

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 4

VOCATIONAL REHABILITATION

CHAPTER 400.1

VOCATIONAL REHABILITATION ADMINISTRATION

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Historical note: Chapter 17-400.1 is based substantially upon chapter 17-400. [Eff 11/5/81; am and comp 4/22/94; am 9/25/00; R [AUG 13 2007](#) ]

§17-400.1-1 Objectives. The objectives of the rules of the vocational rehabilitation and services for the blind division are to implement the requirements of chapters 347 and 348, Hawaii Revised Statutes, chapter 6A, 20 United States Code, and chapter 16, 29 United States Code, for administering services for the blind and visually impaired including the vending facilities for the blind program, and a statewide, comprehensive, coordinated, effective, efficient, and accountable program of vocational rehabilitation (VR) services, which is an integral part of a statewide workforce investment system and is designed to assess, plan, develop and provide VR services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice, so that they may prepare for and engage in gainful employment. [Eff [AUG 13 2007](#)] (Auth: HRS §§347-3, 347-4, 348-3, 348-6; 29 U.S.C. §720; 34 C.F.R. §361.1) (Imp: HRS §§347-3, 347-4, 348-3, 348-6; 29 U.S.C. §720; 34 C.F.R. §361.1)

§17-400.1-2 Sole state agency. The department of human services, hereafter referred to as the department, shall be the sole state agency to administer the VR services program. The vocational rehabilitation and services for the blind division, hereafter referred to as the division, is the designated state unit of the department to administer the VR services program in the State, including services for individuals who are blind and visually impaired, and disability determination under the Social Security Act.

All decisions affecting the eligibility and priority for services of eligible individuals, the determination of VR needs, and the nature and scope of

VR services to be provided, shall be made by the division. This responsibility shall not be delegated to any other agency or individual.

The administrator of the division, hereafter referred to as division administrator, shall have the authority and responsibility to establish policies on eligibility requirement, determination of VR needs, and on the standards governing the quality and quantity of services to be provided. These policies shall be administered uniformly and expeditiously to assure prompt handling of referrals and applications in the provision of services to eligible individuals statewide. [Eff AUG 13 2007 ] (Auth: HRS §§347-3, 347-4, 348-3, 348-6; 29 U.S.C. §§705(8)(A) and (B), 721(a)(2); 34 C.F.R. §361.5) (Imp: HRS §§347-3, 347-4, 348-3, 348-6; 29 U.S.C. §§705(8)(A) and (B), 721(a)(2); 34 C.F.R. §361.5(13) and (14))

§17-400.1-3 State plan. (a) The department must submit to the U.S. Secretary of Education, hereafter referred to as Secretary, and obtain approval of, a State plan that contains a description of the State's VR services program, the plans and policies (rules) to be followed in carrying out the program, and other information requested by the Secretary, in accordance with 34 C.F.R. section 361.10 and the requirements of this section.

(b) The department may choose to submit the State plan for VR services as part of the State unified plan under section 501 of the Workforce Investment Act of 1998. The portion of the State unified plan that includes the State plan for VR services must meet the State plan requirements in this section.

(c) Prior to the adoption of any substantive rules governing the provision of VR services under the State plan, including making any substantive amendment to those rules, the State plan must assure that the department conducts public meetings throughout the State to provide the public, including individuals with disabilities, an opportunity to comment on the

rules, in accordance with the following requirements:

- (1) The State plan must assure that the department provides appropriate and sufficient notice throughout the State of the meetings in accordance with State law governing public meetings.
- (2) The State plan must provide a summary of the input of the State Rehabilitation Council (Council) into the State plan and any amendments to the State plan, including:
  - (A) Recommendations from the annual report of the Council;
  - (B) The Council's review and analysis of the effectiveness of, and consumer satisfaction with:
    - (i) The functions performed by the department;
    - (ii) The VR services provided by State agencies and other public and private entities responsible for providing VR services to individuals with disabilities; and
    - (iii) The employment outcomes achieved by eligible individuals receiving services including the availability of health and other employment benefits in connection with those employment outcomes;
  - (C) Other reports prepared by the Council; and
  - (D) The division's response to the input and recommendations, including explanations of reasons for rejecting any input or recommendations of the Council.
- (3) The State plan must assure that the department actively consults with the director of the Client Assistance Program, the State Rehabilitation Council, and, as appropriate, Indian tribes, tribal organizations, and native Hawaiian

organizations on its rules governing the provision of VR services under the State plan.

- (4) The division must provide to the public, through appropriate modes of communication:
  - (A) Notices of the public meetings;
  - (B) Any materials furnished prior to or during the public meetings; and
  - (C) The rules governing the provision of VR services under the State plan.

(d) The State plan remains in effect, subject to the submission of modifications the division determines to be necessary or the Secretary may require, based on a change in State policy, a change in Federal law, including regulations, an interpretation of the Rehabilitation Act of 1973, as amended, hereafter referred to as the Act, by a Federal court or the highest court of the State, or a finding by the Secretary, of State noncompliance with the requirements of the Act, or Federal regulations.

(e) The division must submit the State plan for approval:

- (1) To the Secretary on the same date that the State submits a State plan relating to the statewide workforce investment system under section 112 of the Workforce Investment Act of 1998;
- (2) As part of the State unified plan submitted under section 501 of the Workforce Investment Act of 1998; or
- (3) To the Secretary on the same date that the State submits a State unified plan under section 501 of the Workforce Investment Act that does not include the State plan under this section.

(f) The division must make the following annual submissions to the Secretary for approval:

- (1) Revisions to the State plan in accordance with subsection (d) and 34 C.F.R. 76.140.
- (2) Annual updates of the information required under 34 C.F.R. sections 361.18, 361.29, and

361.35 and any other updates of the information required under this section that are requested by the Secretary.

- (3) The division is not required to submit rules or descriptions required under this section, that have been previously submitted to the Secretary and that demonstrate that the State meets the requirements of this section, including any rules, or descriptions submitted under this section that are in effect on August 6, 1998.

(g) The Secretary approves any State plan and any revisions to the State plan that conform to the requirements of this section and section 101(a) of the Act.

(h) The Secretary disapproves any State plan that does not conform to the requirements of this section and section 101(a) of the Act, and that is not in accordance with the following procedures:

- (1) Prior to disapproving any State plan, the Secretary attempts to resolve disputes informally with State officials.
- (2) If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the department of the intention to disapprove the State plan and of the opportunity for a hearing.
- (3) If the department requests a hearing, the Secretary designates one or more individuals, either from the U.S. Department of Education or elsewhere, not responsible for or connected with the administration of the State VR services program, to conduct a hearing in accordance with the provisions of 34 C.F.R. part 81, subpart A.
- (4) The hearing officer issues an initial decision in accordance with 34 C.F.R. 81.41.
- (5) The department may seek the Secretary's review of the initial decision in accordance with 34 C.F.R. part 81.

- (6) The Secretary reviews the initial decision in accordance with 34 C.F.R. 81.43.
- (7) The final decision of the U.S. Department of Education is made in accordance with 34 C.F.R. 81.44.
- (8) The department may appeal the Secretary's decision to disapprove the State plan by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§721, 727; 34 C.F.R. §§361.10, 361.20) (Imp: HRS §347-4, 348-3, 348-6; 29 U.S.C. §721, 727; 34 C.F.R. §§361.10, 361.20)

§17-400.1-4 Nondiscrimination. (a) Services shall be administered without regard to age, gender, race, color, national origin, religion or political beliefs.

(b) No qualified person with a disability shall be denied the benefits of, be excluded from participating in, or otherwise be subjected to discrimination solely on the basis of the person's disability, under the division's programs. (Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §794; 34 C.F.R. §361.42(c)) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §794; 34 C.F.R. §361.42(c))

§17-400.1-5 Right to due process. (a) Any applicant or eligible individual or, as appropriate, individual's representative, who is dissatisfied with any decision or action taken by personnel of the division that affects the provision of VR services or general services for the blind, may request, or, if appropriate, may request through the individual's representative, for a timely review of that determination, in accordance with this section.

- (1) The request for review from an applicant or eligible individual or, as appropriate, individual's representative must be made within 90 days of the decision or action taken by the division. If the 90<sup>th</sup> day falls on a weekend or holiday, the 90<sup>th</sup> day shall be the working day following the weekend or holiday.
- (2) The date of request is the date the division receives a signed request for review from the applicant or eligible individual or, as appropriate, individual's representative.
- (3) The request must be made to the division administrator, in writing.
  - (A) The division shall assist the applicant or eligible individual in documenting the request by use of the division's preprinted form letter.
  - (B) Other written requests for review, containing the required information specified in paragraph (4) by an applicant or eligible individual or, as appropriate, individual's representative, shall be sufficient to initiate the review process.
- (4) The request for review shall contain the nature of the complaint, the agency staff involved, the alleged action or decision in question, a statement, if applicable, that the applicant or eligible individual or, as appropriate, individual's representative wants to pursue mediation prior to a formal due process hearing, and the signature of the applicant or eligible individual or, as appropriate, individual's representative.
- (5) The request for review shall be acknowledged by the division administrator within two weeks of its receipt by the division.
- (6) A copy of the request for review shall be filed in the division's record of services



for the individual.

(b) The division shall provide each applicant or eligible individual or, as appropriate, the individual's representative, notice of:

- (1) The right to obtain review of any determinations made by personnel of the division that affect the provision of VR services through an impartial due process hearing in accordance with section 17-400.1-7;
- (2) The right to pursue mediation with respect to determinations made by personnel of the division that affect the provision of VR services, prior to hearing, in accordance with the mediation process under section 17-400.1-6;
- (3) The names and addresses of individuals with whom requests for mediation or due process hearings may be filed;
- (4) The manner in which a mediator may be selected consistent with the requirements of section 17-400.1-6(a)(7), or the manner in which an impartial hearing officer may be selected consistent with the requirements of section 17-400.1-7(a)(3)(B); and
- (5) The availability of the Client Assistance Program of the Hawaii Disability Rights Center to assist the applicant or eligible individual during mediation sessions or impartial due process hearings.

(c) Such notification shall be provided in writing:

- (1) At the time the individual applies for vocational rehabilitation services under section 17-401.1-4;
- (2) At the time the individual is assigned to a category in the division's order of selection, when the division has established an order of selection under section 17-401.1-5;
- (3) At the time the individualized plan for

- employment (IPE) is developed; and
- (4) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

(d) Applicants who are found ineligible for VR services and previously eligible individuals who are determined to be no longer eligible for VR services pursuant to section 17-401.1-8, are permitted to challenge the determinations of ineligibility under the procedures described in this section. [Eff [AUG 13 2007](#)] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §722(c); 34 C.F.R. §361.57) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §722; 34 C.F.R. §361.57)

§17-400.1-6 Mediation. (a) The following mediation procedures shall be followed whenever an applicant or eligible individual or, as appropriate, individual's representative requests mediation prior to a hearing, to resolve the individual's request for review of the division's decision or action taken concerning the provision of vocational rehabilitation services, or the provision of general services for the blind.

- (1) Participation in the mediation process shall be voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the division.
- (2) The mediation process shall not be used to deny or delay the applicant's or eligible individual's right to pursue resolution of the dispute through hearing, or any other rights provided under title I of the Act.
- (3) The mediation process must be conducted within the same 60-day time period allowed for conducting the formal hearing to resolve the request for review. However, the mediation process must allow time for holding the formal hearing by the 60<sup>th</sup> day, should the parties fail to reach agreement through mediation, unless the parties

- agree to a specific extension of time to conduct the hearing.
- (4) At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event the mediation is terminated, either party may pursue resolution through hearing.
  - (5) The mediation process shall be conducted by a qualified and impartial mediator defined as follows:
    - (A) Is not an employee of a public agency other than an employee of a public agency who is an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education (an individual is not considered to be an employee of the department or division solely because the individual is paid by the department or division to serve as a mediator);
    - (B) Is not a member of the State Rehabilitation Council for the division;
    - (C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;
    - (D) Is knowledgeable of the VR services program and the applicable Federal and State laws, regulations, and policies governing the provision of VR services;
    - (E) Has been trained in effective mediation techniques consistent with any State-approved or State-recognized certification, licensing, registration, or other requirements; and
    - (F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

- (6) The division shall maintain a list of qualified and impartial mediators.
- (7) The applicant or eligible individual or, as appropriate, individual's representative, must select a first and second choice of impartial mediators from the list of qualified and impartial mediators:
  - (A) By a random method, from numbered chips corresponding to the names on the division's list of qualified and impartial mediators; or
  - (B) By name, in the order of preference of the individual or individual's representative.
- (8) The individual or individual's representative, shall be informed that the purpose for naming a second choice is to avoid delay should the mediator of first choice not be available, and that the individual or individual's representative will be provided opportunity for further selection if the mediator of first and second choice is not available, as soon as this becomes known to the division.
- (9) The individual's or individual's representative's selection shall be documented on the division's form for selection of impartial mediator and filed in the division's record of services for the individual.
  - (A) A copy of the completed selection form containing the selections shall be given to the individual or individual's representative as early as possible.
  - (B) A copy of the completed selection form and other necessary documents shall be immediately forwarded to the division administrator.
- (10) An applicant or eligible individual or, as appropriate, the individual's representative shall be provided an opportunity to submit

- during mediation sessions evidence and other information that supports the applicant's or eligible individual's position.
- (11) An applicant or eligible individual shall be allowed to be represented during mediation sessions by counsel or other advocate selected by the applicant or eligible individual.
  - (12) Interpreter or reader services shall be arranged by the division for an applicant or eligible individual or, as appropriate, individual's representative who is not English-speaking or who is deaf, blind, or deaf-blind.
  - (13) A written position statement explaining the reasons for the division's action or decision, and citing the authority or the specific sections of the State plan, statutes, rules or policy on which the decision was based, shall be submitted to the mediator, and the applicant or eligible individual or, as appropriate, individual's representative in advance of the mediation. A copy of the statement shall be filed in the division's record of services for the applicant or eligible individual.
  - (14) The division may not institute a suspension, reduction, or termination of VR services being provided to an applicant or eligible individual, including evaluation and assessment services and IPE development, pending a resolution through mediation under this section, unless:
    - (A) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction or termination of services; or
    - (B) The division has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the

individual or the individual's representative.

- (15) Notice of mediation shall be issued by the mediator in writing and sent by certified mail with return receipt requested at least 15 days before the first mediation session. The notice shall include a statement of:
- (A) The date, time, and place of the first mediation session;
  - (B) The legal authority under which the mediation is to be held;
  - (C) The particular sections of the statutes and rules involved;
  - (D) An explicit statement in plain language of the issues involved and the facts alleged by the division in support thereof, provided that if the division is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved; and
  - (E) The fact that the applicant or eligible individual is allowed to be represented by counsel or other advocate if the applicant or eligible individual so chooses.

- (16) The division may pay for transportation for the applicant or eligible individual to and from the place of the mediation when the individual is unable to meet such costs and requests for payment by the division.

(b) The division shall pay for the cost of the mediation process but is not required to pay for any costs related to the representative of an applicant or eligible individual authorized under paragraph (a)(11).

(c) The qualified and impartial mediator shall be compensated for conducting the mediation at a rate determined by the division, and shall conduct the mediation in accordance with the following procedures

and shall prescribe additional procedures as the circumstances warrant to insure fair and orderly conduct of the mediation:

- (1) The mediator shall preside over the entire proceedings and shall assist the parties in reaching agreement based on the provisions of the approved State plan, the Act, Federal VR regulations, and applicable State rules or policies.
- (2) Each session shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.
- (3) Any decision to postpone or extend the mediation at the request of either party or both parties shall be made by the mediator and must allow for implementing the formal hearing procedures within the 60-day time period allowed for resolving the request for review should the parties fail to reach agreement through mediation, unless the parties agree to a specific extension of time. The 60-day time period begins from the date the division receives the individual's request for review and includes the period of time spent in mediation.
- (4) The mediator shall ensure that all discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding, by requiring that both parties to the mediation sign a confidentiality pledge on a preprinted form prepared by the division, prior to the commencement of the mediation.
- (5) The mediator shall decide the merits of any adjournment and shall conclude the mediation when satisfied that all pertinent and relevant factors needed to reach an agreement have been presented and examined.
- (6) If mediation is unsuccessful in resolving the disputes, the mediator shall terminate

- the mediation process and submit a written summary of the mediation, including the reasons for the termination to the parties.
- (7) If mediation is successful, the mediator shall prepare and share with the parties to the dispute, a written summary of the agreements reached by the parties. The mediator may use the division's pre-printed form or other format. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §722(c); 34 C.F.R. §361.57) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §722 (c); 34 C.F.R. §361.57)

§17-400.1-7 Hearing. (a) The following hearing procedures shall be followed whenever an applicant or eligible individual or, as appropriate, individual's representative requests for a review of a determination made by personnel of the division that affects the provision of VR services or general services for the blind to the individual, unless informal resolution or a mediation agreement is achieved prior to hearing:

- (1) The hearing (formal due process hearing) must be held within 60 days of the date of the receipt of an applicant's or eligible individual's or, as appropriate, individual's representative's request for review, unless informal resolution or a mediation agreement is achieved prior to the 60<sup>th</sup> day of the request for review, or the parties agree to a specific extension of time.
- (2) The hearing shall be conducted by a qualified and impartial hearing officer defined as follows:
- (A) Is not an employee of a public agency other than an employee of a public agency who is an administrative law judge, hearing examiner, or employee of an institution of higher education;



- (B) Is not a member of the State Rehabilitation Council for the division;
  - (C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;
  - (D) Has knowledge of the delivery of VR services, the State plan under section 101 of the Act, and the Federal and State rules governing the provision of VR services;
  - (E) Has received training with respect to the performance of official duties; and
  - (F) Has no personal or financial interest that would be in conflict with the objectivity of the individual.
- (3) The division shall maintain a list of qualified and impartial hearing officers.
- (A) The list shall be jointly identified by the division and members of the State Rehabilitation Council.
  - (B) The applicant or eligible individual or, as appropriate, individual's representative, must select a first and second choice of impartial hearing officers from the list of qualified and impartial hearing officers:
    - (i) By a random method, from numbered chips corresponding to the names on the division's list of qualified and impartial hearing officers; or
    - (ii) By name, from the list of qualified and impartial hearing officers, in the order of preference of the individual or individual's representative.
  - (C) The individual or individual's representative shall be informed that the purpose for naming a second choice is to avoid delay should the

- impartial hearing officer of first choice not be available, and that the individual or individual's representative will be provided opportunity for further selection if the hearing officer of first and second choice is not available.
- (D) The individual's or individual's representative's selection shall be documented on the division's form for selection of impartial hearing officer, and filed in the division's record of services for the individual. A copy shall be given to the individual or individual's representative as early as possible.
  - (E) A copy of the completed selection form and other necessary documents shall be immediately forwarded to the division administrator.
- (4) An applicant or eligible individual or, as appropriate, the individual's representative shall be provided opportunity to submit during the hearing, evidence and other information that supports the applicant's or eligible individual's position. However, discussions that occurred during the mediation process described in section 17-400.1-6 shall be confidential and may not be used as evidence in any due process hearing or civil proceeding pursuant to section 17-400.1-6 (c)(4).
  - (5) An applicant or eligible individual shall be allowed to be represented during the hearing by counsel or other advocate selected by the applicant or eligible individual. In addition, the applicant or eligible individual or, as appropriate, the individual's representative must be given the opportunity to present witnesses during the hearing and to examine all witnesses

- and other relevant sources of information and evidence.
- (6) Interpreter or reader services shall be arranged by the division for an applicant or eligible individual or, as appropriate, individual's representative, who is non English-speaking or who is deaf, blind, or deaf-blind.
  - (7) The division may pay for transportation of the individual to and from the place of the hearing when the individual is unable to meet such costs and requests for payment by the division, but the division is not required to pay for any costs related to the representative authorized under paragraph (5).
  - (8) A written position statement explaining the reasons for the division's action or decision, and citing the authority or the specific sections of the State plan, statutes, rules or policy on which the decision was based, shall be submitted to the impartial hearing officer and the applicant or eligible individual or, as appropriate, individual's representative in advance of the hearing. A copy of this statement shall be filed in the division's record of services for the individual.
  - (9) The division may not institute a suspension, reduction, or termination of VR services being provided to an applicant or eligible individual, including evaluation and assessment services and IPE development, pending a resolution through hearing under this section, unless:
    - (A) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or
    - (B) The division has evidence that the services have been obtained through

misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

- (10) Notice of hearing shall be issued by the impartial hearing officer in writing and sent by certified mail with return receipt requested at least 15 days before the hearing. The notice shall include a statement of:
  - (A) The date, time, place and nature of hearing;
  - (B) The legal authority under which the hearing is to be held;
  - (C) The particular sections of the statutes and rules involved;
  - (D) An explicit statement in plain language of the issues involved and the facts alleged by the division in support thereof, provided that the initial notice may be limited to a statement of the issues involved if the division is unable to state such issues and facts in detail at the time the notice is served, and furnishes a bill of particulars thereafter upon application; and
  - (E) The fact that any party may retain counsel if the party so desires and the fact that the individual is allowed to be represented by counsel or other appropriate advocate.
- (11) The hearing may be postponed at the request of the individual or, as appropriate, individual's representative, or the division administrator. Reasonable extension of time for good cause shown at the request of a party or at the request of both parties shall be allowed.
- (12) A hearing may be canceled only if the following occurs:

- (A) The individual or, as appropriate, individual's representative, fails to appear.
- (i) The appropriate branch administrator shall determine cause for failure to appear.
  - (ii) If for good cause (e.g. unable to call or appear due to emergency hospitalization on the day of the hearing), and the individual or individual's representative shows continued desire and interest for a hearing, the branch administrator shall submit a written decision to the impartial hearing officer to allow for rescheduling of the hearing. The hearing shall be rescheduled and conducted by the impartial hearing officer within three weeks following receipt of the branch administrator's written decision with the understanding of the parties that the three week period shall satisfy any need for specific extension of time beyond the required 60-day time period for conducting the hearing.
  - (iii) If without good cause (e.g. could have notified the hearing officer or division of need to reschedule but failed to do so, and failed to appear), the individual's or, as appropriate, individual's representative's failure to appear shall be treated as a final decision to terminate the request for review.
  - (iv) The branch administrator shall inform the individual or, as appropriate, individual's

- representative, the division administrator, and the impartial hearing officer of the branch administrator's decision and reasons, in writing.
- (v) A copy of the branch administrator's decision shall be filed in the division's record of services for the individual.
- (B) The individual or, as appropriate, individual's representative requests for cancellation of the hearing.
- (i) The individual or, as appropriate, individual's representative's request for cancellation shall be acknowledged in writing by the branch administrator.
  - (ii) The branch administrator shall also notify the individual or, as appropriate, individual's representative of the individual's right to reactivate the request for hearing if the individual wishes within 30 days of the date of the notice of cancellation.
- (C) Corrective action, by the division, is taken before the hearing and agreed to by the individual or, as appropriate, individual's representative.
- (i) The branch administrator shall seek a cancellation with the applicant or eligible individual or, as appropriate, individual's representative and acknowledge the cancellation in writing.
  - (ii) All actions taken and results obtained shall be documented and reported to the division administrator. A copy of the documentation shall be filed in the division's record of services

for the individual.

(b) The impartial hearing officer selected in accordance with subsection (a)(3), shall be compensated for conducting the hearing at a rate determined by the division, and shall preside over the entire proceeding and must:

- (1) Make a decision based on the provisions of the approved State plan, the Act, Federal VR regulations, and applicable State rules and policies that are consistent with Federal requirements; and
- (2) Provide to the individual or, if appropriate, individual's representative and the division administrator, a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing.

(c) The hearing officer's decision is final, except that any party involved in a hearing who is dissatisfied with the hearing officer's decision may bring a civil action under subsection (d).

- (1) If a party brings a civil action under subsection (d) to challenge the final decision of a hearing officer, the final decision of the hearing officer must be implemented pending review by the court.
- (2) All matters relating to the hearing shall be heard and disposed of within 90 days from the date of the request for review, except in those cases where:
  - (A) The individual withdraws or abandons the request for a hearing; or
  - (B) The matter is postponed for good cause. The time limit shall be extended only for the period of the continuance.

(d) Any party involved in a hearing who disagrees with the findings and decision of an impartial hearing officer under subsection (c) has a right to bring a civil action with respect to the matter in dispute.

- (1) The action may be brought in any State court

of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

- (2) In any action brought under this subsection, the court:
  - (A) Receives the records related to the hearing;
  - (B) Hears additional evidence at the request of a party to the action; and
  - (C) Grants the relief that the court determines to be appropriate, basing its decision on the preponderance of the evidence. [Eff AUG 13 2007] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §722(c); 34 C.F.R. §361.57) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §722(c); 34 C.F.R. §361.57)

§17-400.1-8 Maintenance of case records. (a) The division shall maintain a record of services (case file, case record) for each applicant and eligible individual. Information in the record of services shall be limited to purposes necessary for the administration of the programs of the division, and in accordance with section 17-401.1-34.

(b) All information contained in the division's record of services for applicants and eligible individuals is confidential and may be released only for purposes necessary for the proper administration of the vocational rehabilitation services and the services for the blind programs, or with the written informed consent of the applicant or eligible individual or, as appropriate, individual's representative, and in accordance with section 17-401.1-35 and other applicable Federal and State laws.

(c) All medical or psychological records in the possession of any physician or psychologist, or medical facility which were obtained by services paid for by the division shall be confidential and shall have the same degree of protection provided in this



section and section 17-401.1-35. [Eff AUG 13 2007]  
 (Auth: HRS §§92F-14, 346-10, 347-11, 348-6; 29 U.S.C. §§709(c), 721(a)(6)(A); 34 C.F.R. §361.38) (Imp: HRS §§92F-14, 346-10, 347-11, 348-6; 29 U.S.C. §§709(c), 721(a)(6)(A); 34 C.F.R. §361.38)

§17-400.1-9 Certification for telephone solicitation. (a) The department shall certify and issue a certificate to persons with disabilities engaging in the solicitation of goods or services by telephone who declare their disabling condition to promote sales, and satisfy the application and certification requirements of this section.

(b) The certificate shall certify that the applicant is impaired by a disability which constitutes a substantial permanent or semi-permanent impairment to employment. The certificate shall be valid for one year (12 months from the date of the certificate) and may be renewed in accordance with subsection (g).

(c) The person so certified at the time of solicitation shall disclose:

- (1) The person's name and vocational rehabilitation certificate number;
- (2) The person's employer's name;
- (3) The amount of remuneration or commission the person will receive from the sale of goods or services; and
- (4) The fact that the person represents a business for profit which is owned by persons who are not disabled or impaired, if such is the fact.

(d) Persons who wish to be certified under this section shall apply, in writing, to the vocational rehabilitation and services for the blind division and submit the following information within 30 calendar days, unless extended for a specific period of time by the division in the event of a national disaster, State emergency, or union strike, which would prevent the applicant or the division from fulfilling this requirement:

- (1) Name, address, telephone;
- (2) Name of firm or employer;
- (3) Statement of request and signature; and
- (4) Written medical reports (medical or psychological or both) substantiating claimed disability and other related information as necessary, completed by licensed physicians or psychologists in cases of mental conditions.

(e) Failure to submit the required information within the 30-day period, or by the end of any specific period of extension allowed by the division, will result in termination of the application.

(f) All applications must be reviewed and be approved or denied by a representative of the division within 60 calendar days of the date the application is received by the division, unless extended for a specific period of time in the event of a natural disaster, State emergency, or union strike, which would prevent the applicant or division from fulfilling review requirements. Failure on the part of the division to complete the review or to approve or deny an application within the 60 calendar day period, or within any specific period of extension determined necessary under this subsection, shall result in an automatic approval of the application. The division shall issue a numbered certificate to the applicant which shall be valid for one year (12 months from the date of the certificate) after which the individual must reapply for certification.

(g) Renewal of certification shall be filed in the same manner as an initial application, and in accordance with the requirements of subsections (d), (e), and (f). Medical reports shall not be required except where the individual's circumstances may indicate one is needed.

(h) Any applicant for initial, reapplication, or renewal certification who is dissatisfied with the division's decision or action taken in reviewing or denying the applicant's application, may file an appeal with the department in accordance with the

general provisions for administrative relief contained in title 17, chapter 2, Hawaii Administrative Rules of the department of human services. [Eff AUG 13 2007 ] (Auth: HRS §§91-13.5, 481B-3) (Imp[: HRS §§91-13.5, 481B-3)

§17-400.1-10 Standards of services. (a) Except as provided in subsection (b), all purchases of services by the division for applicants and eligible individuals shall be authorized in writing by authorized staff of the division either simultaneously with or before purchases.

(b) In an emergency situation, verbal authorization by authorized staff of the division will be permitted if there is prompt documentation and the authorization is confirmed in writing and forwarded to the provider of the services immediately thereafter.

(c) The division shall give preference for in-State services provided that the preference does not deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, and either service would meet the individual's rehabilitation needs, the division shall not be responsible for those costs in excess of the cost of the in-State service.

(d) The division shall not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(e) The division shall make payments to vendors for goods and services authorized by the division, upon certification that the goods and services have been rendered.

(1) Funds shall be expended only as authorized by applicable Federal and State laws, rules, regulations, policies and procedures governing the programs of the division.

(2) Funds shall not be expended for past incurred indebtedness of applicants and eligible individuals.

(f) Amount of payment for goods and services shall be in accordance with established fee schedules.

Where a fee schedule does not exist, payment shall be at the lowest cost for comparable goods and services.

(g) Vendors from whom personal services and materials are to be purchased shall:

- (1) Possess a State general excise license.
- (2) Meet applicable State accreditation, licensing or certification requirements.
- (3) Have established and maintained a place of business with the intent of being permanent.

[Eff AUG 13 2007 ] (Auth: HRS §§103D, 347-4, 348-3; 29 U.S.C. §§709(c), 721(a)(6); 34 C.F.R. §361.50) (Imp: HRS §§103D, 347-4, 348-3; 29 U.S.C. §§709(c), 721(a)(6); 34 C.F.R. §361.50)

§17-400.1-11 Administration of funds. (a) The division administrator shall be responsible for all funds under the jurisdiction of the division, in all of its programs and organizational subdivisions, regardless of their source or designation.

(b) Any charge for services not covered by approved fee schedules shall be authorized by authorized staff of the division in accordance with this section, section 17-400.1-10 and applicable State fiscal policies and procedures governing purchase of services.

(c) Payment for services must be authorized in writing, by authorized staff of the division either simultaneously with or before the services are rendered. In an emergency situation, verbal authorization by authorized staff of the division will be permitted if there is prompt documentation and the authorization is confirmed in writing and forwarded to the provider of the services immediately thereafter.

(d) Services shall be provided by qualified vendors who meet the requirements of section 17-400.1-10(g) and are duly licensed to practice their profession in accordance with State licensure laws.

- (1) Physicians must be licensed by the State board of medical examiners;
- (2) Specialists must be licensed to practice in the State and certified by the American

- board in the particular medical specialty;
- (3) Dentists must be licensed by the State board of dental examiners;
- (4) Psychologists must be licensed by the State and certified by the appropriate certifying body; and
- (5) Other duly authorized medically-oriented resource persons, such as osteopaths, must be licensed and certified by the appropriate governing bodies.

(e) When board certified or licensed service providers are not available, the division's medical consultant shall assist in making a selection of a service provider guided by available objective standards of competence, such as the following:

- (1) Completion of training and experience requirements for admission to board examinations;
- (2) Recognition as a competent specialist by State or county medical societies;
- (3) Acceptance as a specialist by the workers' compensation board;
- (4) Membership on the clinical teaching staff of a medical school; or
- (5) Similar objective standards of competence as described in (1) through (4).

(f) New schedules or changes in existing fee schedules shall be authorized only by the division administrator and are subject to the public hearing process before purchase of services.

- (1) The 1970 relative value studies (RVS) of the Hawaii medical association and the conversion factors approved by the division and distributed under internal communication memo entitled "VRSBD Medical Fee Schedule - RVS Conversion Factors" shall be the division's fee schedule for all medical diagnostic and treatment (restoration) services purchased by the division. Where there is no procedure code or fee that adequately covers a particular situation or

is indicated "by report" in the RVS, the physician must provide a brief description of the services plus the charge, for review and approval by authorized staff of the division. A change of physicians or vendors may be necessary in instances where agreement on charges cannot be reached.

- (2) The dental fee schedule approved by the division and distributed under internal communication memo entitled "VRSBD Dental Fee Schedule" shall be the schedule used for all dental services purchased by the division.
- (3) The division's list of allowed psychological services distributed under internal communication memo entitled "VRSBD Psychological Fee Schedule" shall be the division's fee schedule for psychological services purchased by the division.
- (4) The sign language interpreter services fee schedule approved by the division and distributed under internal communication memo entitled "VRSBD Interpreters for the Deaf and Deaf-Blind" shall be the schedule for all sign language interpreter services purchased by the division. The division's maximum rates for interpreter services shall be determined by the division in consideration of:
  - (A) The current guidelines issued by the Disability and Communication Access Board; and
  - (B) The Certification levels of the National Registry of Interpreters for the Deaf, the National Association of the Deaf, and the Hawaii Quality Assurance System.
- (5) When health insurance is available for applicants or eligible individuals, the division shall only pay the difference between the amount indicated on the

division's applicable fee schedule and the amount covered by the health insurance. If the amount covered by the health insurance equals or exceeds the amount indicated on the division's applicable fee schedule, the division's share shall be zero.

- (A) In arranging for the purchase of services, the division shall inform the vendor of the above arrangements in determining the division's share in the cost.
  - (B) Regardless of the amount of the division's share in the cost, the division shall ensure that the vendor agrees not to bill the applicant or eligible individual for any remaining difference in charges resulting from the differences in the amounts covered by insurance, the division's fee schedule, and the vendor's charges for the service.
  - (C) A change of physician or vendor may be necessary in instances where agreement on charges cannot be reached.
- (6) No payment shall be made to vendors for services canceled by the division. Vendors shall be notified in writing of the cancellation.
  - (7) The division may pay up to fifty per cent of the amount authorized in instances when the applicant or eligible individual fails to keep an appointment. Exact amount of payment shall be individually adjusted. Factors such as prolonged procedures, e.g., psychiatry-psychological evaluations, and repeated "no shows" should be considered in setting the final payment amounts.
  - (8) When a request is made to a vendor for special reports such as narrative reports, reviews of medical records, or copies of medical files necessary to establish or

clarify an applicant's or eligible individual's status, a charge adequate to cover the value of the additional service may be authorized within the limits set by the division administrator. The cost allowed will vary with the complexity, extensiveness, and time required by a vendor to prepare the report.

- (9) Payments to hospitals shall be the usual and customary rates as published by the hospital for procedures that are not covered by the division's fee schedules. Payments shall not be authorized for private rooms unless it is a medical necessity, authorized by the physician and approved by the division's medical consultant. [Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-7; 29 U.S.C. §721; 34 C.F.R. §§361.50, 361.51) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §721; 34 C.F.R. §§361.50, 361.51)

§17-400.1-12 Interagency cooperation and collaboration. (a) The division, in consultation with other appropriate agencies, and with the Governor's assurance, if necessary, will effect an interagency agreement or other mechanism for interagency coordination between the division and any appropriate public entity, including the State entity responsible for administering the State medicaid program, a public institution of higher education, and a component of the statewide workforce investment system, to ensure the provision of vocational rehabilitation services described in section 17-401.1-6 other than those services exempted in section 17-401.1-13(b), that are included in the IPE of an eligible individual, including the provision of such VR services during any pendency of any interagency dispute described in paragraph (2)(C).

- (1) The above requirements of paragraph (a) may be met through:  
(A) A State statute or regulation;



- (B) A signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity for the provision of the services; or
  - (C) Another appropriate mechanism as determined by the division.
- (2) The interagency agreement or other mechanism for interagency coordination must include the following:
- (A) An identification or description of a method for defining the financial responsibility of the public entity for providing the VR services other than those exempted in section 17-401.1-13(b), and a provision stating the financial responsibility of the public entity for providing those services.
  - (B) Information specifying the conditions, terms, and procedures under which the division must be reimbursed by the other public entities for providing VR services based on the terms of the agreement or other mechanism.
  - (C) Information specifying procedures for resolving interagency disputes under the agreement or other mechanism, including procedures under which the division may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism.
  - (D) Information specifying policies and procedures for public entities to determine and identify interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of VR services other than those exempted in section 17-401.1-13(b).

(b) If a public entity, other than the division, is obligated under Federal law (such as the Americans with Disabilities Act, section 504 of the Act, or section 188 of the Workforce Investment Act) or State law, or assigned responsibility under State policy or an interagency agreement established under this subsection, to provide or pay for any services considered to be VR services (e.g., interpreter services under section 17-401.1-24), other than those exempted in section 17-401.1-13(b):

- (1) The public entity must fulfill that obligation or responsibility through:
  - (A) The terms of the interagency agreement or other requirements of this section;
  - (B) Providing or paying for the service directly or by contract; or
  - (C) Other arrangement.
- (2) If the public entity fails to provide or pay for VR services for an eligible individual as established under this subsection, the division must provide or pay for those services to the individual and may claim reimbursement for the services from the public entity that failed to provide or pay for those services. The public entity must reimburse the division pursuant to the terms of the interagency agreement or other mechanism in accordance with the procedures established in the agreement or other mechanism pursuant to paragraph (a)(2)(C). [Eff AUG 13 2007] (Auth: HRS §§347-4, 348-7; 29 U.S.C. §721; 34 C.F.R. §361.53(d) and (e)) (Imp: HRS §§347-4, 348-7; 29 U.S.C. §721; 34 C.F.R. §361.53(d) and (e))

§17-400.1-13 Coordination of services with the State department of education. (a) The division shall implement the following plans, policies, and procedures for coordination of services with the State department of education to facilitate the transition of students with disabilities from the receipt of

educational services in school to the receipt of vocational rehabilitation services under the division:

- (1) The development and approval of an individualized plan for employment in accordance with section 17-401.1-10 as early as possible during the transition planning process but, at the latest, by the time each student determined to be eligible for VR services leaves the school setting or, if the division is operating under an order of selection pursuant to section 17-401.1-5, before each eligible student able to be served under the order leaves the school setting.
- (2) A formal interagency agreement with the State department of education which at a minimum, provides for:
  - (A) Consultation and technical assistance to assist the department of education in planning for the transition of students with disabilities from school to post-school activities, including VR services;
  - (B) Transition planning between personnel of the division and the department of education for students with disabilities that facilitate the development and completion of their individualized education programs (IEPs) under the Individual's with Disabilities Education Act (IDEA);
  - (C) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and
  - (D) Procedures for outreach to and identification of students with disabilities who are in need of transition services as early as

possible during the transition planning process, and including, at a minimum, a description of the purpose of the VR services program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals. [Eff AUG 13 2007] (Auth: HRS §§347-4, 348-7; 29 U.S.C. §721; 34 C.F.R. §361.22) (Imp: HRS §§347-4, 348-7; 29 U.S.C. §721; 34 C.F.R. §361.22)

§17-400.1-14 Cooperation with WIA One-Stop centers. (a) The division shall carry out the following functions as a required partner in the One-Stop service delivery system of the statewide workforce investment system under Title I of the Workforce Investment Act of 1998:

- (1) Make available to participants through the One-Stop service delivery system the core services that are applicable to the program administered by the division under this part, which consists of:
  - (A) Eligibility determination;
  - (B) Outreach, intake and orientation;
  - (C) Skills assessment;
  - (D) Job search, placement assistance, career counseling;
  - (E) Information on:
    - (i) Employment statistics information.
    - (ii) Performance and cost data on eligible training providers.
    - (iii) Local area performance outcomes.
    - (iv) Availability of supportive services.
    - (v) Filing claims on unemployment compensation.
  - (F) Assistance in establishing eligibility for welfare-to-work and financial aid for training and education; and
  - (G) Follow up services for 12 months after

placement.

- (2) Use a portion of funds made available to the program administered by the division under this part, consistent with the Act and this part, to:
  - (A) Create and maintain the One-Stop service delivery system; and
  - (B) Provide core services as described in subparagraph (1).
- (3) Enter into a memorandum of understanding (MOU) with the Local Workforce Investment Board under section 117 of the Workforce Investment Act of 1998 relating to the operation of the One-Stop service delivery system that meets the requirements of section 121(c) of the Workforce Investment Act including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals.
- (4) Participate in the operation of the One-Stop service delivery system consistent with the terms of the MOU and the requirements of the Act and this part.
- (5) Provide representation on the Local Workforce Investment Board. [Eff [AUG 13 2007](#)] (Auth: HRS §§347-4, 348-7; 29 U.S.C. §721; 34 C.F.R. §361.23(a)) (Imp: HRS §§347-4, 348-7; 29 U.S.C. §721; 34 C.F.R. §361.23(a))

§17-400.1-15 Cooperative agreements with WIA One-Stop partners: (a) The division or department shall enter into cooperative agreements with the other entities that are partners under the One-Stop service delivery system of the Workforce Investment Act of 1998.

- (1) The division shall replicate those agreements at the local level between individual offices of the division and local entities carrying out the One-Stop service delivery system or other activities through

- the statewide workforce investment system.
- (2) Cooperative agreements developed under this subsection may provide for:
- (A) Intercomponent training and technical assistance regarding:
    - (i) The availability and benefits of, and information on eligibility standards for, vocational rehabilitation services; and
    - (ii) The promotion of equal, effective and meaningful participation by individuals with disabilities in the One-Stop service delivery system and other workforce investment activities through the promotion of program accessibility consistent with the requirements of the Americans with Disabilities Act of 1990 and section 504 of the Act, the use of nondiscriminatory policies and procedures, and the provision of reasonable accommodations, auxiliary aids and services, and rehabilitation technology for individuals with disabilities;
  - (B) The use of information and financial management systems that link all of the partners of the One-Stop service delivery system to one another and to other electronic networks, including nonvisual electronic networks, and that relate to subjects such as employment statistics, job vacancies, career planning, and workforce investment activities;
  - (C) The use of customer service features such as common intake and referral procedures, customer databases, resource information, and human services hotlines;

- (D) The establishment of cooperative efforts with employers to facilitate job placement and carry out other activities that the division and the employers determine to be appropriate;
- (E) The identification of staff roles, responsibilities, and available resources and specification of the financial responsibility of each partner of the One-Stop service delivery system with respect to providing and paying for necessary services, consistent with the requirements of the Act, this part, other Federal requirements, and State law; and
- (F) The specification of procedures for resolving disputes among partners of the One-Stop service delivery system. [Eff [AUG 13 2007](#)] (Auth: HRS §§347-4, 348-7; 29 U.S.C. §721; 34 C.F.R. §361.23(b)) (Imp. HRS §§347-4, 348-7; 29 U.S.C §721; 34 C.F.R. §361.23(b))

§17-400.1-16 Cooperation with other federal, state, and local agencies and programs. The division shall cooperate with and use the services and facilities of other Federal, State, and local agencies and programs, including programs carried out by the Under Secretary for Rural Development of the Department of Agriculture and State use contracting programs to the extent that those agencies and programs are not carrying out activities through the statewide workforce investment system. [Eff [AUG 13 2007](#)] Auth: HRS §§347-4, 348-7; 29 U.S.C. §721; 34 C.F.R. §361.24) (Imp: HRS §§347-4, 348-7; 29 U.S.C. §721; 34 C.F.R. §361.24)

§17-400.1-17 Requests to inspect or obtain copies of government or personal records. (a) All requests, informal or formal, to inspect or obtain copies of

government or personal records maintained by the division, shall be processed in accordance with title 2, chapter 71, Hawaii Administrative Rules, of the office of information practices (OIP) pertaining to agency procedures and fees for processing government record requests and, as appropriate, in accordance with section 17-401.1-35 pertaining to confidentiality, and this section.

- (1) Requests to inspect or obtain copies of government or personal records maintained by a unit (branch or section) of the division shall be processed by the unit in accordance with this section.
- (2) A record of each request processed by a unit including the amount of fees assessed or waived, or both, shall be submitted to the division administrator upon processing of each request, for reporting to the OIP as required.

(b) When the division, branch or section is unable to disclose a record, a written notice to the requester shall be prepared, in accordance with section 2-71-14(c) of the OIP rules, and shall state that the division is unable to disclose the requested record, or part thereof, because:

- (1) The division does not maintain the record, and may provide the name and address of another agency that the division reasonably believes may maintain the requested record;
- (2) The division requires a further description or clarification of the requested record in order to identify and search for the record; or
- (3) The request requires the division to create a summary or compilation of information from records that is not readily retrievable.

(c) When the division, branch or section intends to deny access to all or part of the information requested, a written notice to the requester shall be prepared in accordance with section 2-71-14(b) of the OIP rules, and shall state:



- (1) The specific record or parts of the record that will not be disclosed; and
- (2) The specific legal authorities under which the request for access is denied under section 92F-13, Hawaii Revised Statutes, or other laws. [Eff AUG 13 2007 ] (Auth: HRS §§91-2, 92F-11) (Imp: HRS §91-2, 92F-11)

§17-400.1-18 Requests for changes in the rules of the division. (a) Any interested person may petition the director in writing for the amendment, adoption or repeal of a rule of the division.

(b) When a petition is filed, the department shall process the request in accordance with chapter 17-3. [Eff AUG 13 2007 ] (Auth: HRS §§91-2, 348-3) (Imp: HRS §§91-2, 348-3)

§17-400.1-19 Volunteer services program. (a) The division may use volunteers to enhance and supplement services provided by the staff.

(b) The division's volunteer services program shall comply with chapter 90, Hawaii Revised Statutes concerning the utilization of volunteer services.

(c) A division volunteer coordinator shall develop, coordinate, monitor, and evaluate the volunteer services program of the division.

- (1) Each branch shall have a branch volunteer coordinator before volunteers may be used by the branch. The branch volunteer coordinator shall maintain statistical data and assess the effectiveness of the program.
- (2) All volunteers shall be appropriately recognized.

(d) The division volunteer coordinator shall compile statistical data and submit the Annual Assessment Form to the statewide volunteer services, Office of the Governor. [Eff AUG 13 2007 ] (Auth: HRS §90-2) (Imp: HRS §90-2)