

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-802.3
Hawaii Administrative Rules

FINDINGS

The Department of Human Services finds that:

1. The 2019 Novel Coronavirus ("COVID-19") was identified in January 2020 in Wuhan, China and has since spread around the world. COVID-19 spreads by respiratory droplets or aerosols expelled when a person breathes, coughs, sneezes, talks, or spits. It can also be spread by personal contact, including shaking hands or touching one's mouth, nose, or eyes after touching a contaminated surface.
2. On January 31, 2020, the US Department of Health and Human Services declared COVID-19 a national public health emergency. On March 11, 2020, the World Health Organization declared a global pandemic. There have been more than 34 million COVID-19 cases and 600,000 deaths in the United States. As of July 29, 2021, there have been 41,303 confirmed and probable cases and 534 deaths in Hawaii.
3. The Omicron variant of COVID-19 is significantly more transmissible than the original and Delta strain of the virus, and accounts for the majority of confirmed cases in Hawaii at this time. The Omicron variant has resulted in significant surges in COVID-19 cases in other countries, in portions of the United States, and in Hawaii.
4. The Governor of the State of Hawaii issued an emergency proclamation pursuant to chapter 127A, Hawaii Revised Statutes ("HRS") on March 4, 2020 declaring a state of emergency in Hawaii due to the

threat of COVID-19 to the people of the state. The Governor issued subsequent proclamations finding that COVID-19 has continued to endanger the health, safety, and welfare of the people of Hawaii, the most recent proclamation dated January 26, 2022.

5. The COVID-19 pandemic constitutes an imminent peril to "the public health, safety, or morals, to livestock and poultry health, or to natural resources" as set forth in section 91-3(b), HRS.

6. Swift adoption of these rules is necessary to address and mitigate the effects of COVID-19 by providing grants to child care facilities to remain open or reopen to provide child care services to Hawaii residents, particularly for essential workers, and to adopt and maintain safe practices related to preventing the spread of COVID-19 among the child care facility staff and children in care.

7. The threat presented by COVID-19 further prevents the Department of Human Services from conducting public hearings under section 91-3(a), HRS, in which people will be required to physically congregate in settings that are conducive to the spread of the virus.

8. The Department of Human Services must therefore adopt these emergency rules without prior notice or hearing in order to continue the agency's COVID-19 mitigation efforts and to provide relief to the people of Hawaii, as authorized under section 91-3(b), HRS.

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 802.3

CHILD CARE GRANT PROGRAM

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Historical Note: Chapter 17-802.3 is based substantially upon chapter 17-802.2, Child Care Grant Program [Eff 08/06/21; R 12/05/21] **MAR 04 2022**]

§17-802.3-1 Purpose. The purpose of this chapter is to establish the rules governing the administration and implementation of the child care grant program to support child care facilities and homes during the coronavirus 2019 disease, or COVID-19, pandemic to ensure the continued availability and capacity for child care services statewide, and any grant funds shall not be used for any non-secular or sectarian instruction or educational services. The intent of the program is to provide child care grants to as many eligible child care facilities as possible through the limited funding that is appropriated for the purpose of this chapter. These emergency rules shall be effective upon filing with the Lieutenant Governor's office; provided that the conditions set out in these rules shall apply retroactively as of December 6, 2021. [Eff **MAR 04 2022**] (Auth: HRS §91-3, §91-4, Auth: HRS §91-3, §91-4, 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14) (Imp: 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14)

§17-802.3-2 Definitions. For the purpose of this chapter:

"Applicant" means a private for profit or non-profit organization or individual operating a child care facility that applied for a child care facility subsidy grant.

"Child care facility" means a place maintained by any individual or organization for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, group child care center, infant and toddler child care center, or before or after school care program.

"Department" means the department of human services or its designee.

"Family child care home," "family child care," or "FCC" means any private residence at which care is provided at any given time to six or fewer children, as defined in section 346-151, HRS.

"Grant" means an award of state funds to a specified recipient to support the activities of the recipient and permit the community to benefit from those activities.

"Group child care center" means a facility, other than a private home, at which care is provided, as defined in section 346-151, HRS. The term may include nurseries; infant and toddler centers for children ages six weeks to thirty-six months, preschools; parent cooperatives; drop-in child care centers; before-school and after-school programs; holiday, intersession and summer care for eligible school age children; or other similar care settings that are established to provide group care to a child for any part of a twenty-four hour day and is licensed by the department.

"Group Child Care Home" or "GCH" means child care provided by an individual in a facility that may be an extended or modified family child care home which provides care to no more than twelve children during any part of a twenty-four-hour day. GCHs are licensed under the rules for group child care centers.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a group child care center or group child care home.

"Organization" means an association formed for a common purpose.

"Perquisite" means a privilege furnished or a service rendered by an organization to an employee, officer, director, or member of that organization to reduce the individual's personal expenses.

"Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. Personal protective equipment may include items such as face masks, face shields, gloves, safety glasses, or gowns.

"Private educational institution" means a non-public entity that provides: 1) educational services for any grades from kindergarten through grade twelve; 2) post-secondary education; or 3) pre-kindergarten level services that are provided by an entity that

holds itself out to the public as a school or educational institution, or that are identified by the entity as educational services rather than solely as child care services.

"Qualified exempt provider " means child care that is operated as an A+ after school program authorized by the department of education in accordance with sections 302A-1149.5 and 302A-408, HRS, and may be exempt from licensure by the department under section 346-152, HRS.

"Recipient" means an individual or organization that is awarded a grant.

"Registration" means a certificate of approval issued by the state department of human services authorizing the operation of a family child care home. [Eff **MAR 04 2022**] (Auth: HRS §91-3, §91-4, 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14) (Imp: 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §§346-14, 346-151)

§17-802.3-3 Standards for grant applications.

(a) An organization or individual may apply for a child care grant if the organization or individual meets the following:

- (1) An organization shall:
 - (A) Be a for-profit organization incorporated under the laws of the State;
 - (B) Be a nonprofit organization exempt from the federal income tax by the Internal Revenue Service; provided that a tax exempt nonprofit organization shall have a governing board whose members have no material conflict of interest and serve without compensation; and
 - (C) Have bylaws or policies that describe the manner in which business is conducted, prohibit nepotism, and provide for the management of potential conflict of interest situations; and

- (D) Be licensed by or registered with the department to operate a child care facility or be a qualified exempt provider as of March 11, 2021; or
- (2) An individual shall be licensed by or registered with the department to operate a child care facility or be a qualified exempt provider as of March 11, 2021; or
- (b) A child care facility that is part of or owned or operated by or as a private educational institution as defined under this chapter is not eligible to apply for a child care grant. An organization or individual that owns or operates both a private educational institution and a child care facility may apply only if they can provide evidence that the operations and finances of the private educational institution are completely separate from the operations and finances of the child care facility so that it is clear a child care grant would not support or benefit the private educational institution in violation of article X, section 1 of the Hawaii State Constitution. [Eff **MAR 04 2022**] (Auth: HRS §91-3, §91-4, Auth: HRS §91-3, §91-4, 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14) (Imp: 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14)

§17-802.3-4 Conditions for grant awards. (a) A recipient shall agree to the following conditions:

- (1) Comply with the applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability;
- (2) Not use public funds for the purposes of entertainment, perquisites, campaign contributions, or lobbying activities;
- (3) Indemnify and hold the state harmless from and against any claims relating to activities carried out by the recipient under the contract, and assume the sole

liability to the recipient's employees and agents, and to any individual not party to the contract, in accordance with section 17-802.3-7, for any loss, damage, or injury caused by the recipient, or the recipient's employees or agents in the course of their employment for purposes of performance under the contract;

- (4) Ensure payment of all applicable federal, state, and county taxes and fees which may become due and owed by the recipient by reason of the contract in accordance with section 17-802.3-7;
- (5) Comply with section 103-55, HRS, Wages, hours, and working conditions of employees or contractors performing services;
- (6) When requested or required, complete an independent financial and compliance audit in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of the Office of Management and Budget;
- (7) Maintain insurance acceptable to the state in full force and effect throughout the term of the grant contract in accordance with section 346-157, HRS;
- (8) Allow the department, its designee, the legislative bodies and their staff, the legislative auditor, the U.S. Department of Health and Human Services, the office of inspector general, or the department's auditing entity full access to the recipient's records, reports, files, and other related documents and information for purposes of monitoring compliance, measuring effectiveness, and ensuring the proper expenditure of funds under the contract in accordance with section 17-802.3-7. After the review of the expenditures, if any expenditures are determined to be inappropriate or unallowable, the department

may require that monies be refunded by the recipient;

- (9) Be current with all state and federal tax obligations as indicated by a tax clearance from the Hawaii department of taxation and the Internal Revenue Service;
- (10) Be registered and in good standing with the department of commerce and consumer affairs business registration division as required for the type of business for which they hold themselves out to the public;
- 11) Maintain operations of the child care facility, including the care of children, for which grant funds are being requested for a minimum period of six months from the receipt of payment of grant funds, unless the child care facility is ordered to close by the department, the department of health, or by any emergency proclamation or order issued by the governor of the State of Hawaii or the mayor of the county in which the child care facility is located; and
- (12) Satisfy any other conditions required by the source of funding.

(b) Failure to continue to comply with any of the conditions in this section throughout the term of the grant period shall be regarded as material default under the agreement, entitling the State to exercise any or all of the remedies provided in the contract for a default of the recipient. [Eff MAR 04 2022]
(Auth: HRS §91-3, §91-4, 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14) (Imp: 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14)

§17-802.3-5 Applications. (a) A request for child care facility subsidy grants shall be made by applicants meeting the standards under section 17-802.3-3 and requesting grant funds as a result of the response to the COVID-19 pandemic for any of the following:

- (1) Personnel costs, including payroll and salaries or similar compensation for an employee (including any sole proprietor or independent contractor), employee benefits, premium pay, or costs for employee recruitment and retention;
- (2) Rent (including rent under a lease agreement) or payment on any mortgage obligation, utilities, facility maintenance or improvements, or insurance;
- (3) Personal protective equipment, cleaning and sanitization supplies and services, or training and professional development related to health and safety practices;
- (4) Purchases of or updates to equipment and supplies to respond to the COVID-19 public health emergency;
- (5) Goods and services necessary to maintain or resume child care services;
- (6) Mental health supports for children and employees;
- (7) Reimbursement to the provider of goods and services for sums obligated or expended before March 11, 2021 for the cost of a good or service described in this subsection to respond to the COVID-19 public health emergency; or
- (8) Other purposes as authorized by the department and consistent with any applicable federal funding source and state law.

(b) A request for child care grants shall be submitted in writing on a form approved by the department to the department or its designee by the designated application deadline date specified in any notice of opportunity of grant awards.

(c) The form shall be dated and signed under penalty of law that all information as stated on the form and any other information submitted with the application is true and correct.

(d) Each grant application request shall include:

- (1) The name of the requesting organization or individual that operates the licensed or registered child care facility or is a qualified exempt provider;
- (2) The physical location, mailing address, the maximum capacity, and the license or registration number of the child care facility or the A+ contract number for a qualified exempt provider, for which the grant funds are being requested;
- (3) The statement of the public purpose of the activities to be funded by the grant;
- (4) The services to be supported by the grant;
- (5) The target group of families and children to be served;
- (6) The requested grant amount and the financial information and budget for the costs or incurred expenses of the activities to be funded by the grant;
- (7) A disclosure and explanation of any pending litigation to which the applicant is a party, including any outstanding judgment;
- (8) The signature of the authorized signatory for the organization or the individual requesting grant funds;
- (9) Any other information the department requests;
- (10) Any other information or verification required as a condition of the source of funding.

(e) Requested grant amounts shall not include administrative costs or indirect costs, unless it is requested as an allowable cost under section (a).

(f) The date of the application shall be the date the signed and dated application form is received by the department or its designee.

(g) The department or its designee shall review each application request to determine the efficiency and the effectiveness of the proposed activities and costs in achieving the objectives of the department's child care grants.

(h) The criteria for award of a grant shall be based upon an analysis of the application request in terms of the objectives to be achieved, the need in the community for child care, the quality of the proposed activities and budget at the child care facility, the ability of the applicant to provide child care, the benefits to be provided by the request in comparison to the estimated costs and activities proposed, and the extent to which the proposed activities and costs meet the priorities established by the department pursuant to this chapter.

(i) Requested grant amounts may not be fully funded, and the grant amount awarded to a recipient is not subject to review under section 17-802.3-9.

(j) The department or its designee shall inform each applicant of the disposition of the application requesting a child care grant. [Eff **MAR 04 2022**]
(Auth: HRS §91-3, §91-4, 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14) (Imp: 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14)

§17-802.3-6 Determination of funding

allocations. (a) The department shall determine the funding allocation for the child care grants based upon the total funds appropriated for the purpose of this chapter, take into account the deadline, if any, to expend the appropriated funds, and the needs identified by the department.

(b) Funding allocations may be prioritized based on criteria that include:

- (1) Geographic area in which the child care facility is located and the number of children who are at risk in the community, including title I school districts;
- (2) The type of child care facility and maximum capacity of children in care for the child care facility; and
- (3) The percentage of children attending the child care facility whose families receive

child care subsidy assistance from the department;

- (4) The date the application for the child care facility subsidy grant was received by the department or its designee.

(c) If the department determines that funding is still available after all grants are awarded, additional grant awards may be issued to recipients if the requested grant amount was not already fully funded by the awarded contract. [Eff **MAR 04 2022**]
(Auth: HRS §91-3, §91-4, 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14) (Imp: 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14)

§17-802.3-7 Contracts and monitoring. (a) The child care grants shall be awarded through a contract with the recipient.

(b) The department or its designee shall monitor the contract to ensure compliance with this chapter and the terms of the contract.

(c) Prior to executing a contract, a recipient shall provide evidence of compliance with:

- (1) The business registration and tax clearances required by section 17-802.3-4; and
- (2) The insurance requirements in accordance with section 346-157, HRS.

(d) Payment of funds shall be made within thirty days after the contract with the recipient is executed, except for additional grant awards determined under section 17-802.3-6(c).

(e) A recipient of a child care grant shall comply with the terms of the contract including reporting requirements and reconciliation of expenditures paid for with grant funds by the deadlines established in the contract.

(f) A recipient of a child care grant who withholds or omits any material fact or deliberately misrepresents facts to the department or its designee shall be in violation of this chapter. In addition to any other penalties provided by law, a recipient found

by the department to have violated this chapter or the terms of its contract shall be prohibited from applying for any department grant for a period of five years from the date of termination of the contract or determination by the department of the violation of this chapter.

(g) Grant funds paid to a recipient and determined to be inappropriate or unallowable costs in accordance with section 17-802.3-4(a)(8) shall be repaid by the recipient to the department by:

- (1) Cash refund made directly to the department or its designee; or
- (2) Appropriate action under state law against the income and assets of the recipient.

(h) The department may:

- (1) Send periodic bills requesting payment from the recipient;
- (2) Collect and compute any cash refunds toward the balance owed of the total overpayment; or
- (3) Require the recipient to repay the total balance of inappropriate or unallowable costs before the recipient can be authorized to care for a child whose family receives a child care subsidy from the department.

(i) Recipients subject to recovery of grant funds that are determined to be overpaid due to the identification of inappropriate or unallowable costs shall be provided written notice by the department or its designee stating:

- (1) The reason, dates, and the amount of the overpayment; and
- (2) Method by which the overpayment shall be recovered. [Eff **MAR 04 2022**] (Auth: HRS §91-3, §91-4, 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14) (Imp: 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14)

§17-802.3-8 Denial of grant applications. (a)

An application for a child care grant may be denied when:

- (1) The applicant does not complete the process of application or withdraws or discontinues the application;
- (2) The applicant does not sign and date the application form prescribed by the department;
- (3) The applicant does not meet the standards under section 17-802.3-3;
- (4) The applicant does not submit verifying information requested by the department or its designee;
- (5) The applicant does not remove costs that are not allowed under section 17-802.3-5;
- (6) Grant funds paid to a recipient are determined to be inappropriate or unallowable costs in accordance with section 17-802.3-4(a)(8);
- (7) The applicant has been found by the department to have violated this chapter or the terms of a contract with the department entered pursuant to this chapter within five years from the date of termination of the contract or the determination by the department of a violation of this chapter; or
- (8) The department determines pursuant to section 17-802.3-10 that there are insufficient funds for all child care grant awards. A decision under this paragraph shall be final and conclusive and is not subject to review under section 17-802.3-9.

(b) A denial of an application by the department's designee may be submitted to the department for review under section 17-802.3-9. [Eff
MAR 04 2022] (Auth: HRS §91-3, §91-4, 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14) (Imp: 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14)

§17-802.3-9 Review of the decision. (a)

Decisions by the department under this section are final and may not be appealed.

(b) A denial of an application by the department's designee may be submitted for review upon written request of the applicant. The written request for review shall:

- (1) Specify the applicant's request for a review;
- (2) Specify the reason(s) why the applicant does not agree with the denial; and
- (3) Be received by the department or its designee within fifteen calendar days of the date the notice of denial was sent.

(c) If the written request for review is not received by the department or its designee as required under section 17-802.3-9(b)(3), the department or its designee shall deny the written request for review and notify the applicant.

(d) Upon timely request for review, the department's designee shall first review its own determination and, if the result is the same, shall then send the request for review with the application and any supporting documents, to the department, along with a written statement explaining the reason for the designee's decision.

(e) The department's review of a decision by the designee submitted pursuant to subsection (d) shall be conducted without a hearing, based on the application and any supporting documents submitted by the applicant and the statement of the designee; provided that the department may request additional information or records from the department's designee or the applicant, and may interview the applicant or the department's designee, at the department's discretion.

(f) A denial may only be reversed based on:

- (1) Missing or insufficient information provided in the application is provided to the department or the department's designee as

requested in accordance with subsections (d) or (e); or

- (2) An incorrect determination by the department's designee that the applicant or application does not meet the conditions required under this chapter.

(g) The department or the department's designee shall provide written notice to the applicant of the department's decision with a short statement of the reason for the decision. [Eff **MAR 04 2022**] (Auth: HRS §91-3, §91-4, 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14) (Imp: 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14)

§17-802.3-10 Termination, denial, or reduction for insufficient funds. (a) The department may, at its discretion, refuse to take new applications, deny an award, reduce grant award amounts, or terminate grant award amounts when there are insufficient funds to pay for child care grants.

(b) Refusal to take new applications, denial of awards, reduction of grant award amounts, or termination of grant awards will first be accomplished in reverse priority from what is listed in section 17-802.3-6.

(c) When the department determines that the budget appropriation has or soon will be exceeded, notices may be issued to applicants and recipients of actions being taken by the department to operate within the child care grant program budget appropriation. A decision under this section shall be final and conclusive and is not subject to review under section 17-802.3-9." [Eff **MAR 04 2022**] (Auth: HRS §91-3, §91-4, 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14) (Imp: 2020 Haw. Sess. Laws 9, Part XII, §§27-28; HRS §346-14)