client's emergency management procedures;

(5) Medication schedule checklist;

(6) Daily documentation of the provision of services through personal care or skilled nursing daily check list, RN and social worker monitoring flow sheets, client observation sheets, and significant events that may impact the life, health, safety, or welfare of, or the provision of services to the client, including but not limited to adverse events;

(7) Expenditure records; and

(8) Personal inventory.

(d) All client records and reports are confidential, as provided in section 11-800-16, and shall not be released without the

written consent of the client or the client's legal representative, or the case management agency, as applicable. The case management agency shall be informed of any request for the release of information concerning clients and shall retain a copy of the client's written consent to release information.

(e) When a client leaves a home, all records and reports kept by the home shall be given to the case management agency. [Eff NOV 15 2018] (Auth: HRS §§321-481, 321-483, 321-485, 346-14) (Imp: HRS §§321-481, 321-483, 321-485, 346-14)

§§11-800-55 to 11-800-58 (Reserved).

DEPARTMENT OF HEALTH

Chapter 11-800, Hawaii Administrative Rules, on the Summary Page dated NOV 13 2018, was adopted on NOV 13 2018, following a public hearing held on July 20, 2018, after public notice was given in the Honolulu Star Advertiser, West Hawaii Today, Hawaii Tribune Herald, The Garden Island, and Maui News on June 17, 2018.

The adoption of chapter 11-800 shall take effect ten days after filing with the Office of the Lieutenant Governor.

BRUCE S. ANDERSON, Ph.D.
Director
Department of Health

APPROVED AS TO FORM:

Deputy Attorney General

DAVID Y. IGE
Governor
State of Hawaii

Date: 11-13-2018

Filed

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LIEUTENANT GOVERNOR'S OFFICE

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