

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

December 10, 2012

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Secretary Pro Tem Shubert-Kwock called the meeting to order at 1:05 p.m., with a quorum present.

MEMBERS PRESENT:

- Chu Lan Shubert-Kwock
- Leslie Mullens
- Howard Lum
- Barbara Bennett
- Kyoko Kimura
- Howard West
- Mary Alice Evans

ABSENT MEMBERS:

- None

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF JUNE 20, 2012 MINUTES

Ms. Evans made a motion to accept the June 20, 2012 minutes as presented. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Small Business Statement after Public Hearing for Hawaii Administrative Rule (HAR) Title 16 Chapter 171, Miscellaneous Insurance Rules (Department of Commerce and Consumer Affairs (DCCA))

The Governor signed off on these rules for adoption; as a result, no action was taken.

- B. Small Business Statement after Public Hearing for HAR Title 16 Chapter 23, Motor Vehicle Insurance Law (DCCA)

Chair Pro Tem Shubert-Kwock stated that DCCA has taken these rule to public hearing, and are requesting that they be adopted. The rules are not expected to have any small business impact as the amendments eliminate the posting of a bond, and streamline the language of the rules to match the national standards.

Ms. Evans made a motion that the proposed amended rules proceed to the Governor for adoption. Ms. Mullens seconded the motion, and the Board members unanimously agreed.

- C. Small Business Statement After Public Hearing for HAR Title 15 Chapter 32, Hawaii Small Business Innovation Research and Small Business Technology Transfer Grant Program

(High Technology Development Corporation / Department of Business Economic Development and Tourism)

The Governor signed off on these rules for adoption; as a result, no action was taken.

IV. NEW BUSINESS

A. Proposed Amendments to HAR Title 17 Chapter 1722.3 Basic Health Hawaii; Chapter 1725, Assets; Chapter 1727 QUEST; and Chapter 1739.1 Authorization, Payment and Claims in the Fee-for-Service Medical Assistance Program for Non-institutional Services (Department of Human Services (DHS))

Ms. Aileen Befitel, Program Specialist, indicated that the overall purpose of the amendments is to comply with Federal regulations, restore benefits, modify and clarify certain procedures, and make housekeeping measures. Specifically, proposed amendments to Chapter 1722.3 will allow the DHS to be consistent with Federal regulations; amendments to Chapter 1725 will correct the chapter's citations; amendments to Chapter 1727 are intended to bring the benefits package current for availability to eligible individuals. The benefits package includes unlimited inpatient visits, rehabilitation services, optometry services, visual appliances, durable medical equipment and medical supplies.

In addition, amendments to Chapter 1739.1, which is the only chapter that would have any ascertainable small business impact, entail an amended reimbursement methodology to the cost of prescription drugs. Impacted businesses are licensed pharmacies; however, the impact would be minimal as a result of a nominal decrease in revenue stream due to the new methodology of the Medicaid fee-for-service program.

Ms. Mullens made a motion that the proposed amended rules proceed to public hearing. Mr. Lum seconded the motion, and the Board members unanimously agreed.

B. Proposed Amendments to HAR Title 16 Chapter 89 Nurses (DCCA)

Ms. Lee Ann Teshima, Executive Officer for the Board of Nursing at DCCA, explained that the most important change to the rules applies to the prescriptive authority of an advanced practice registered nurse. This change aligns the rules with the statute, pursuant to Act 110, SLH 2011, which repealed the requirement for advanced practice registered nurses with prescriptive authority to have an appropriate working relationship with a physician in order to prescribe both controlled and non-controlled substances. Also, as the current requirement for continuing education regarding controlled substances is onerous and unnecessary, it is being deleted from the rules. Overall, the changes are expected to benefit the small businesses due to the updating, clarification, and streamlining of the processes and procedures.

Ms. Kimura made a motion that the proposed amended rules proceed to public hearing. Ms. Evans seconded the motion, and the Board members unanimously agreed.

C. Proposed Amendments to HAR Title 16 Chapter 115 Professional Engineers, Architects, Surveyors, and Landscape Architects (DCCA)

Mr. Norman Hong, Chairman of the State's Board of Professional Engineers, Architects, Surveyors and Landscape Architects, explained that the proposed amendments will consolidate the accredited architectural degrees and allow a graduate from accredited architectural programs to take the architectural registration examination while still enrolled in the National Council of Architectural Registration Boards' intern development program. However, graduates of non-accredited programs or persons with no degree shall continue to be required to complete the intern development program and meet the experience requirement prior to being allowed to take the architectural registration examination. He noted that there have been a number of meetings with the State Board of Professional Engineers, Architects, Surveyors and Landscape Architects and the affected organizations and small businesses throughout the rule-making process, where positive support for the proposed amendments has been provided.

Several people testified at the meeting in support of the rule changes. Mr. Philip White, President of the Honolulu Chapter of the American Institute of Architects (AIA) strongly supported the amendments due to the positive impact on small businesses and newly licensed architects. Mr. Chris Palagi, a full-time instructor at the University of Hawaii at Manoa, believes that the proposed amendments will ultimately create a strong architectural practice. Ms. Amy Blagriff, Executive Vice President for the Honolulu Chapter of the AIA, who oversees the affairs of the AIA Hawaii State Counsel, represents all its architect members on all of the islands regarding regulatory and advocacy issues; she stated that all of the members support the proposed changes to the rules.

Mr. Louis Fung is the president of his own firm, Fung Associates, Inc., and is the incoming president of AIA next year. He stated that if these measures are not passed, prospective architects may be inclined to move to other states where it is easier to be licensed. Mr. John Ida, an architect and partner in a small business, supports these changes, and discussed the process of taking the architectural exam. Mr. Dan Chun, an architect at Kauahikaua & Chun Architects, explained that Hawaii operates in a competitive mode, unlike some of the states that compete aggressively within the profession; he believes the rule changes are good.

Ms. Kimura made a motion that the proposed amended rules proceed to public hearing. Mr. Lum seconded the motion, and the Board members unanimously agreed.

D. Proposed Amendments to HAR Title 16 Chapter 100, Speech Pathologists and Audiologists (DCCA)

Ms. Candace Ito, Executive Director for the Board of Speech Pathologists and Audiologists, stated that the rule amendments reflect to basic changes. One of the amendments modifies the passing score of the new national exam for audiologists; the other amendment involves adding two different routes for audiologists, one for the doctor of audiology degree and the other is for the Board of Certification in Audiology from the American Board of Audiology. She noted that the changes should be beneficial to small businesses because audiologists work in different settings with some in private practice. Additional changes include adding definitions, modifying requirements and other housekeeping measures. Any small business impact is likely to be positive due to the deletion of outdated provisions and the streamlining of many of the requirements.

Ms. Mullens made a motion that the proposed amended rules proceed to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

E. Proposed Article IV, Rules Relating to Plastic Bag Reduction (Department of Environmental Management – County of Hawaii)

Mr. Ivan Torigoe, Deputy Corporation Counsel from the County of Hawaii explained that the County's Department of Environmental Management (Department) has joined the other islands, Maui and Kauai, in establishing plastic bag reduction rules as an environmental measure. He explained that several meetings were held during the rule-making process, where the Department has made reasonable efforts to include the small business community to share ideas and concerns of the proposed rules. The rules provide that all retail businesses will be allowed to sell plastic checkout bags for one year. Thereafter, businesses will be allowed to provide paper checkout bags and reusable bags, as well as permissible plastic bags for non-checkout uses. Small businesses may be somewhat impacted because of an inability "to obtain bulk purchasing economies of scale from reusable or paper bag suppliers." However, in discussions with the bag suppliers, they were amenable to working with those businesses.

In response to a question from Ms. Bennett as to how visitors on the Island of Hawaii would be informed of the rules, Mr. Torigoe indicated that he approached the County's Recycling Coordinator who is researching to see if there are specific ways in which awareness can be brought to the visitors regarding these rules. Ms. Bennett noted that in Kauai the plastic bag rules have been very positive as it appears to have eliminated plastic bags along the ocean front and on the side of the roads. However, she believes that Kauai has not done a sufficient job in alerting the visitors of the rules. When visitors shop, for example at the Kauai Walmart, they are either provided no bags, or if they want a bag, they are required to pay twenty-five cents. This has caused some dissention among the visitors, largely because they are not accustomed to paying a fee for shopping bags, albeit small. Overall, she believes that the County of Hawaii has done its due diligence in promulgating the rules by involving the small business community to attend the community meetings, and she supports the proposed rules.

Ms. Evans made a motion that the proposed amended rules proceed to the Mayor of Island of Hawaii to go to public hearing. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

V. NEXT MEETING – Scheduled for 9:30 a.m., Wednesday, January 23, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, HI

VI. ADJOURNMENT – Mr. Borge made a motion to adjourn the meeting at 2:33 p.m.; Ms. Mullens seconded and the board members agreed.