HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 12

MED-QUEST DIVISION

CHAPTER 1725.1

ASSETS FOR MAGI-EXCEPTED INDIVIDUALS

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Historical Note: This chapter is based substantially upon subchapters 3, 7 and 8 of chapter 17-1721 and repealed chapter of 17-1725.

The source notes for subchapters 3, 7 and 8 of chapter 17-1721 are: [Eff 08/01/94; am 11/13/95; am 11/25/96; am 10/26/01; am 01/31/09; am 10/19/09; am 06/25/12; R].

The source notes for chapter 17-1725 are: [Eff 08/01/94; am 11/13/95; am 01/29/96; am 03/30/96; am 11/13/96; am 11/25/96; am 05/02/98; am 06/19/00; am 10/26/01; am 12/03/01; am 04/11/03; am 05/10/03; am 09/10/09; am 10/19/09; am 04/12/13; R].

SUBCHAPTER 1

GENERAL PROVISIONS

§17-1725.1-1 Purpose. This chapter describes the types and amount of assets that apply to a MAGI-excepted individual and the treatment of resources for a MAGI-excepted individual or household and for

individuals applying for or receiving long-term care services. [Eff] (Auth: HRS §§346-14, 346-53; 42 C.F.R. §§431.10, 435.3, 435.120, 435.230, 435.301, 435.735, 435.840, 435.843, 435.845; 42 U.S.C. §§1315, 1396r-5) (Imp: HRS §346-14; 42 C.F.R. §§431.10, 435.3, 435.120, 435.230, 435.301, 435.735, 435.840, 435.843, 435.845; 42 U.S.C. §§1315, 1396r-5)

§17-1725.1-2 General requirements. This chapter identifies and describes the types of assets and how they are considered in determining the eligibility of a MAGI-excepted individual or household. [Eff] (Auth: HRS §346-53; 42 C.F.R. §§435.230; 435.601, 435.840, 435.845) (Imp: HRS §§346-14, 346-53, 346-71; 42 C.F.R. §§435.230; 435.601, 435.840, 435.845)

§17-1725.1-3 Rounding of assets. There are no provisions for the rounding of assets to a whole dollar amount when determining eligibility for a MAGI-excepted individual or household. [Eff] (Auth: HRS §346-14; 42 U.S.C. §§1382b, 1396a(a)(10)(A)(ii)(I)) (Imp: HRS §346.14, 42 U.S.C. §§1382b, 1396a(a)(10)(A)(ii)(I))

§§17-1725.1-4 to 17-1725.1-8 (Reserved).

SUBCHAPTER 2

AVAILABILITY AND VERIFICATION OF ASSETS

§17-1725.1-9 Purpose. This subchapter describes the requirements to provide verification of assets which are considered and evaluated to determine eligibility for a MAGI-excepted individual. [Eff] (Auth: HRS §346-53; 42 C.F.R. §§435.840, 435.845; 20 C.F.R. §416.1202) (Imp: HRS

§§346-29, 346-53; 42 C.F.R. §§435.840, 435.845; 20 C.F.R. §416.1202)

§17-1725.1-10 Availability and verification of assets. (a) An individual shall apply for and develop potential sources of assets, when applicable.

(b) The asset shall be considered as of the first moment of the calendar month for which medical assistance is being requested or received.

(c) The asset of an individual and their legally responsible household members residing in the same residence shall be considered when determining eligibility for medical assistance.

(d) Joint ownership of a liquid asset that is legally defined and available to the individual shall be considered.

(e) Joint ownership of a liquid asset when legally defined to which only a portion is legally accessible, shall be considered an available resource only as to that portion.

(f) Joint ownership of a non-liquid asset, including real and personal property that is legally defined to which only a portion is legally accessible, shall be considered an available resource only as to that portion.

(g) The department shall deny or terminate medical assistance when an individual fails to:

(1) Apply for, access, or develop potential sources of assets;

(2) Cooperate in providing accurate and complete information or verification; or

(3) Complete any other action on the part of the individual or household that prevents a correct determination of eligibility to be made. [Eff] (Auth: HRS §346-53; 42 C.F.R. §§435.121, 435.230, 435.602, 435.608, 435.840, 435.845) (Imp: 42 C.F.R. §§435.121, 435.230, 435.602, 435.608, 435.840, 435.845)

§§17-1725.1-11 to 17-1725.1-15 (Reserved).

SUBCHAPTER 3

ASSETS TO BE CONSIDERED

§17-1725.1-16 Purpose. This subchapter describes assets which are considered in the determination of eligibility for a MAGI-excepted individual or household. [Eff] (Auth: HRS §346-53) (Imp: HRS §346-53)

§17-1725.1-17 Assets to be considered. The following assets shall be considered in the personal reserve of a MAGI-excepted individual or household and include, but are not limited to:

(1) Cash on hand;
(2) Cash in savings and checking accounts;
(3) Value of stocks and bonds verified by a stock brokerage firm;
(4) Value of time deposits and savings certificates verified by the financial institution where the funds are deposited;
(5) State tax refunds, including state excise tax credits and state income tax credits;
(6) Cash surrender value of a life insurance policy after the subtraction of outstanding loans or encumbrances from the cash value of the policy verified by the insurance company;
(7) Value of governmental debenture bonds, such as U.S. savings bonds, treasury notes, or municipal bonds verified by the financial institutions or stock brokerage firms or issuers;
(8) Value of mutual fund shares be verified by the stock brokerage firm;
(9) Value of burial plots or burial vaults not exempt in section 17-1725.1-26(8) shall be

determined by subtracting all encumbrances from the market value verified by the purchasing cemetery;

(10) Value of funeral plans not exempt in subsection 17-1725.1-26(9) shall be determined by subtracting all encumbrances from the original purchase price;

(11) Equity in personal property, such as jewelry, watercrafts or air transportation vehicles not exempt in subsection 17-1725.1-26(3);

(12) Equity in real property, not used as the family home, that is not exempt in section 17-1725.1-35 or section 17-1725.1-36;

(13) Moneys or assets in an irrevocable trust fund established on or before August 10, 1993 if there is the opportunity to remove legal impediments to gain access to the available assets of the trust. Proof of irrevocability of the trust or evidence of legal impediments to acquiring access to the assets of the trust fund must be provided. Medical assistance shall be provided to an otherwise eligible individual while legal or other impediments to the potential availability of the assets are being removed, or title is being cleared on the condition the individual submits a plan of action within thirty days of the date of application to remove such legal or other impediments to current availability.

(A) Failure to meet the deadline shall disqualify the individual from receiving further medical assistance. Benefits received thereafter shall constitute an ineligible payment recoverable by the department;

(B) The department shall periodically review the submitted plan of action or failure to take appropriate action shall disqualify the individual from further medical assistance;

For any Medicaid qualifying trust the maximum amount permitted to be distributed to the individual shall be counted regardless of whether the trust is irrevocable or established for purposes other than to qualify for medical assistance with the exception of a Medicaid qualifying trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a developmentally disabled or intellectually disabled individual who resides in an intermediate care facility for the developmentally disabled or intellectually disabled individuals;

(14) Payments made from protected retirement plans or annuities to include, but not be limited to, profit sharing plans, IRAs, or other retirement accounts, shall be considered an available asset if an individual has access to the distribution of funds;

(15) Money received by the individual from the sale of assets;

(16) Investments in diamonds, gold, silver, or other precious metals;

(17) Equity in a business shall be determined as follows:

(A) Subtract the current liabilities from the fair market value of the remaining assets.

(B) Exempt the following assets that are essential to the production of goods or services in determining equity in a business, which includes, but are not limited to:

(i) Stock and inventory;

(ii) Tools and equipment; and

(iii) Motor vehicles required for business use.

(C) The remaining equity of all non-exempt assets, in part or in whole, shall be considered.

(18) Equity value of any assets not exempt under section 17-1725.1-26 verified by an appropriate entity;
(19) Federal tax refunds unless otherwise exempted by the Federal government;
(20) Cash dividends from stocks, life insurance, or other sources;
(21) Refunds of utility and rental deposits not paid by the department;
(22) Funds used to purchase an annuity that:
  (A) Is revocable and allows the annuitant access to the cash value of the annuity less early withdrawals and surrender fees;
  (B) Is assignable to allow the sale of the annuity on the open market; or
  (C) Does not address issues of revocability or assignability;
(23) Value of the outstanding balance owed on a promissory note or a property agreement to the individual (creditor) who holds the promissory note or agreement of sale;
(24) Entrance fees of an individual residing in a continuing care retirement community or life care community under the following conditions:
  (A) The entrance fee may be used to pay for care if the individual's other resources or income is insufficient to pay for the care;
  (B) The entrance fee or any remaining portion is refundable when the individual dies or terminates the contract and leaves the continuing care retirement community or life care community; and
  (C) The entrance fee does not assign an ownership interest in the continuing care retirement community or life care community. [Eff] (Auth: HRS §§346-53, 346-71; 20 C.F.R. §416.1201, 42 C.F.R §§431.10, 435.601;

435.811, 435.840, 435.845; 45 C.F.R. §233.20; 42 U.S.C. §1396p) (Imp: HRS §§346-29, 346-53, 346-71; 20 C.F.R. §416.1201; 42 C.F.R. §§431.10, 435.601; 435.811, 435.840, 435.845; 45 C.F.R. §233.20; 42 U.S.C. §1396p)

§17-1725.1-18 Treatment of trusts established after August 10, 1993. (a) An individual shall be considered to have established a trust if assets of the individual form all or part of the corpus of the trust and if the trust was formed other than by a will by any of the following:

(1) The individual;
(2) The individual's spouse;
(3) A person, including a court or administrative body, with legal authority to act on behalf of the individual or the individual's spouse; or
(4) A person, including a court or administrative body, acting at the direction of the individual or the individual's spouse.

(b) If a trust contains assets of persons other than the individual, only the portion of the trust that contains the assets of the individual will be considered in this section.

(c) The treatment of trusts in this section will be made without regard to:

(1) The purpose for which the trust was established;
(2) Whether the trustees have or exercise any discretion under the trust;
(3) Any restrictions on when or whether distributions can be made from the trust; or
(4) Any restrictions on the use of distributions from the trust.

(d) In the case of a revocable trust the following shall apply:

(1) The corpus of the trust is considered an available asset;

(2) Payments from the trust to or for the benefit of the individual shall be considered income of the individual; and

(3) Any other payments from the trust shall be considered assets disposed and subject to the provisions of subchapter 7.

(e) In the case of irrevocable trusts the following apply:

(1) If payments could be made to or for the benefit of the individual, the portion of the corpus from which the payment could be made is considered an available asset;

(2) If payments could be made to or for the benefit of the individual, the income on the corpus from which the payment could be made is considered an available asset;

(3) The payments in paragraphs (1) and (2) from the corpus or from the income on the corpus is considered income to the individual; and

(4) The portion of the corpus from which no payments could be made to or on behalf of the individual is considered assets disposed and subject to the provisions of subchapter 7. [Eff] (Auth: HRS §346-53; 20 C.F.R. §416.1201; 42 C.F.R. §431.10; 45 C.F.R. §233.20; 42 U.S.C. §1396p) (Imp: HRS §346-29; 20 C.F.R. §416.1201; 42 C.F.R. §431.10; 45 C.F.R. §233.20; 42 U.S.C. §1396p)

§17-1725.1-19 Assets of the sponsor of a non-citizen. (a) The sponsor of a non-citizen who executed an affidavit of support pursuant to section 213A of the INA on or after December 19, 1997, shall have their assets and their spouse's assets deemed as available to a non-citizen requesting medical assistance.

(b) The assets of a non-citizen's sponsor and the sponsor’s spouse shall be deemed available to the non-citizen until such time as the non-citizen:

(1) Achieves U.S. citizenship through naturalization pursuant to chapter 2 of Title III of the INA; or

(2) Has worked forty qualifying quarters of coverage as defined under Title II of the Social Security Act or can be credited with such qualifying quarters as provided under 8 U.S.C. §1645. In the case of any such qualifying quarter beginning after December 31, 1996, the non-citizen must not have received any Federal means-tested public benefit during any such period.

(c) The non-citizen's failure to provide information and verification regarding the assets of their sponsor and the sponsor’s spouse as applicable shall disqualify the non-citizen from receiving medical assistance.

(d) The assets of a non-citizen's sponsor and the sponsor’s spouse shall not be deemed available to a non-citizen for coverage of emergency medical assistance as described in chapter 17-1723.1.

(e) Special provisions shall apply in the case of an indigent non-citizen. The deeming of assets in subsection (a) shall not be applicable for a twelve-month period from the date a non-citizen is determined to be indigent.

(1) The department may determine a non-citizen to be indigent when the non-citizen is unable to obtain food and shelter because the non-citizen's own assets plus assets provided by other individuals, including the sponsor and the sponsor's spouse, does not exceed one hundred per cent of the asset retention limit for the non-citizen’s household size;

(2) The department will only consider the actual amount contributed by the sponsor and sponsor’s spouse for a twelve month period, which begins on the date of such determination and ends twelve months after such date;

(3) Each period of indigence is renewable for additional twelve month periods; and

(4) The department must notify the federal Attorney General of each such determination, including the names of the sponsor and the sponsored non-citizen involved.

(f) Special provisions for a battered spouse and child who are non-citizens. The assets of the sponsor and the sponsor's spouse described in subsection (a) shall not be deemed when the sponsor and the sponsor's spouse are the batterer and the spouse of the batterer, and only for the period the non-citizen is not residing in the residence of the batterer:

(1) This provision applies to:

(A) A non-citizen who was battered or subjected to extreme cruelty in the U.S. by the non-citizen’s spouse or parent, or by a member of the spouse's or parent's family residing in the same residence as the non-citizen and the spouse or parent consented to or acquiesced to such battery or cruelty;

(B) A non-citizen whose child was battered or subjected to extreme cruelty in the U.S. by the spouse or parent of the non-citizen who did not actively participate in such battery or cruelty or by a member of the spouse's or parent's family residing in the same residence and the spouse or the parent consented to or acquiesced to such battery or cruelty; or

(C) A non-citizen child who was residing with the parent who was battered or subjected to extreme cruelty in the U.S. by that parent's spouse or by a member of the spouse's family residing in the same residence as the parent and the spouse consented to or acquiesced to such battery or cruelty described in any of the paragraphs under this subsection;

(2) The department shall determine whether the battery or cruelty is substantially connected to the need for public benefits which means that without the support of the batterer, the non-citizen is unable to obtain food and shelter because the non-citizen's own assets, or other assets provided by other individuals, including the sponsor and the sponsor's spouse, does not exceed one hundred per cent of the asset retention limit for the non-citizen's household size; and

(3) After the twelve month period ends, the department shall continue to exempt the batterer's assets when the battery or cruelty is recognized in an order of a judge or administrative law judge or a prior determination of the USCIS and the department determines that such battery or cruelty still has a substantial connection to the non-citizen’s need for benefits.

[Eff] (Auth: HRS §346-14; 20 C.F.R. §416.1204; 8 U.S.C. §§1631, 1632) (Imp: 20 C.F.R. §416.1204; 8 U.S.C. §§1631, 1632)

§§17-1725.1-20 to 17-1725.1-24 (Reserved).

SUBCHAPTER 4

EXEMPT ASSETS

§17-1725.1-25 Purpose. This subchapter describes assets which are exempt in the determination of eligibility for an individual or household.

[Eff] (Auth: HRS §§346-14, 346-53) (Imp: HRS §346-53)

§17-1725.1-26 Exempt assets. The following assets shall be exempted from consideration in the personal reserve of an individual or household which shall include, but are not limited to:

(1) Household goods of limited value essential to day-to-day living including but not limited to clothing, furniture, appliances or electronic equipment;
(2) Personal effects including but not limited to one wedding ring and one engagement ring, personal care items and clothing, pets, educational or recreational items, or items of cultural or religious significance to an individual;
(3) All motor vehicles, with the exception of watercrafts or air transportation vehicles, including but not limited to cars, trucks, vans, or motorcycles;
(4) Any equity in the principal place of residence of an individual or household, as described in subchapter 5 except for the home of an individual requesting or receiving long-term care services placed in a trust;
(5) Refunds of utility and rental deposits paid by the department;
(6) Bona fide loans or agreements from any source, including but not limited to educational loans, is a debt that the individual (borrower) has an obligation to repay;
(7) Cash payments to the assistance unit responsible for payment of the household bills by a non-unit household member for his or her share of common household expenses;
(8) One burial space (including plots, vaults, and niches) per household member if specifically designated for the individual or immediate household member;
(9) The value of bona fide funeral or burial plans or agreements per household member if

specifically designated for the individual or immediate household member;

(10) All funds contained in a trust established after August 10, 1993 for a disabled (as defined in section 17-1719-8) individual under sixty-five years of age established under 42 U.S.C. §1396p(d)(4)(A) that meets the following conditions:

(A) The trust was established with the assets of the disabled individual solely for the benefit of the individual by a parent, grandparent, legal guardian or by a court; and

(B) The State will receive all amounts remaining in the trust upon the death of the disabled individual up to an amount equal to the total medical assistance received by the individual;

(11) All funds contained in a trust established after August 10, 1993 for a disabled (as defined in section 17-1719-8) individual under sixty-five years of age, established and managed by a non-profit association established under 42 U.S.C. §1396p(d)(4)(C) that meets the following conditions:

(A) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust may pool these accounts;

(B) The accounts in the trust were established with the assets of the disabled individual solely for the benefit of the individual by a parent, grandparent, legal guardian or by a court; and

(C) The State will receive all amounts remaining in the disabled individual's account in the trust upon the death of the disabled individual up to an amount equal to the total medical assistance received by the individual;

(12) Funds used to purchase an annuity that is irrevocable and not assignable.
  (A) An annuity is irrevocable when the annuitant cannot void the contract and obtain the cash value of the annuity less early withdrawals and surrender fees; and
  (B) An annuity is not assignable when the annuitant cannot sell the annuity on the open market;

(13) Federal tax refund or payment made by an employer related to an earned income tax credit (EITC) received is excluded for nine months following the month the refund or payment is received;

(14) Federal tax refund from a child tax credit (CTC) received is excluded from resources for nine months following the month the refund or payment is received;

(15) One-time payment issued to eligible Filipino veterans who aided American troops during World War II that were established by the Filipino Veterans Equity Compensation Fund (FVECF) under the American Recovery and Reinvestment Act of 2009;

(16) Any gift to, or for the benefit of, an individual under nineteen years of age who has a life-threatening condition, received from an organization described under §501(c)(3) of the Code. An in-kind gift that is converted to cash or a cash gift, only up to $2,000 is exempt in the calendar year in which the gift is made;

(17) Restitution payments made under Pub. L. 100-383 for the evacuation, relocation, and internment to an eligible Japanese-American citizen or permanent resident non-citizen of Japanese ancestry under §105 of the Civil Liberties Act of 1988 and to an eligible Aleut under §206 of the Aleutian and Pribilof Islands Restitution Act;

(18) State annuities paid to an individual or the individual's spouse on the basis that the individual is an aged, blind, or disabled veteran under §202 of P.L. 110-245;

(19) Crime Victim Compensation payments issued pursuant to the Victims of Crime Act of 1984 to victims of certain crimes or dependents of deceased victims to include, but not limited to compensation paid by Hawaii's Crime Victim Compensation Commission which are exempt up to nine months from the month of receipt;

(20) Value of stocks or equity in protected retirement accounts which include, but are not limited to profit sharing plans, IRAs, annuities, or other retirement accounts, if an individual continues to be employed by the firm which controls the profit sharing distributions;

(21) Unspent funds from payments made to or for an individual who is or was:

(A) Captured and interned by North Vietnam pursuant to §606 of Pub. L. 105-78;

(B) Captured and incarcerated by the Democratic Republic of Vietnam after entering Vietnam under OPLAN 34A, or Laos under OPLAN 35, pursuant to certain Vietnamese commando operations pursuant to §657(d)(2) of Pub. L. 104-201;

(C) Displaced by any federal or federally-assisted project pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§460l-4655);

(D) A volunteer under the Domestic Volunteer Service Act of 1973 as amended by the National and Community Service Trust Act of 1993 - Volunteers In Service to America (VISTA), Foster Grandparent Program, Retired and Senior Volunteer Program (RSVP), Senior

Companion Program (42 U.S.C. §§4951-5085) and under the Small Business Act - Service Corps of Retired Executives (SCORE), and the Active Corps of Executives (ACE) (15 U.S.C. §637);

(E) Provided relocation assistance payments by a state or county government or through a state or county-assisted project up to nine months after receipt;

(F) Paid pursuant to the Civil Liberties Act of 1988, Title I of Pub. L. 100-383, and the Aleutian and Pribilof Islands Restitution Act, Title II of Pub. L. 100-383;

(G) Paid from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) effective to January 1, 1989;

(H) A victim pursuant to the Netherlands' Act on Benefits for Victims of Persecution 1940-1945, to a persecuted victim during the Nazi occupation of the Netherlands and the Dutch East Indies during World War II pursuant to Pub. L. No. 103-286;

(I) Compensated for losses during the period March 1933 and May 1945 due to political, religious, or ethnic reasons under paragraphs 500 to 506 of the Austrian General Social Insurance Act;

(J) Paid from the Radiation Exposure Compensation Trust Fund established under the Radiation Exposure Compensation Act (RECA) (Pub. L. 101-426) to compensate an individual for injuries or death resulting from the exposure to radiation from nuclear testing or uranium mining under the National Defense Authorization Act for

Fiscal Year 1991 and RECA Amendments of 2000 and succeeding amendments;

(K) Paid pursuant to the Disaster Relief and Emergency Assistance Act or any other assistance provided under a federal statute as a result of a catastrophe which is declared a major disaster by the President of the U.S. or comparable disaster assistance provided by any state, county agency or from a disaster assistance organization;

(L) Paid for assistance to children under the School Lunch Programs (42 U.S.C. chapter 13), Child Nutrition Programs - School Breakfast Program, WIC Program, Milk Programs (42 U.S.C. chapter 13(A)); and

(M) Paid for assistance to senior citizens under the Programs for Older Americans (42 U.S.C. §§3030d-3030g);

(22) Settlement received in the case of Susan Walker v. Bayer Corporation, et al., to compensate an individual who contracted the human immunodeficiency virus (H.I.V.) from contaminated blood products pursuant to Title IV, section 4735 of the Balanced Budget Act of 1997 (Pub. L. 105-33);

(23) Retroactive RSDI or SSI benefits retained in the form of cash or deposited into a bank account is exempt for a period of nine calendar months following the month of receipt;

(24) VA benefits received by or on behalf of certain natural children of:

(A) Vietnam and Korean Service veterans, born with spina bifida under §421 of Pub. L. 104-204 and §102 of Pub. L. 108-183, respectively; and

(B) Vietnam veteran women, born with certain birth defects that results in

permanent physical or mental disability under §401 of Pub. L. 106-419;

(25) Ricky Ray Hemophilia Relief Fund Act of 1998 under Pub. L. 105-369 to compensate an individual with hemophilia-clotting disorder who was treated with blood-clotting agents and contracted the H.I.V.;

(26) The following payments made to Native Americans:

(A) San Carlos Apache Indian Tribe of Arizona under §7 of PL 93-134 and Pub. L. 97-95;

(B) Wyandot Tribe of Indians of Oklahoma under §6 of Pub. L. 97-371;

(C) Shawnee Tribe of Indians (Absentee Shawnee Tribe of Oklahoma, Eastern Shawnee Tribe of Oklahoma and the Cherokee Band of Shawnee descendants) under §7 of Pub. L. 97-372;

(D) Clallam Tribe of Indians of the State of Washington (Port Gamble Indian Community, Lower Elwha Tribe Community and the Jamestown Band of Clallam Indians) under §6 of Pub. L. 97-402;

(E) Red Lake Band of Chippewa Indians under §3 of Pub. L. 98-123;

(F) Saginaw Chippewa Indian Tribe of Michigan under §6 of Pub. L. 99-346;

(G) Cow Creek Band of Umpqua Tribe of Indians under §4 of Pub. L. 99-377;

(H) Santee Sioux Tribe of Nebraska, the Flandreau Santee Sioux Tribe, the Prairie Island Sioux, Lower Sioux, and Shakopee Mdewakanton Sioux Communities of Minnesota under §8 of Pub. L. 99-130 and §7 of Pub. L. 93-134 as amended by Pub. L. 97-458;

(I) Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. §1620);

(J) Distributions made to a household, an individual Native, or a descendent of a

Native by a Native Corporation established in accordance with the Alaska Native Claims Settlement Act (Pub. L. 92-203 as amended) as provided by Pub. L. 100-241, §15 (43 U.S.C. §1626);

(K) Assiniboine Tribe of Fort Belknap Indian Community of Montana and the Assiniboine Tribe of the Fort Peck Indian Reservation of Montana under §5 of Pub. L. 98-124;

(L) White Earth Band of Chippewa Indians as allottees, or their heirs under §16 of Pub. L. 99-264;

(M) Sac and Fox Indian Nation under §6 of Pub. L. 94-189;

(N) Grand River Band of Ottawa Indians under §6 of Pub. L. 94-540;

(O) Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation under §2 of Pub. L. 95-433;

(P) Assiniboine Tribe of Fort Belknap Indian Community and the Papago Tribe of Arizona under §6 and §8 of Pub. L. 94-408;

(Q) Chippewas of Lake Superior and the Chippewas of the Mississippi under §6 of Pub. L. 99-146;

(R) Chippewas of Lake Superior and the Chippewas of the Mississippi under §4 of Pub. L. 99-377;

(S) Delaware Tribe of Indians and the absentee Delaware Tribe of Western Oklahoma under §8 of Pub. L. 96-318;

(T) Miami Tribe of Oklahoma and the Miami Indians of Indiana under §7 of Pub. L. 97-376;

(U) Pembina Chippewa Indians (Turtle Mountain Band of Chippewa Indians, Chippewa Cree Tribe of Rocky Boy's Reservation, Minnesota Chippewa Tribe,

Little Shell Band of the Chippewa Indians of Montana, and the non-member Pembina descendants) under §9 of Pub. L. 97-403;

(V) Confederated Tribes of the Warm Springs Reservation up to $2,000 under §4 of Pub. L. 97-436;

(W) Wyandotte Tribe of Oklahoma and the Absentee Wyandottes under §106 of Pub. L. 98-602;

(X) Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida and the independent Seminole Indians of Florida under §8 of Pub. L. 101-277;

(Y) Indian judgment funds under Pub. L. 93-134, as amended by Pub. L. 97-458 (25 U.S.C. §1407);

(Z) Wisconsin Band of Potawatomi (Hannahville Indian Community and Forest County Potawatomi) under §503 of Pub. L. 100-581;

(AA) Passamaquoddy Tribe, Penobscott Nation, and the Houlton Band of Maliseet Indians under the Maine Indian Claims Settlement Act under §9 of Pub. L. 96-420 (25 U.S.C. §1728(c));

(BB) Michigan Indian Land Claims Settlement Act under Pub. L. 105-143 and §4 of the Cowlitz Indian Tribe Distribution of Judgment Funds Act under Pub. L. 108-222;

(CC) Shoalwater Bay Indian Tribe under §5 of Pub. L. 98-432;

(DD) Coushatta Tribe of Louisiana under §2 of Pub. L. 100-411 and §7 of Pub. L. 93-134 as amended by Pub. L. 97-458 (25 U.S.C. §1407);

(EE) Hoopa Valley Indian Tribe and the Yurok Indian Tribe under §§4, 6, and 7 of Pub. L. 100-580 and §3 of Pub. L. 98-64;

(FF) Red Lake Band of Chippewa Indians from the sale of timber and lumber on the Red Lake Reservation under §3 of Pub. L. 85-794;

(GG) Blackfeet and GrosVentre by the Blackfeet and GrosVentre tribal government resulting from judgment funds under §4 of Pub. L. 92-254 and under §6 of Pub. L. 97-408;

(HH) Under §102 of the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 under Pub. L. 101-618 and §7 of Pub. L. 93-134 as amended by Pub. L. 97-458 (25 U.S.C. §4107);

(II) Seneca Nation of New York under §8(b) of the Seneca Nation Settlement Act of 1990, Pub. L. 101-503 (25 U.S.C. §1774f);

(JJ) Pueblo of Santa Ana and distributed to members of that tribe under §6 of Pub. L. 95-498; and the Pueblo of Zia of New Mexico and distributed to members of that tribe under §6 of Pub. L. 95-499;

(KK) Certain Indian tribes under §6 of Pub. L. 94-114 (25 U.S.C. §459e);

(LL) Hopi and Navajo Tribes under §22 of Pub. L. 93-531 as amended by Pub. L. 96-305;

(MM) Puyallup Tribe under §10 of the Puyallup Tribe Indians Settlement Act of 1989, Pub. L. 101-41 (25 U.S.C. §17734(c));

(NN) Catawba Indian Tribe of South Carolina under §11(m) of Pub. L. 103-116;

(OO) Confederated Tribes of the Colville Reservation under §7(b) of Pub. L. 103-436; and

(PP) Heirs of certain deceased Indians under of the Old Age Assistance Claims Settlement Act §8 of Pub. L. 98-500;

(27) Unspent financial assistance received, under:

(A) Title IV of the Higher Education Act which include but may not be limited to the following:

(i) Academic Achievement Incentive Scholarships;

(ii) Byrd Scholars;

(iii) Federal Educational Loans (Federal PLUS Loans, Perkins Loans, Stafford Loans, Ford Loans, etc.);

(iv) Federal Supplemental Educational Opportunities Grants (FSEOG);

(v) Gear Up (Gaining Early Awareness and Readiness for Undergraduate Programs);

(vi) LEAP (Leveraging Educational Assistance Partnership);

(vii) Pell grants;

(viii) SLEAP (Special Leveraging Educational Assistance Partnership);

(ix) State Student Incentives;

(x) Upward Bound; and

(xi) Work-Study Programs; or

(B) The Bureau of Indian Affairs student assistance programs which exempt all other grants, scholarships, fellowships, and gifts used to pay tuition, fees, and other necessary educational expenses at any educational institution, including vocational and technical education under Pub. L. 108-203 for nine calendar months following the month of receipt.

[Eff] (Auth: HRS §346-29; 20 C.F.R. §§416.1201, 416.1237; 42 C.F.R. §§431.10; 435.631; 45 C.F.R. §233.20) (Imp: HRS §346-29; 20 C.F.R. §§416.1201, 416.1237; 42 C.F.R. §§431.10; 435.631; 45 C.F.R. §233.20)

§§17-1725.1-27 to 17-1725.1-31 (Reserved).

SUBCHAPTER 5

EVALUATION OF REAL PROPERTY

§17-1725.1-32 Purpose. This subchapter identifies and describes the different types of property ownership and how they are considered in the determination of eligibility for a MAGI-excepted individual or household. [Eff] (Auth: HRS §346-53) (Imp: HRS §346-53)

§17-1725.1-33 Equity value of real property.

(a) The equity value of real property shall be determined by subtracting all encumbrances from the fair market value.

(b) The equity value of any real property not designated within this chapter as exempt shall be considered an available asset counted towards the individual's personal reserve.

(c) The fair market value of real property shall be determined by considering the following variables:

(1) Geographic location;

(2) Land use;

(3) Amenities; and

(4) Land configuration.

(d) Acceptable verification of the current fair market value other than the county property tax assessment shall specify how the value was established based on the variables in subsection (c) and may include, but are not limited to the following sources:

(1) A licensed appraiser’s written appraisal of the current fair market value of the property;

(2) A current sales agreement that reflects the current property appraisal or an accurate valuation of the fair market value of the property; or

(3) A licensed realtor’s written appraisal of the current fair market value of the property. [Eff] (Auth: HRS §346-53; 42 C.F.R. §§431.10, 435.601, 435.845; 45 C.F.R. §233.20) (Imp: HRS §346-29; 42 C.F.R. §§431.10, 435.601, 435.845; 45 C.F.R. §233.20)

§l7-1725.1-34 Treatment of special forms of ownership of real or personal property. (a) The individual's interest in property shall be determined by the type and form of ownership which may affect the value of the property in determining eligibility.

(b) Property held in joint tenancy shall be determined by:

(1) An appraisal of the current fair market value of the individual’s interest in the property; or

(2) Dividing the current fair market value of the property by the number of joint tenants; and

(3) Upon the death of one of the joint tenants, the survivor or survivors become the sole owner or owners of the entire interest.

(c) Property held in tenancy by the entirety shall be determined by:

(1) An appraisal of the current fair market value of the individual's interest in the property; and

(2) Dividing the current fair market value of the property equally between the husband and wife.

(d) Property held by tenancy in common:

(1) Shall be determined by an appraisal of the current fair market value based on the percentage of ownership of two or more individual owners;

(2) Each owner may sell, transfer or dispose of his or her share of the property without the permission of the other owner or owners but

cannot do so with respect to the entire property; and

(3) There is no automatic survivorship rights to a deceased's ownership interest as it passes to his or her estate or heirs.

(e) Property under an agreement of sale shall be allocated between the buyer and seller in accordance with their respective interests as follows:

(l) The buyer's interest shall be the fair market value of the real property minus the balance due on the agreement of sale; and

(2) The seller's interest shall be the balance on the agreement of sale.

(f) Property subject to a life estate interest:

(1) Is established by a will or deed which conveys property to a life estate owner or life tenant for life and to one or more remaindermen upon termination of life estate;

(2) The current value of the property shall be allocated between the life tenant and the remainderman by determining the present worth of their respective interests using the Life Estate and Remainder Interest Table (26 C.F.R §20.2031-7 and 49 FR Vol. 49 No. 93/5-11-84), that corresponds to the age of the life tenant;

(3) The life tenant:

(A) Owns the physical property for the duration of the life estate;

(B) Has the right to possess, use, and obtain profits from the property;

(C) Can sell his or her life estate interest; but

(D) Cannot take any action concerning the interest of the remainderman.

(4) The remainderman:

(A) Has ownership interest in the physical property;

(B) Does not have the right to possess and use the property until termination of life estate; and

(C) Unless restricted by will or deed, is able to sell his or her interest in the physical property before the life estate interest expires but the market value of the remainder interest may be reduced as the sale is subject to life estate interest.

(g) The individual's interest in real property shall not be considered available as an asset if a co-owner would be affected by the sale of the individual’s interest under the following:

(1) The co-owner resides on the property;

(2) The co-owner would have to move if the property was sold; and

(3) The co-owner owns no other real property that could be used as the co-owner’s home property. [Eff] (Auth: HRS §346-53; 20 C.F.R. §§416.1201, 416.1245, 416.1246; 42 C.F.R §§435.230, 435.601, 435.840, 435.845) (Imp: HRS §346-53; 20 C.F.R. §§416.1201, 416.1245, 416.1246; 42 C.F.R §§435.230, 435.601, 435.840, 435.845)

§17-1725.1-35 Special provision for removal of legal impediments to availability. Medical assistance shall be provided to an otherwise eligible individual while legal impediments to the current availability of real property are being removed or title is being cleared based on the condition that the individual’s plan of action is submitted within thirty days of the date of request by the department to remove those legal impediments or to clear title.

(1) Failure to meet the deadline shall disqualify the individual from receiving further medical assistance.

(2) The department shall periodically review the status of the plan of action and determine whether a recipient's failure to take appropriate action shall disqualify the recipient from further assistance.

[Eff] (Auth: HRS 346-14; 20 C.F.R. §§416.1201, 416.1245; 42 C.F.R. §§431.10, 435.601) (Imp: 20 C.F.R. §§416.1201, 416.1245; 42 C.F.R. §435.601)

§17-1725.1-36 Real property used as a home. (a) Real property which is considered the home or usual place of residence of the individual is generally exempt from consideration as a countable asset except for the home property of an institutionalized individual placed in a trust.

(b) The home property exemption is extended to the land and all structures on the parcel of land. The home property exemption may include contiguous parcels of property, regardless of whether legally considered separate parcels of property, and adjoining structures on that property that are not separated by easements or public right of ways, and provided the individual owner or owners consider the parcels to be part of their home property.

(c) For the purpose of this subsection, whether an individual is living on or away from the real property shall determine whether the property is considered home property or not, regardless of the form of the individual's interest such as a life tenant, remainderman, a buyer or seller under an agreement of sale, settlor or beneficiary under a trust, or any other form of leased or divided interest.

(1) For an institutionalized individual home property shall not be considered other property if:
   (A) The individual states an intent to return to the home; or
   (B) A spouse or dependent relative is living in the home.
(2) For a non-institutionalized individual in the community who is not residing on their home property, the home property may continue to be exempt if the individual states the intent to return home.

(3) The intent to return home for individuals under paragraphs (1) and (2) shall be re-evaluated annually. [Eff] (Auth: HRS §346-53; 42 C.F.R. §431.10; 45 C.F.R. §233.20; 42 U.S.C. §1396p) (Imp: HRS §346-53; 45 C.F.R. §233.20; 42 U.S.C. §1396p)

§§17-1725.1-37 to 17-1725.1-41 (Reserved).

SUBCHAPTER 6

PERSONAL RESERVE STANDARDS

§17-1725.1-42 Purpose. This subchapter identifies the personal reserve standards for a MAGI-excepted individual or household. [Eff] (Auth: HRS §346-14; 42 C.F.R. §§435.3, 435.840, 435.843, 435.845) (Imp: 42 C.F.R. §§435.3, 435.840, 435.843, 435.845)

§17-1725.1-43 Personal reserve standard for a MAGI-excepted individual or household. (a) The personal reserve standards for an individual or household are the maximum amount of countable assets that may be held by the individual or household while establishing or maintaining eligibility.

(b) An individual or a household whose equity in non-exempt assets as determined in this chapter exceeds the personal reserve standard for medical assistance shall be ineligible.

(c) The personal reserve standards for a MAGI-excepted individual or household applying for or receiving assistance, is equal to standards employed by the SSI program.

(d) For each additional family member, $250 shall be added to the SSI personal reserve standard for a household of two and the resultant amount is the

personal reserve standard for a household of applicable size. [Eff] (Auth: HRS §346-14; 42 C.F.R. §§435.840, 435.843, 435.845) (Imp: 42 C.F.R. §§435.840, 435.843, 435.845)

§§17-1725.1-44 to 17-1725.1-48 (Reserved).

SUBCHAPTER 7

TREATMENT OF ASSETS FOR INDIVIDUALS REQUESTING COVERAGE OF LONG-TERM CARE SERVICES

§17-1725.1-49 Purpose. The purpose of this subchapter is to establish the requirements for the treatment of assets for an individual who requests coverage of long-term care services. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §1396p(c)) (Imp: 42 U.S.C. §1396p(c))

§17-1725.1-50 Determination of the community spouse resource allowance. (a) At the time of initial eligibility determination, the community spouse of an institutionalized individual who received long-term care services on or after September 30, 1989, shall be allowed to maintain countable assets up to the maximum allowed by federal statutes or regulations with provisions for increase, as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing.

(b) At the time of initial eligibility determination of an institutionalized individual, the total value of assets of both spouses, regardless of how they are held, shall be considered available to the institutionalized individual, except for the community spouse resource allowance, as defined by subsection (a).

(c) The assets retained by the community spouse, as allowed by subsection (a), shall not jeopardize the eligibility of the institutionalized individual. After the initial eligibility of the institutionalized individual is established, any assets of the community spouse, which do not include the institutionalized individual as a co-owner, shall not be considered during the continuous period of both eligibility and institutionalization of the institutionalized individual.

(d) The post-eligibility interspousal transfer of assets shall be allowed for the legal transfer of assets from the institutionalized individual to the community spouse. After a protected period of ninety days from the date eligibility is determined, which may be extended if there are legal reasons or extenuating circumstances that delay such a transfer,any assets still legally available to the institutionalized individual shall be considered in the determination of continued eligibility of the institutionalized individual.

(e) The provisions of subsections (a) through (d) apply to an institutionalized individual who qualifies for long-term care services.

[Eff] (Auth: HRS §346-14; 42 C.F.R §431.10, 435.217; 42 U.S.C. §§1315, 1396r-5) (Imp: HRS §346-29; 42 C.F.R. §435.217; 42 U.S.C. §§1315, 1396r-5)

§17-1725.1-51 Penalty period for the transfer of an asset for less than fair market value. (a) An individual who requests medical assistance for coverage of long-term care services shall be assessed a penalty period for coverage of these services if the individual or the individual’s spouse, transferred an asset for less than fair market value within the applicable look-back period. The length of the look-back period shall be sixty months for an asset transferred on or after February 8, 2006.

(b) An asset that was transferred on or after the date of application shall be considered as follows:

(1) A penalty period shall be assessed if an individual transfers an asset after being determined eligible for coverage of long-term care services.

(2) A penalty period shall not be assessed for the transfer of an asset owned by the community spouse made after the individual has been determined eligible for coverage of long-term care services with the exception of subsection (d).

(c) The transfer provision shall apply to an asset held by the individual and the individual's spouse when any action is taken that reduces or eliminates such individual's ownership or control of such asset.

(d) The transfer provision shall apply to countable assets under this chapter owned by the individual or the individual's community spouse or both and to the following exempt assets in subchapters 4 and 5:

(1) The home property;

(2) The value of basic maintenance items essential for day-to-day living including but not limited to clothing, furniture, and appliances;

(3) All motor vehicles with the exception of watercrafts or air transportation vehicles, including but not limited to cars, trucks, vans, or motorcycles;

(4) The equity value of a bona fide funeral or burial plan or agreement; and

(5) The burial space (including plots, vaults, and niches) including those designated for immediate family members.

(e) The transfer provision shall apply to the transfer of income of the individual and the individual's spouse, or their right to receive income, either as a single payment or a stream of income that

is countable in determining Medicaid eligibility under chapter 17-1724.1.

(f) The unpaid portion of long-term care expenses incurred during a penalty period shall not be deducted in post-eligibility as an incurred medical expense when a penalized individual becomes eligible for coverage of long-term care services. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §§1382b(a), (c) and (d), and 1396p(c)) (Imp: 42 U.S.C. §§1382b(a), (c) and (d), and 1396p(c))

§17-1725.1-52 Treatment of annuities. (a) An individual who requires coverage of long-term care services or their community spouse shall disclose whether or not the individual or their community spouse has any ownership interest in annuities at the time of application and at each subsequent redetermination of Medicaid eligibility.

(1) An individual shall not be eligible for coverage of long-term care services if the institutionalized individual or their community spouse fails to disclose any interest in an annuity.

(2) The disclosure shall be required regardless of whether the annuity is irrevocable or treated as an asset under this chapter.

(b) The portion of the funds of an annuity purchased by the institutionalized individual or their community spouse prior to February 8, 2006, that is not actuarially sound and is payable beyond the life expectancy of the annuitant shall be considered transferred.

(c) All funds used to purchase an annuity on or after February 8, 2006, by the institutionalized individual or their community spouse shall be considered transferred if the department is not named as a remainder beneficiary in the first position, or in a position behind the community spouse and the institutionalized individual’s minor child under the age of twenty-one years or who is blind or disabled,

for the amount of medical assistance paid on behalf of the institutionalized individual.

(1) The department shall notify the issuer of an annuity issued on or after February 8, 2006, of the right of the department to be a preferred remainder beneficiary.

(2) The issuer may inform other remainder beneficiaries of the department's remainder interest.

(d) Funds used to purchase an annuity on or after February 8, 2006, by the institutionalized individual or the community spouse, or on behalf of the institutionalized individual or their community spouse, shall not be considered transferred if:

(1) The annuity is considered:

(A) An individual retirement annuity that meets the requirements of section 408(b) of the IRC; or

(B) A deemed IRA under a qualified employer plan under section 408(q) of the IRC; or

(2) The annuity is purchased with proceeds from one of the following:

(A) A traditional IRA under section 408(a) of the IRC;

(B) An account or trust which is treated as a traditional IRA under section 408(c) of the IRC;

(C) A simplified retirement account under section 408(p) of the IRC;

(D) A simplified employee pension under section 408(k) of the IRC; or

(E) A Roth IRA under section 408A of the IRC; or

(3) The annuity meets all of the following requirements:

(A) Is actuarially sound as determined by the department in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration;

(B) Is irrevocable, non-assignable and cannot be sold;
(C) Makes equal payments throughout the term of the contract and does not defer payments or allow balloon payments; and
(D) Cannot be cancelled upon the death of the institutionalized individual or the community spouse.

(e) Certain transactions or changes which occur on or after February 8, 2006, that affect the terms of a qualified annuity that was purchased by the institutionalized individual or their community spouse prior to February 8, 2006, shall be considered a transfer of asset to include, but are not limited to the:

(1) Course of payment made by the annuity;
(2) Treatment of income or principal of the annuity to include additions of principal, elective withdrawals or requests to change the distribution of the annuity; or
(3) Election to annuitize the contract.

(f) Routine changes or automatic events or both, made by the institutionalized individual or the community spouse for an annuity that was purchased prior to February 8, 2006, that are not considered a transfer of asset include:

(1) Routine changes to include, but are not limited to notifications of address change, death, or divorce of a remainder beneficiary.
(2) Changes based on the terms of an annuity which existed prior to February 8, 2006, which do not require a decision, election or action to be effective.
(3) Changes that are beyond the control of the institutionalized individual or the community spouse to include, but are not limited to, changes in the law or the issuer’s policies.

(g) Transactions or changes made for annuities purchased prior to February 8, 2006, that do not meet the criteria of subsection (f) of this section as well

as a qualified annuity that is transferred to anyone except the community spouse or to another individual for the sole benefit of the community spouse, the individual's child, or to a trust as described in section 1917(c)(2)(B) of the Social Security Act, shall be treated as a transfer of asset. [Eff](Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §§1396(a), 1396p(c) and (e), 1396r-5(c)) (Imp: 42 U.S.C. §§1396(a), 1396p(c) and (e), 1396r-5(c))

§17-1725.1-53 Treatment of promissory notes, loans and mortgages. (a) The assets used by an individual who requires coverage of long-term care services or their community spouse, to secure a promissory note, loan or mortgage on or after February 8, 2006, shall not be considered transferred if all of the following conditions apply to the promissory note, loan or mortgage:

(1) The repayment term is actuarially sound;
(2) It is irrevocable and cannot be sold;
(3) Equal payments are made throughout the term of the contract with no deferral or balloon payments; and
(4) The balance cannot be cancelled upon the death of the institutionalized individual or the community spouse.

(b) If the provisions of subsection (a) are not met, the transferred amount is equal to the outstanding balance owed as of the date of the individual's request for coverage of long-term care services.

(c) The portion of the funds used to secure a promissory note, loan or mortgage prior to February 8, 2006, that is not actuarially sound and is payable beyond the life expectancy of the owner of the funds shall be considered transferred. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §1396p(c)) (Imp: 42 U.S.C. §1396p(c))

§17-1725.1-54 Treatment of the purchase of a life interest in the home property of another. (a) The funds used by the individual who requires coverage of long-term care services or their community spouse to purchase a life interest in the home property of another, on or after February 8, 2006, shall be considered transferred if the purchaser did not reside on the property for a period of at least one year after the date of the purchase.

(b) For the purchase of a life interest in the property of another made on or after February 8, 2006 that meet the requirements of subsection (a), the portion of the funds that exceed the value of the life interest property based on the life estate tables published by the SSA, shall be treated as transferred assets.

(c) The portion of the funds used to purchase a life interest in the property of another by the individual or the individual's spouse prior to February 8, 2006, that exceed the value of the life interest in the property based on the life estate tables published by the Social Security Administration, shall be treated as a transferred asset. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §1396p(c)) (Imp: 42 U.S.C. §1396p(c))

§17-1725.1-55 Treatment of the transfer of income. (a) A transfer of asset penalty period shall be assessed if the institutionalized individual or their community spouse transferred:

(1) Lump sum payments received in the month; or

(2) An entitled stream of income (disclaimed or voluntarily agreed).

(b) The penalty period for the transfer of income shall be calculated by dividing the amount of income by the statewide average monthly cost of nursing facility services assessed to a private patient at the time the individual requests coverage of long-term care services. Disposal of such lump sum

payments or the entitled stream of income constitutes a transfer of asset.

(c) The amount of income used to calculate a penalty period shall be:

(1) The gross amount of the lump sum income transferred in the month it was received; or

(2) The total gross amount of income expected to be received during the individual's lifetime when the entitled stream of income was transferred, which is calculated by multiplying the annual amount of income expected to be received during the individual's lifetime based on the life expectancy tables established by the Social Security Administration's Office of the Actuary. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §1396p(c)) (Imp: 42 C.F.R. §431.10; 42 U.S.C. §1396p(c))

§17-1725.1-56 <u>Transfer of assets that are not subject to the assessment of a penalty.</u> A penalty period shall not be applied when:

(1) The asset transferred was the individual's home property and title was transferred to the:

(A) Spouse of such individual;

(B) Child of such individual who is under age twenty-one years, or a blind or disabled child;

(C) A sibling of such individual who has an equity interest in the home, and has resided in the home for at least one year immediately prior to the date the individual becomes an institutionalized individual; or

(D) An adult child of such individual, other than a child described in paragraph (B), who has resided in the home with the individual for at least two years immediately prior to the date

the individual becomes an institutionalized individual and who provided care which allowed the individual to reside at home.

(2) The asset, other than a home, was transferred:
   (A) To the individual's community spouse or to another individual or entity for the sole benefit of the community spouse;
   (B) From the community spouse to another individual or entity for the sole benefit of the community spouse;
   (C) To the individual's child who is under age twenty-one years, a blind or disabled child, or to a trust established after August 10, 1993, for the child; or
   (D) To a trust established after August 10, 1993, solely for the benefit of an individual under age sixty-five years who is disabled as defined in section 17-1719-10.

(3) The individual can substantiate that the individual intended to transfer the asset:
   (A) At either fair market value, or for other valuable consideration by providing substantiated evidence of attempts to dispose of the asset for fair market value, as well as evidence to support the value at which the asset was disposed; or
   (B) The asset was transferred exclusively for a purpose other than to qualify for medical assistance by providing convincing evidence as to the specific purpose for which the asset was transferred.

(4) Circumstances that meet the requirements of this subsection include, but are not limited to:

(A) The individual did not require long-term care services at the time of the transfer;
(B) The individual was living independently at the time of the transfer;
(C) The individual did not have a pre-existing condition that could have led to the need for long-term care or assisted living services at the time of the transfer;
(D) The transfer was not within the individual's control (e.g. court ordered); or
(E) A diagnosis of a previously undetected disabling condition that led to the need for long-term care services occurred after the date of transfer.

(5) The asset transferred for less than fair market value has been returned.
(A) The returned asset must be evaluated for the impact on the individual’s eligibility for Medicaid.
(B) If the entire transferred asset has been returned, the penalty period is negated. Coverage of long-term care services shall be provided for any portion of a penalty period that was applied prior to the return of the asset.
(C) If only a portion of the transferred asset has been returned, and the individual is eligible for coverage of long-term care services, the penalty period shall be recalculated based upon the balance of the unreturned asset.
(i) The end date of the recalculated penalty period shall be applicable if it exceeds the amount of the penalty period already applied; and
(ii) Coverage of long-term services shall be provided for the portion

of the penalty period that exceeds the end date of the recalculated penalty period.
[Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §1396p(c)) (Imp: 42 C.F.R. §431.10; 42 U.S.C. §1396p(c))

§17-1725.1-57 Determining a penalty period.

(a) A penalty period shall be calculated by dividing the total uncompensated value of the asset transferred, by the statewide average monthly cost of nursing facility services assessed to a private patient at the time the individual requests and is determined eligible for the coverage of long-term care services.

(b) A penalty period that results in a partial month penalty shall not be rounded down or disregarded.

(c) A penalty period established for an asset that was transferred, shall be applied as follows:

(1) The value of all non-exempt transfers during the applicable look-back period specified in subsection 17-1725.1-51(a) shall be combined and a single penalty period shall be determined.

(2) A separate penalty period shall be determined for non-exempt transfers which occurred while a penalty is being applied for a previous transfer by an individual determined eligible for coverage of long-term care services.

(3) The penalty period shall commence the later of:

(A) The date of request for long-term care services;

(B) The date the individual would be eligible for coverage of long-term care services but a penalty is being imposed under this subchapter; or

(C) The date a negative action can be taken in situations when timely notice of adverse action is required for the individual currently receiving coverage of long-term care services.

(4) A penalty period that would commence within the term of another penalty period shall commence at the end of the prior penalty period.

(d) An established penalty period shall continue to run, regardless of whether the penalized individual no longer is eligible for medical assistance, or is not receiving long-term care services.

(e) The department shall send a denial notice to an individual requesting coverage of long-term care services, or an adverse action notice to an individual who is receiving coverage for long-term care services when imposing a penalty period. The notices shall meet the requirements of chapter 17-1713.1, and must inform the individual of:

(1) The type and amount of the transferred asset used to determine the penalty period;

(2) The length of the penalty period;

(3) The start and end date of the penalty period;

(4) The authority under the Hawaii administrative rules to impose the negative action; and

(5) The individual's right to request a hardship waiver of the penalty period.

(f) If the spouse of a penalized individual becomes eligible for coverage of long-term care services, the remaining penalty period may be allocated between both spouses.

(g) If one of the spouses should die before completing the allocated penalty period, the remaining spouse shall be allocated the balance remaining for the deceased spouse. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §1396p(c)) (Imp: 42 C.F.R. §431.10; 42 U.S.C. §1396p(c))

§17-1725.1-58 Waiver of a transfer of asset penalty period due to undue hardship. (a) A penalty period may be waived if the department determines that the imposition of the penalty will cause undue hardship for the individual.

(b) Undue hardship exists if the application of a penalty period would deprive the individual of:

(1) Medical care such that the individual's life or health would be endangered; or

(2) Food, clothing, shelter, or other necessities of life.

(c) A waiver of a penalty period due to undue hardship may be granted if the individual provides satisfactory evidence to the department that the asset transferred:

(1) Has been depleted below the resource standard specified in section 17-1725.1-43;

(2) Has been converted to another asset that is not liquid or redeemable;

(3) The return of the transferred assets would put the receiving party in serious deprivation such that the loss of income or the asset would qualify the receiving party for medical assistance;

(4) The receiving party cannot be located by the individual or another including but not limited to the individual's spouse, other family member, representative, or an agent of the nursing facility, after all attempts to locate the receiving party have been exhausted; or

(5) The asset was transferred due to theft, fraud, or financial exploitation upon the individual or their community spouse.

(d) The process for requesting and reviewing a waiver of a penalty period imposed for a transfer of asset due to undue hardship is as follows:

(1) The department shall send the individual a notice of denial or a notice of adverse action according to the requirements of chapter 17-1713.1 to inform the individual of the establishment of the penalty period

and the individual's right to request a hardship waiver.

(2) The individual shall have twenty calendar days from the mailing of the notice of denial or adverse action as specified in paragraph (1) to request a hardship waiver and provide all documentation to support the basis of a hardship waiver request.

(3) The department shall make a determination to grant a hardship waiver within ten business days after receiving the waiver request and supporting documentation.

(4) An individual who is denied a hardship waiver shall be informed of the enforcement date of the penalty period and the right to request a fair hearing under chapter 17-1703.1.

(e) Nursing facilities may request a hardship waiver on behalf of their resident with the written consent of the resident or the resident's personal representative and may represent the resident or the resident's personal representative throughout the appeals process. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §1396p(c)) (Imp: 42 C.F.R. §431.10; 42 U.S.C. §1396p(c))

§17-1725.1-59 <u>Individual with substantive equity in a home property.</u> (a) An individual shall not be eligible for coverage of long-term care services if the individual's home equity interest exceeds $750,000.

(b) The individual's home equity interest shall be determined by the fair market value less encumbrances.

(c) The provisions of this subsection do not apply if the individual's spouse, a child under age twenty-one years, a blind child, or a disabled child is residing in the individual's home.

(d) An individual affected by the provisions of this subsection is allowed to reduce their equity in

the home property through the use of a reverse mortgage or a home equity loan without penalty.

(e) An individual affected by this subsection has the right to file for a waiver due to demonstrated hardship by which the individual is legally barred from taking action to access the equity in the property.

(f) Effective 2011, the amount of the equity interest shall be subject to increase each calendar year based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest $1,000. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §1396p(c)) (Imp: 42 U.S.C. §1396p(c))

§17-1725.1-60 Waiver of excess home equity due to undue hardship. (a) The denial for the coverage of long-term care services may be waived if the department determined that the imposition of ineligibility will cause the individual undue hardship.

(b) Undue hardship exists if the denial of coverage of long-term care services would deprive the individual of:

(1) Medical care such that the individual's life or health would be endangered; or

(2) Food, clothing, shelter, or other necessities of life.

(c) Undue hardship may be granted if the individual provides a written statement with satisfactory evidence to the department of the legal inaccessibility of the excess home equity through any means provided by the individual, spouse, legal representative or authorized representative from the nursing facility.

(d) The process for requesting and reviewing a waiver of ineligibility due to excess home equity is as follows:

(1) The department shall send the individual a notice of denial or a notice of adverse action according to the requirements of

chapter 17-1713.1 to inform the individual of ineligibility due to excess home equity and of the individual's right to request a hardship waiver.

(2) The individual shall have twenty calendar days from the mailing of the denial or adverse notice as specified under paragraph (1) to request a hardship waiver and provide all documentation to support the basis of the hardship waiver request.

(3) The department shall make a determination of whether to grant a hardship waiver within ten business days after receiving the waiver request and supporting documentation.

(4) An individual who is denied a hardship waiver shall be informed of the right to request a fair hearing under chapter 17-1703.1.

(e) Nursing facilities may request a hardship waiver on behalf of their resident with specific written consent of the resident or the resident's personal representative and may represent the resident or the resident's personal representative throughout the appeals process. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 U.S.C. §1396p(c)) (Imp: 42 C.F.R. §431.10; 42 U.S.C. §1396p(c))

§§17-1725.1-61 to 17-1725.1-65 (Reserved).