

Hawaii's Administrative Rules Improvement Initiative

National Association of Secretaries of State
Administrative Codes and Registers Section
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Indianapolis, IN

The Aloha State: Fast Facts

- Geography
 - Most isolated populated archipelago
 - 8 inhabited islands
 - 25% of US' endangered species are only in Hawaii
- Demographics
 - 1.3 million resident and 8 million visitors
 - Minority-majority state since always
 - Highest per capita Spam consumption
 - Longest life span in US
 - Unless you are Native Hawaiian

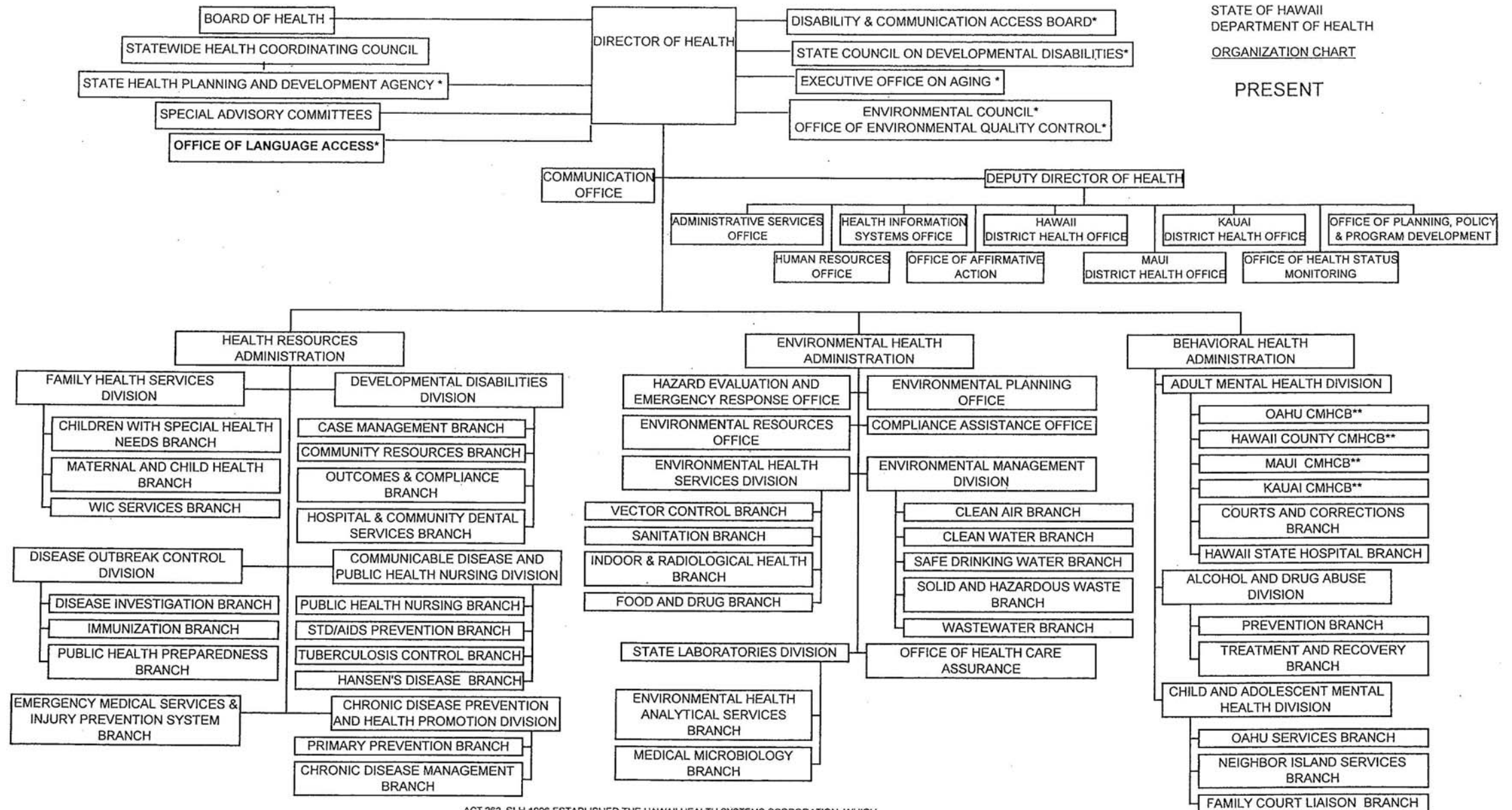


State Government

- Statehood in 1959
 - Territory from 1898
 - Kingdom from 1795
 - Organized populations from 1200
- Legislature
 - 25 Senators
 - 51 Representatives
 - Supermajority in both chambers
- Executive
 - 18 Cabinet agencies, plus Board of Education (Libraries) and University of Hawaii
 - Department of Health: public health, mental health, and environmental management
 - No Secretary of State
 - Lieutenant Governor is a limited analog



PRESENT



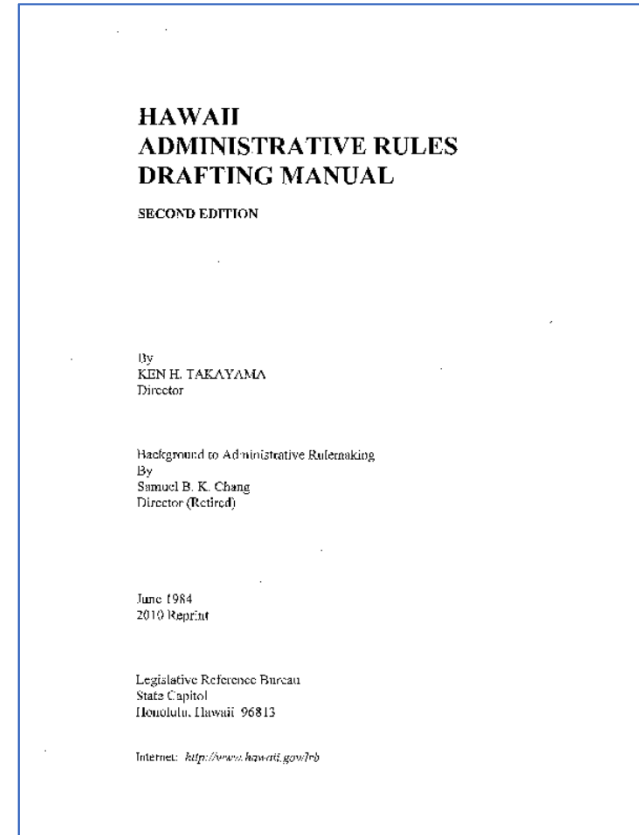
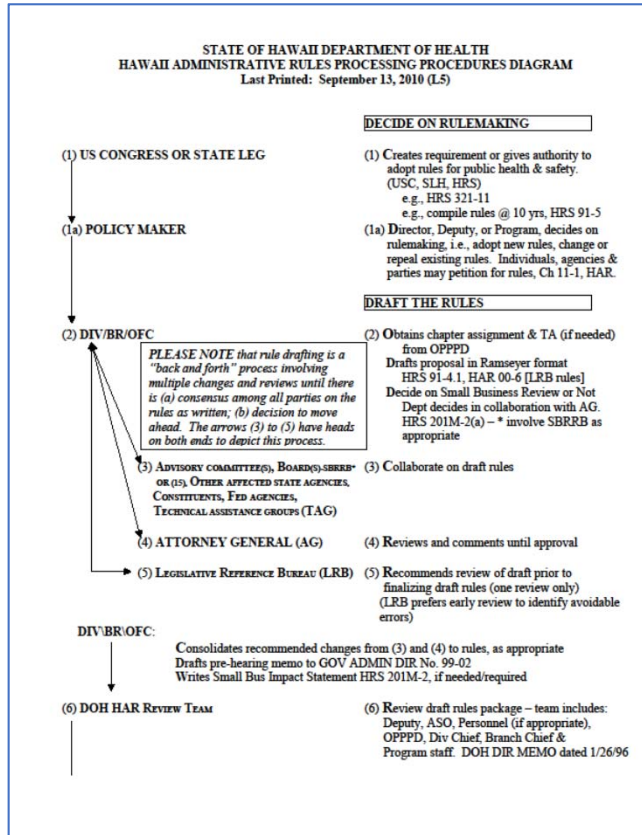
ACT 262, SLH 1996 ESTABLISHED THE HAWAII HEALTH SYSTEMS CORPORATION, WHICH SHALL BE A PUBLIC BODY CORPORATE AND POLITIC AND AN INSTRUMENTALITY AND AGENCY OF THE STATE. THE CORPORATION SHALL BE PLACED WITHIN THE DEPARTMENT OF HEALTH FOR THE ADMINISTRATIVE PURPOSES SPECIFIED IN SECTION 26-35(6), HRS ONLY.

* ASSIGNED FOR ADMINISTRATIVE PURPOSES.
**COMMUNITY MENTAL HEALTH CENTER BRANCH.

Administrative Rules Policy Framework

- Chapter 91 HRS
 - 30 days notice of public hearing though comments are non-binding
 - Small Business Regulatory Review Board
 - Approval by the Governor
- Section 201M-2 HRS
 - Small business impact determination and report by agency
- Section 321-9 HRS
 - The department of health may adopt a seal and may adopt such rules and regulations as it may consider expedient for the conduct of its business. The department may amend or revise such rules and regulations from time to time.
- Administrative Directive 09-01

Artifacts of Administrative Rule Making



<http://health.hawaii.gov/opppd/departments-of-health-administrative-rules-title-11/>

1) Deciding on Rulemaking

a) DIV/BR/OFC identifies a need for a rule or a change to an existing rule. US Congress or State Legislation may require or give authority to adopt rules for public health & safety (USC, SLH, HRS) e.g. 321-11, HRS; 91-5, HRS

OR

b) The Director, Deputy or Program decides on adopting new rules, change or repeal existing rules. Individuals, agencies & parties may petition for rules [\[11-1-51, HAR\]](#)

2) Draft the Rules

a) DIV/BR/OFC obtains chapter assignment from OPPPD if drafting new rules (586-4188).j

b) DIV/BR/OFC obtains reference material from OPPPD (GOV ADMIN DIR No.09-01, SBRRB impact statement checklist, cover memo sample, and complete package sample).

c) Review [Chapter 201M](#), HRS; [Ch 91, HRS](#); and [11-01, HAR](#).

d) Review and familiarize with the [Hawaii Administrative Rules Drafting Manual](#), Second Addition (LRB rule drafting manual).

e) DIV/BR/OFC drafts proposal in Ramseyer format [[HRS-91-4.1](#); [00-6 HAR](#) (LRB rule drafting manual)].

f) DIV/BR/OFC collaborates with AG to determine whether Small Business Review is necessary [[201M-2\(a\), HRS](#)]. **SBRRB should not need to be involved for the rest of the process if it is determined by program & AG that there is no small business impact. DBEDT will review and send it to SBRRB if they feel it is necessary.*

g) DIV/BR/OFC collaborates with Advisors Committee(s), Board(s), or other affected State

Agencies, Constituents, Fed Agencies, Technical Assistance Groups to draft rules.

h) DIV/BR/OFC consolidates recommended changes and drafts [pre-hearing memo](#) to Governor [[GOV ADMIN DIR NO. 09-01](#)].

i) DIV/BR/OFC writes Small Business Impact Statement, if needed/required.

- [Sample of SB impact statement.](#)
- [Sample of SB cost impact matrix.](#)

j) DIV/BR/OFC consults Attorney General (AG) for review and comments of rules, memo, and SB impact statement (if required) until approved.

k) DIV/BR/OFC has Legislative Reference Bureau (LRB) review draft rules prior to finalizing in order to identify avoidable errors and ensure conformance with drafting manual.

l) DIV/BR/OFC provides AG with updated rules accompanied by LRB markup.

m) DOH HAR Review Team reviews draft rules package – team includes Deputy, ASO, Personnel (if appropriate) OPPPD, DIV Chief, Branch Chief & Program staff. **Send rules package via internal email to review team with two week deadline. Send reminder email one week, and one day, prior and to deadline. If no response, consider approved.*

3) Obtain Governor Approval for Public Hearing

a) DIV/BR/OFC finalize package to Governor (memo, rules in Ramseyer format, and SB impact statement).

b) Attorney General reviews & signs memo [GOV ADMIN DIR No. 09-01].

c) DIV/BR/OFC makes copies for GOV, AG, B&F, DBEDT/ SBRRB, and OPPPD.

d) OPPPD checks package for signatures, number of copies and routes through DIR OFC for approval.

e) Director signs approval.

f) OPPPD hand delivers package to Gov.

g) DIV/BR/OFC distributes copies to AG, B&F, DBEDT-SBRRB, and OPPPD [GOV ADMIN DIR No. 09-01]. Include cover memos to each department requesting review, for Director's signature.

h) SBRRB hearing (if required).

i) B&F reviews and recommends to Governor [GOV ADMIN DIR No. 09-01].

j) SBRRB/DBEDT reviews, makes recommends to Governor, and sends SBRRB comments to DIR OFC. [Sample of SBRRB approval.](#)

k) DIV/BR/OFC may contact OPPPD to obtain status from reviewing departments (programs do not contact reviewing departments directly).

4) Governor Approves Public Hearing

a) Governor reviews and approves for Public Hearing.

b) OPPPD retrieves and date stamps receipt.

c) OPPPD notifies DIV/BR/OFC of receipt.

5) Publish Hearing Notice

a) DIV/BR/OFC contacts OPPPD for assignment of docket number for Hearing Notice [\[11-1-52\(a\), HAR\]](#).

b) DIV/BR/OFC drafts hearing notice [\[91.3\(a\), HRS\]](#). [See sample of hearing notice.](#)

c) AG receives copy & approves Hearing Notice.

Question	Summary of comments	Analysis
<p>1. Do you anticipate new rule writing or rule amendment/updating? 28 responded, 1 skipped</p>	<p>24 yes = 85.71% 4 no = 14.29% 1 no response</p>	<p>85.71% responding have rules to promulgate.</p>
<p>1. What type of staff works on rules? 29 responded</p>	<p>14 specialist = 63.64% 11 Scientific = 50% 5 Clerical = 22.73%</p>	<p>Rules are written by professional staff with clerical support.</p>
<p>1. What are the major barriers or constraints to keeping rules up-to-date/promulgating new rules? 26 Answered, 3 skipped</p>	<p>Training: Updated guide & documents esp. SBRRB process, want orientation, training, workshops. 4 respondents Staffing issues: no time, volunteer board w/no staff or budget, lack of experience, setting up technical committee, need good writer. 10 respondents Process is long: Long approval process, lengthy process, coordination of hearings process on the neighbor islands or sites using VCC, ads in paper takes time, complex process. 8 respondents Deputy Attorney General: takes time going to AG, limited support from AG. 2 respondents Formatting document: Ramseyer, rules format. 2 respondents</p>	<p>Staffing issues are the major concern from programs in promulgating rules. Also, to be considered is that the process needs to be clear and useful tools would be welcomed.</p>

<p>1. How much staff time is spent working on rules per month/year? 27 responded, 2 skipped.</p>	<p>0-10 hours per month depending on where rule is in process. 25-30 hrs. 40-80 hrs. <500 hours per year Non-routine task 1-3 days per month 20% of time over 3 year period.</p>	<p>The time programs spend on rules varies per program, experience, and need.</p>
<p>1. What suggestions do you have to improve the rules experience? 26 responded, 3 skipped.</p>	<p>Training session, orientation and help along the way, flow chart of process and training, Workshop and formatting. Support from rule making specialists, centralized office is good with experts. Clearer examples on formatting. Set benchmarks. Electronic system for routing. Clerical support and staffing needed. Program needs resources to write rules. AG delays are long.</p>	<p>Respondents commented that a clear process would help along with good training or an orientation on rule promulgation.</p>
<p>1. What tools/templates/resources do you find useful in your program to develop rules? 26 responded, 3 skipped.</p>	<p>Hawaii Administrative Rules Manual. – 7 respondents Other staff who have gone through process or historical documents. – 5 respondents OPPPD. – 3 respondents Updated flow chart/Manual on the process. – 2 respondents Format help like Adobe, other states and regulations. – 9 respondents</p>	<p>Respondents felt that the Hawaii Administrative Rules Manual was the most helpful. Additionally, respondents would specifically appreciate help with the use templates to assist in formatting and figuring out what to do based on examples.</p>

OMG HELP

- What is the optimal organizational structure?
- What skills are the most and least transferrable?
- What training is necessary?
- How do you measure skill and effectiveness?
- What is the value-add to:
 - Centralization of drafting?
 - Distributed or federated drafting?
- What are common tools of the trade?

Mahalo.

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