

**CHAPTER 333F**  
**SERVICES FOR PERSONS WITH DEVELOPMENTAL OR**  
**INTELLECTUAL DISABILITIES**

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## Note

Chapter heading amended by L 2011, c 220, §2.

### Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCF rule 81(b)(7).

" **§333F-1 Definitions.** As used in this chapter, unless the context requires otherwise:

"Active treatment" means provision of services as specified in an individualized service plan. These services may include, but are not limited to, activities, experiences, and therapy which are part of a professionally developed and supervised program of health, social, habilitative, and developmental services.

"Applicant" means every person applying for a license to become a provider of an adult foster home or developmental disabilities domiciliary home.

"Case management services" means services to persons with developmental or intellectual disabilities that assist them in gaining access to needed social, medical, legal, educational, and other services, and includes:

- (1) Follow-along services which assure, through a continuing relationship between an agency or provider and a person with a developmental or intellectual disability and the person's parent, if the person is a minor, or guardian, if a guardian has been appointed for the purpose, that the changing needs of the person and the family are recognized and appropriately met.
- (2) Coordinating and monitoring services provided to persons with developmental or intellectual disabilities by two or more persons, organizations, or agencies.
- (3) Providing information to persons with developmental or intellectual disabilities about availability of services and assisting the persons in obtaining the services.

"Current employee" means every person currently employed by an applicant, who will become an adult foster or developmental disabilities domiciliary home caregiver once the applicant is approved to be a provider by the department.

"Department" means the department of health.

"Developmental disabilities" means a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

An individual from birth to age nine who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described above, if the individual, without services and supports, has a high probability of meeting those criteria later in life.

"Director" means the director of health.

"Existing provider" means every person licensed or certified as an adult foster or developmental disabilities domiciliary home provider before the effective date of section 321-15.2.

"Habilitation" means the process by which the staff of an agency assists an individual to cope more effectively with the demands of his or her own person and environment and to raise the level of his or her physical, mental, and social functioning. Habilitation includes, but is not limited to, programs of formal structured education and treatment.

"Individualized service plan" means the written plan required by section 333F-6 that is developed by the individual, with the input of family, friends, and other persons identified by the individual as being important to the planning process. The plan shall be a written description of what is important to the person, how any issue of health or safety shall be addressed, and what needs to happen to support the person in the person's desired life.

"Individually appropriate" means responsive to the needs of the person as determined through interdisciplinary assessment and provided pursuant to an individualized service plan that is person-centered and community-based.

"Intellectual disability" means significantly subaverage general intellectual functioning resulting in or associated with

concurrent moderate, severe, or profound impairments in adaptive behavior and manifested during the developmental period.

"Interdisciplinary team" means a group of persons that is drawn from or represents those professions, disciplines, or service areas that are relevant to identifying an individual's needs and designing a program to meet them, and is responsible for evaluating the individual's needs, developing an individual program plan to meet them, periodically reviewing the individual's response to the plan, and revising the plan accordingly. A complete team includes the individual being served, unless clearly unable to participate; the individual's family, unless their participation has been determined to be inappropriate; those persons who work most directly with the individual in each of the professions, disciplines, or service areas that provide service to the individual, including direct-care or direct-contact staff; and any other persons whose participation is relevant to identifying the needs of the individual and devising ways to meet them.

"Least restrictive" means the least intrusive and least disruptive intervention into the life of a person with developmental or intellectual disability that represents the least departure from normal patterns of living that can be effective in meeting the person's developmental needs.

"Least restrictive environment" means that environment that represents the least departure from normal patterns of living that can be effective in meeting the individual's needs.

"Monitor" means to conduct a systematic, coordinated, objective, qualitative review of services provided by any person, agency, or organization.

"Prospective employee" means every person seeking employment as a caregiver for an applicant.

"Provider" means the person who is issued the license or certificate of registration, as the case may be, by the department to provide care in an adult foster or developmental disabilities domiciliary home.

"Representative" means any individual who can advise and advocate for a person with developmental or intellectual disabilities and who shall serve at the request and pleasure of such person; provided that if the person with developmental or intellectual disabilities is a minor or is legally incapacitated and has not requested a representative, the parent or guardian may request a representative to assist on behalf of the person with developmental or intellectual disabilities.

"Residence" or "residential" means the living space occupied by the person with a developmental or intellectual disability, including single-person homes, natural family homes,

care homes, group homes, foster homes, institutional facilities, and all other types of living arrangements.

"Respite care" means a service provided in a least restrictive environment for short term care to meet the needs, ranging from simple to complex, of persons with developmental or intellectual disabilities. The purpose of respite care is to avoid, if possible, the necessity for long term institutional care or to provide relief to families and care providers.

"Services" means appropriate assistance provided to a person with a developmental or intellectual disability in the least restrictive, individually appropriate environment to provide for basic living requirements and continuing development of independence or interdependent living skills of the person. These services include, but are not restricted to: case management; residential, developmental, and vocational support; training; habilitation; active treatment; day treatment; day activity; respite care; domestic assistance; attendant care; rehabilitation; speech, physical, occupational and recreational therapy; recreational opportunities; counseling, including counseling to the person's family, guardian, or other appropriate representative; development of language and communications skills; interpretation; transportation; and equipment. [L 1987, c 341, pt of §2; am L 1990, c 178, §§1, 6; am L 1994, c 53, §2; am L 1995, c 189, §§3, 22; am L 1998, c 133, §1; am L 2003, c 95, §8(1); am L 2005, c 22, §18; am L 2011, c 220, §§12, 13; am L 2015, c 190, §6; am L 2016, c 32, §2]

#### **Note**

Definition of "mental retardation" changed to "intellectual disability". L 2011, c 220, §12.

" **§333F-2 Developmental disabilities system.** (a) The department shall develop, lead, administer, coordinate, monitor, evaluate, and set direction for a comprehensive system of supports and services for persons with developmental or intellectual disabilities within the limits of state or federal resources allocated or available for the purposes of this chapter. The department shall administer or may provide available supports and services based on a client-centered plan, which resulted from client choices and decision-making that allowed and respected client self-determination.

The department's responsibility for persons with developmental or intellectual disabilities shall be under one administrative unit for the purpose of coordination, monitoring, evaluation, and delivery of services. Not later than June 30,

1999, all programs and services falling under this chapter shall be provided in the community, including services presently provided at Waimano training school and hospital. When the private sector does not provide or is not able to provide the services, the department shall provide the services. Clients at Waimano training school and hospital shall be placed into community-based programs provided appropriate support services are available.

The department shall convene a panel not later than August 1, 1995, to create a plan to provide services in the community and to ensure that the transition of Waimano training school and hospital residents to the community will be client-centered, taking into consideration the health, safety, and happiness of the residents and the concerns of their families. The panel shall consist of but not be limited to consumers, families, representatives from the private sector, employees and employee representatives, professionals, representatives of the University of Hawaii affiliate program, and representatives of the state council on developmental disabilities.

(b) The department shall ensure the provision of an array of individually appropriate services and care to persons with developmental or intellectual disabilities through the utilization of existing resources within the community, through coordination with supports and services provided under other federal, state, or county acts, and through specific funding when no other resources are available within the limits of state and federal resources allocated or available for the purpose of this chapter. The department shall not supplant or duplicate services provided under other federal, state, or county acts.

(c) Supports and services the department shall administer include, but shall not be limited to:

- (1) Early identification and evaluation of persons with developmental or intellectual disabilities;
- (2) Development, planning, and implementation in coordination with other federal, state, and county agencies, of service programs for persons with developmental or intellectual disabilities;
- (3) Development and provision of service programs in the public or private sectors through chapter 42F or chapter 103F, for persons with developmental or intellectual disabilities;
- (4) Establishment of a continuum of comprehensive services and residential alternatives in the community to allow persons with developmental or intellectual disabilities to live in the least restrictive, individually appropriate environment;

- (5) Development and implementation of a program for single-entry access by persons with developmental or intellectual disabilities to services provided under this chapter as well as referral to, and coordination with, services provided in the private sector or under other federal, state, or county acts, and the development of an individualized service plan by an interdisciplinary team;
- (6) Collaborative and cooperative services with public health and other groups for programs to prevent developmental or intellectual disabilities;
- (7) Informational and educational services to the general public and to lay and professional groups;
- (8) Consultative services to the judicial branch of government, educational institutions, and health and welfare agencies whether the agencies are public or private;
- (9) Provision of community residential alternatives for persons with developmental or intellectual disabilities, including group homes and homes meeting ICF/ID standards;
- (10) Provision of care at the skilled nursing level or in a skilled nursing facility, as individually appropriate;
- (11) Provision of other programs, services, or facilities necessary to provide a continuum of care for persons with developmental or intellectual disabilities;
- (12) Provision of case management services independent of the direct service provider; and
- (13) Development and maintenance of respite services in the community for persons with developmental or intellectual disabilities.

(d) Provisions for supports and services shall be limited to the amount of resources allocated or available for the purposes of this chapter.

(e) The department shall maximize its funds for community services using such funds as state matching funds for Title XIX programs, other governmental finance participation programs, and private finance programs as necessary and when possible. Only those individuals eligible for community services but not eligible for medicaid waiver services or other federally reimbursed programs or for whom such services are not appropriate or not available based on their individual service plan shall receive services and supports with one hundred per cent state funds. [L 1987, c 341, pt of §2; am L 1990, c 178, §§2, 6; am L 1991, c 335, §9; am L 1995, c 189, §§4, 22; am L 1997, c 190, §6; am L 1998, c 133, §2; am L 2001, c 175, §6; am

L 2006, c 303, §§1, 4; am L 2007, c 40, §4; am L 2011, c 220, §§13, 14.]

### **Cross References**

Early intervention services for infants and toddlers, see §§321-351 to 357.

ICF/ID, see §46-4.

" **§333F-3 Community services for the developmentally disabled.** The department shall develop and administer a community service delivery system which may design, implement, administer, coordinate, monitor, and evaluate the programs and services of the department for persons with developmental or intellectual disabilities other than the operations and management of Waimano training school and hospital. [L 1987, c 341, pt of §2; am L 2011, c 220, §13]

" **§333F-4 REPEALED.** L 1995, c 189, §§14, 26; L 1998, c 133, §5.

" **§333F-5 Other systems within the developmental disability system.** The department may create other systems as required to implement the services necessary for persons with developmental or intellectual disabilities. [L 1987, c 341, pt of §2; am L 2011, c 220, §13]

" **§333F-6 Application and assessment for services; individualized service plans.** (a) The department shall administer an application and assessment system for persons with developmental or intellectual disabilities, and shall determine eligibility for services or supports within thirty working days of receipt of an application. If the department determines that the person is eligible for services or supports under this chapter within the limits of federal or state resources available for the purposes of this chapter, the department, after due consideration is afforded the preferences of the person with developmental or intellectual disabilities, the person's parents if a minor, or legal guardian, shall refer that person to appropriate programs within ten working days of the determination; an individualized service plan for the person shall be prepared by an interdisciplinary team for the person, and the department may provide case management services to the person.

(b) The procedure for assessment of the person and the elements of the individualized service plan shall be described in rules adopted by the department pursuant to chapter 91. The



individualized service plan shall be in writing and shall include, at a minimum, the nature of the needs of the person, treatment and care goals, and specific services to be offered to the person to attain these goals.

(c) The department shall keep waiting lists of all individuals who are eligible for services and supports, but for whom services and supports have not been provided for any reason, and shall report annually to the legislature the numbers of persons waiting for services and supports and the reasons for the lack of services and supports. [L 1987, c 341, pt of §2; am L 1995, c 189, §5; am L 2011, c 220, §13]

" **§333F-7 Provision of services.** The department shall:

- (1) Assist the individual to develop, with the help of family and friends if necessary, an individualized service plan;
- (2) Identify the amount of dollars available to the individual to effectuate the individualized service plan; and
- (3) Allow consumers to direct the expenditure of the identified funds. [L 1987, c 341, pt of §2; am L 1995, c 189, §6; am L 1998, c 133, §3]

" **§333F-8 Rights of persons with developmental or intellectual disabilities.** (a) Persons with developmental or intellectual disabilities shall have the following rights:

- (1) To receive the least restrictive, individually appropriate services, including a program of activities outside the residence in accordance with the person's individualized service plan;
- (2) To reside in the least restrictive, individually appropriate residential alternative located as close as possible to the person's home community within the State;
- (3) To the extent it is individually appropriate as decided after due consideration afforded the preferences of the person with developmental or intellectual disabilities, to:
  - (A) Interact with persons without disabilities in a nontreatment, nonservice-oriented setting;
  - (B) Live with, or in close proximity to, persons without disabilities; and
  - (C) Live in a setting which closely approximates those conditions available to persons without disabilities of the same age;
- (4) To reasonable access to review medical, service, and treatment files and to be informed of diagnoses;

- (5) To develop a plan with the input of family and friends that identifies the supports needed to accomplish the plan rather than purchase a program;
- (6) To control, with the help of family and friends as necessary, an identified amount of dollars to accomplish the plan;
- (7) To direct the provision of resources, both paid and unpaid, that will assist an individual with a disability to live a life in the community rich in community association and contribution;
- (8) To a valued role in the community through employment, participation in community activities, volunteering, including being accountable for spending public dollars in ways that are life enhancing; and
- (9) To privacy and confidentiality, to the extent possible, in connection with services provided to the person.

(b) Rights listed in this chapter shall not be construed to replace or limit any other rights, benefits, or privileges, including other statutory and regulatory due process rights and protections, to which a person with a developmental or intellectual disability may be entitled.

(c) The enumeration or granting of these rights does not guarantee the provision of services. [L 1987, c 341, pt of §2; am L 1995, c 189, §7; am L 1998, c 133, §4; am L 2011, c 220, §3]

" **§333F-8.5 Advocacy agency for persons with developmental disabilities and mental illness.** (a) The purpose of this section is to comply with federal law, which mandates the states to provide advocacy services to persons with developmental disabilities and mental illness in order to receive federal funds.

(b) The governor may designate an entity or agency to carry out the purposes of this section.

(c) The entity or agency designated by the governor shall have access to all records of any person with developmental disabilities or mental illness, to the extent required by federal law.

(d) The entity or agency so designated by the governor shall provide those advocacy services to persons with developmental disabilities or mental illness as required by federal law. All departments and agencies of the State and the judiciary shall cooperate with the entity or agency so designated to carry out the purposes of this section. [L 1992, c 249, §1; am L 1995, c 189, §8]

## Case Notes

Discussed, where the court found that the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. §15001 et seq.) creates a private right of action in federal court. 513 F. Supp. 2d 1185.

" **[\$333F-8.7] Confidentiality of records.** (a) All certificates, applications, records, and reports made for the purposes of this chapter that are maintained, used, or disclosed by health care providers as defined in chapter 334, health plans as defined in title 45 Code of Federal Regulations section 160.103, and health care clearinghouses as defined in title 45 Code of Federal Regulations section 160.103, and directly or indirectly identifying a person who receives services because of a developmental disability shall be kept confidential and shall not be disclosed by any person except as allowed by title 45 Code of Federal Regulations part 164, subpart E.

(b) Nothing in this section shall preclude the application of more restrictive rules of confidentiality set forth for records covered by title 42 Code of Federal Regulations part 2, relating to the confidentiality of alcohol and drug abuse patient records, or disclosure deemed necessary under the federal Developmental Disabilities Act of 1984, P.L. 98-527, to protect and advocate for the rights of persons with developmental disabilities who reside in facilities for persons with developmental disabilities. [L 2014, c 214, §2]

" **§§333F-9, 10 REPEALED.** L 1995, c 189, §§15, 16; L 1998, c 133, §5.

" **§333F-11 Director as guardian.** (a) Notwithstanding any law to the contrary, the family court may appoint the director as guardian of any person if the court finds that:

- (1) The person is an incapacitated person as defined in section 560:5-102;
- (2) The person is developmentally or intellectually disabled;
- (3) The person may reasonably be expected to need treatment or care at any residential facility; and
- (4) There is no other suitable guardian including the public guardian as designated in chapter 551A who is able or willing to serve as guardian.

(b) The director, if so appointed, shall have all the powers and duties of a guardian duly appointed by the court; provided that the director shall not be liable in damages for any tortious act committed by the person. [L 1987, c 341, pt of

§2; am L 2004, c 161, §5; am L 2005, c 22, §19; am L 2011, c 220, §3]

" **§333F-12 REPEALED.** L 1995, c 189, §17; L 1998, c 133, §5.

" **§333F-13 Payments for care and treatment of persons receiving services; liability.** A parent, conservator, or other person liable for the support of any person receiving services under this chapter shall be required to pay for the care and treatment of the person. The parent or conservator of a minor receiving services under this chapter shall be liable for the care and treatment until the person has reached the age of majority. The liability of a conservator of a person under this section shall be limited to the estate of the ward and shall not be recoverable out of the individual assets of the conservator. Every person receiving services under this chapter and any property of the person's estate not exempt from execution shall be liable for the expense of the person's care and treatment. The attorney general, whenever requested by the director, shall take any steps that may be appropriate, by civil action if necessary, to enforce any liability established by this section. The attorney general may designate any appropriate county attorney to act in the attorney general's behalf in any enforcement proceeding.

The department, with the approval of the governor and from the funds appropriated to the department for the care and treatment of persons with developmental or intellectual disabilities, may transfer from time to time to the department of human services any amounts that may be requested by the department of human services to match federal funds available under Title XIX of the Social Security Act to assist any indigent or medically indigent persons to pay for the care and treatment of any person receiving services under this chapter. The department may expend federal funds so received for the purposes of this chapter. [L 1987, c 341, pt of §2; am L 1988, c 141, §26; am L 1995, c 189, §9; am L 2004, c 161, §6; am L 2011, c 220, §13]

" **§§333F-14 to 16 REPEALED.** L 1995, c 189, §§18 to 20; L 1998, c 133, §5.

" **[§333F-17] Authority of director to enter into agreements; make dispositions of state resources.** (a) The director may enter into agreements with the federal government, other state departments and agencies, and the counties; enter into assistance agreements with private persons, groups, institutions, or corporations; purchase services required or

appropriate under this chapter from any private persons, groups, institutions, or corporations; allocate and expend any resources available for the purposes of this chapter; and do all things necessary to accomplish the purposes and provisions of this chapter.

(b) To the extent the director deems it appropriate, the director may require a recipient of any state funds under this chapter to contribute moneys, facilities, or services for carrying out the program or project.

(c) The director shall establish standards and review procedures to assure that private persons, groups, institutions, or corporations provide the services and facilities necessary to accomplish the purposes for which the funds are disbursed. [L 1987, c 341, pt of §2]

" **§333F-17.5 Disposition of Title XIX funds.** All earned Title XIX funds collected for community program services under this chapter shall be deposited to the credit of the state general fund. [L 1990, c 96, §1; am L 1993, c 280, §39]

" **§333F-18 Rules.** The director, in consultation with the state council on developmental disabilities, private agencies, users of services under this chapter, and other interested parties, shall adopt rules pursuant to chapter 91 necessary or appropriate to carry out this chapter, which shall include but not be limited to:

- (1) Establishment of eligibility requirements for participation in services provided under this chapter;
- (2) Establishment of standards of transfer from one facility to another;
- (3) Provision for the involvement of the person and, where appropriate, the parents, guardian, or other representatives of the person in the determination of eligibility under this chapter, the preparation of the person's individualized service plan, and the selection or rejection of services under this chapter;
- (4) Protection and enhancement of the rights of persons receiving or applying for services under this chapter, including the right to privacy and confidentiality;
- (5) A fair, timely, and impartial grievance procedure to provide administrative due process and recourse for persons aggrieved by any action or failure to act on the part of the department under this chapter; and
- (6) Other provisions required or appropriate to implement the purposes of this chapter. [L 1987, c 341, pt of §2; am L 2001, c 175, §7]

" **§333F-19 Limitation of liability.** The responsibilities of the department to carry out this chapter shall be limited to the resources available to carry out this chapter in a prudent manner. When these resources are exhausted, no action may be brought by, or on behalf of, any person or organization in any court to compel the provision of further services. [L 1987, c 341, pt of §2; am L 1995, c 189, §10]

" **§333F-20 Standards for services.** The department shall require appropriate standards of services to be met by its own services or contractual services including residential, day treatment, and other related programs. These standards, wherever applicable and appropriate, shall conform to or exceed federal standards. [L 1987, c 341, pt of §2; am L 1995, c 189, §11]

" **§333F-21 Provision of services; family and caregiver support.** The director within the limits of state and federal resources allocated or available for the purposes of this chapter shall provide any services that may be necessary to maintain and enhance care giving in community-based homes for persons with developmental disabilities. For the purposes of this section, "family and caregiver support" means a flexible and varied network of support which does not supplant community resources, and which is capable of providing for the individual families caring for persons with developmental disabilities. These services may include:

- (1) In-home and out-of-home respite services for families and care providers;
- (2) The purchase of adaptive equipment such as bath chairs and special positioning chairs not covered by health insurance or other resources;
- (3) Counseling services for families of care providers concerning stresses and feelings about caring for persons with developmental disabilities;
- (4) Special supply purchases such as diapers and special clothing required by persons with developmental disabilities;
- (5) Homemaker and chore services;
- (6) Transportation services not available through existing resources in the community;
- (7) Specialized therapy services for persons with developmental disabilities not available through insurance, medicaid, or other resources;
- (8) Case management to help families and care providers coordinate and access services available to persons with developmental disabilities; and

- (9) Provision, without regard to chapter 42F or chapter 103F, of modifications to dwelling units to enable persons with developmental disabilities with sensory limitation or mobility problems to reside in community homes which require adaptive and safety alterations such as the installation of ramps and porch lifts, bars and hand rails, widening of doorways, removal of other architectural barriers, and the enlargement of bath facilities to allow the movement and ensure the safety of the person with developmental disabilities; provided that:
- (A) There shall be an agreement between the care provider and the department to ensure continued care in the home where the modification is provided; and
  - (B) Modification costs shall be limited to the amount of funds appropriated for the program for any individual client. [L 1990, c 324, §2; am L 1991, c 335, §10; am L 1995, c 189, §12; am L 1997, c 190, §6]

" **§333F-22 REPEALED.** L 2015, c 190, §10.