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## HAWAII ADMINISTRATIVE RULES

### TITLE 17

#### DEPARTMENT OF HUMAN SERVICES

##### SUBTITLE 12

###### MED-QUEST DIVISION

###### CHAPTER 1703.1

###### ADMINISTRATIVE APPEALS

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Historical Note: This chapter is based substantially upon chapter 17-1703 [Eff 08/01/94; am 01/29/96; am 09/14/98; am 7/18/83; am 9/29/86; R 09/30/13]

§17-1703.1-1 Purpose. The purpose of this chapter is to establish the administrative provisions of the department's review and hearing process for individuals and beneficiaries dissatisfied with department or managed care health plan action or inaction. [Eff 09/30/13] (Auth: HRS §346-14)

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(Imp: HRS §§346-12, 346-14(9); 42 C.F.R §431.200)

§17-1703.1-2 Informal Review. (a) An individual may request an informal review of an adverse action from the Med-QUEST Division before or after filing a request for a hearing. However, the individual is not required to seek informal review prior to filing a request for a hearing.

(b) When the oral or written request for an informal review is received by the Med-QUEST Division, the individual shall be given the opportunity to discuss reasons for the proposed adverse action and to present information to show that the proposed action is incorrect. Corrective action shall be made as necessary. If this informal review does not result in resolution, and the individual has not filed a request for a hearing, the individual may request a hearing subject to the timeliness limitations for filing requests for hearing as specified in this chapter.

(c) During the informal review process, the department may use information regarding an individual obtained by the Health Insurance Exchange.

[Eff 09/30/13] (Auth: HRS §346-14(9); 42 C.F.R. §431.202) (Imp: HRS §346-12)

§17-1703.1-3 Right to a hearing. (a) Every individual shall be provided an opportunity for a hearing where an adverse action affects the individual's eligibility, benefits, services or claims.

(b) Every individual shall be provided an opportunity for an expedited hearing in accordance with section 17-1703.1-11, if the time otherwise permitted as described in section 17-1703.1-15 (a)(1) or (a)(2) would jeopardize the individual's life or health or ability to attain, maintain or regain maximum function.

(c) Every individual filing for a hearing shall have the right to submit a written request naming an authorized representative for hearing purposes. The written authorization shall be received by the department before the department acknowledges any action taken by the authorized representative on the individual's behalf.

(d) Every individual shall be informed in writing at the time of application denial or adverse

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action:

- (1) Of the individual's right to a hearing;
- (2) Of the method for obtaining a hearing;
- (3) That the individual may present the appeal independently or be represented by an authorized representative such as legal counsel, relative, friend, or any other person of the individual's choice;
- (4) The availability of interpreter services for a limited English proficient individual; and
- (5) Auxiliary aids for an individual with disabilities. [Eff 09/30/13] (Auth: HRS §346-14(9); 42 C.F.R. §431.206) (Imp: HRS §346-12; 42 C.F.R. §431.206)

§17-1703.1-4 Action on request for hearing. (a)

An individual shall submit a hearing request:

- (1) By telephone;
- (2) Via mail;
- (3) In person; or
- (4) Through other commonly available electronic means.

(b) The Med-QUEST Division must receive a hearing request within ninety (90) calendar days of the date of the notice for:

- (1) Eligibility related decisions;
- (2) Fee-for-service program coverage decisions; and
- (3) Managed care health plan coverage decisions after completion of the managed care health plan's grievance and appeals process.

If the ninetieth (90<sup>th</sup>) day falls on a weekend or holiday, the ninetieth day shall then be the first working day following the weekend or holiday.

(c) Upon receipt by the hearing office, the request shall be date stamped and immediately forwarded to the Med-QUEST Division to:

- (1) Determine whether the request was received within the period specified in this section;
  - (2) Enter the individual's name, case number, and date received;
  - (3) Verify the authority of a court appointed guardian filing on behalf of an individual through appropriate court documents.
- (d) If the hearing request was not filed within ninety (90) calendar days of the date the notice was sent to the individual as

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described in (b), the request shall be denied and the department shall send a notice of denial to the individual.

(e) If an individual denied eligibility for Medicaid by the department files an appeal with the Health Insurance Exchange that appeal shall be treated as a request for hearing under this section.

(f) When the requirements specified in section 17-1703.1-5 are met, the department shall reinstate or continue assistance. [Eff 09/30/13] (Auth: HRS §346-14(9); 42 C.F.R. §§431.221, 431.230, 431.231) (Imp: HRS §346-12; 42 C.F.R. §§431.221, 431.230, 431.231)

§17-1703.1-5 Payment status of medical assistance or coverage pending hearing. (a) The beneficiary is entitled to timely notice as to the status of medical assistance or coverage pending hearing.

(b) Adequate notice that medical assistance shall be reinstated and continued shall be provided where:

- (1) Pertaining to eligibility or the fee-for-service program coverage denial, the beneficiary requests a hearing within fifteen (15) calendar days of the date of the adequate notice for adverse action.
  - (2) Pertaining to a managed care health plan's coverage denial, the beneficiary requests a hearing from the department within ten (10) calendar days of the date of the managed care health plan's notice for adverse action, for continuation of benefits, which were ordered by an authorized provider, and the original period covered by the original authorization has not expired.
  - (3) If the fifteenth (15<sup>th</sup>) day or tenth (10<sup>th</sup>) day as applicable falls on a weekend or holiday, the fifteenth (15<sup>th</sup>) day or tenth (10<sup>th</sup>) day as applicable shall be the first working day following the weekend or holiday.
  - (4) If the last day of the month falls on a weekend or holiday, the last day shall be the first working day following the weekend or holiday.
- (c) The medical assistance or coverage

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reinstated under (b) shall continue until a hearing decision is rendered unless:

- (1) The beneficiary withdraws or abandons the request for hearing as specified in section 17-1703.1-9;
- (2) Action was due to the application or a change in state or federal law or policy;
- (3) Another change affecting the beneficiary's eligibility occurs during the hearing process and the beneficiary fails to request a hearing after notice of the change;
- (4) The beneficiary does not request continued benefits pending a hearing decision.
- (5) In the case of a managed care health plan appeal, the time period or service limits of a previously authorized service has been met.

(d) The department shall promptly send a notice to the beneficiary if benefits are to be reduced or discontinued pending the hearing decision for reasons other than withdrawal or abandonment of the request by the beneficiary.

(e) If, while receiving aid paid pending hearing, the beneficiary:

- (1) Becomes eligible for a reduction of spenddown amount, or premium-share amount, the change shall be made; or
- (2) Sends a written request for and is denied a medical service, aid paid pending shall continue and a notice of the denial shall be sent to the beneficiary. The notice shall include a statement of the denial, reason for the denial, specific rule supporting the denial, and the person's right to appeal the decision. [Eff 09/30/13] (Auth: HRS §346-14; 42 C.F.R. §§431.223, 431.223, 431.230, 431.231, 431,250) (Imp: HRS §346-12; 42 C.F.R. §§431.223, 431.223, 431.230, 431.231, 431,250)

§17-1703.1-6 Rights of the individual. An individual with a timely appeal shall have an opportunity to:

- (1) Examine the electronic and physical case record as well as all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

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- (2) Present the case independently or with the aid of others including legal counsel;
- (3) Bring witnesses;
- (4) Request for an interpreter and shall be provided by the department during the hearing process if the individual is limited English proficient;
- (5) Request for auxiliary aid or services and shall be provided by the department during the hearing process if the individual is disabled;
- (6) Establish all pertinent facts and circumstances;
- (7) Advance any arguments appropriate to the issue being heard without undue interference; and
- (8) Question or refute any testimony or evidence, and to confront and cross examine any witness. [Eff 09/30/13] (Auth: HRS §346.14(9); 42 C.F.R. §431.242) (Imp: HRS §346-12; 42 C.F.R. §431.242)

### §17-1703.1-7 Med-QUEST Division responsibility.

(a) When the Med-QUEST Division assists an individual in filing for the hearing, the Med-QUEST Division shall provide the individual with an adequate notice of the individual's right to an interpreter, auxiliary aids, legal counsel, and inform the individual of legal resources in the community.

(b) The Med-QUEST Division shall review all requests for a hearing to assure that all facts are properly considered. If any basis to support the grievance is found prior to the hearing, the Med-QUEST Division shall promptly take necessary corrective action.

(c) The Med-QUEST Division shall determine whether the request for hearing is based on action taken by the department as a result of section 17-1703.1-9(a). If applicable, the Med-QUEST Division shall make a recommendation to the hearing officer to deny the request.

(d) The Med-QUEST Division shall be the contact during the duration of the hearing appeal process with the individual and shall immediately notify the hearing officer of any change in address or circumstances which may affect the status of the hearing. [Eff 09/30/13] (Auth: HRS §346-14(9);

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42 C.F.R. §§431.221, 431.231) (Imp: HRS §346-12; 42 C.F.R. §§431.221, 431.231)

§17-1703.1-8 Responsibility of hearing office.

- (a) The hearing office shall accept:
- (1) Any request directly submitted to the hearing office; and
  - (2) All requests received through the Med-QUEST Division.
- (b) The hearing office shall acknowledge the request for the hearing through a written notice according to the provisions described in chapter 17-1713.1 to the individual within fifteen (15) calendar days of the date of the hearing request to explain their right to:
- (1) Prompt administrative action;
  - (2) Implementation of a hearing decision within ninety calendar days of the request; and
  - (3) Receive medical assistance or any medical service which had been reduced or denied if a final decision has not been made and implemented within ninety (90) calendar days of the request and the individual is not already receiving aid paid pending.
- (c) Not less than fifteen (15) days prior to the hearing, the hearing office shall send a written notice in accordance with the provisions described in chapter 17-1713.1 to the individual and the Med-QUEST Division containing the following information:
- (1) The date, time, place, and nature of the hearing;
  - (2) The legal authority under which the hearing is to be held;
  - (3) The sections of the statutes and rules involved;
  - (4) The issues involved and the basis for the department action; and
  - (5) The individual's right to retain legal counsel.
  - (6) The individual's right to request an interpreter or auxiliary aids, if required and shall be provided by the department at no cost.
- (d) When it becomes apparent to the hearing officer through facts presented by the department or other persons that the individual appealing lacks the ability or understanding to make or communicate

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decisions regarding the hearing process or to authorize another individual to act on the individual's behalf, the hearing officer may designate one of the following persons to represent the individual in the hearing process:

- (1) A spouse or other adult relative who has actual custody of the individual or demonstrates a close, continuing concern for the individual's well being; or
- (2) An adult friend who has demonstrated a continuing and current interest, by overt acts, in the individual's well being. In situations in which the hearing officer questions the ability of the individual to participate in the hearing process, the hearing officer may request and authorize a medical evaluation at the department's expense before designating an authorized representative. [Eff 09/30/13] (Auth: HRS §346-14(9); 42 C.F.R. §§ 431.221, 431.244) (Imp: HRS §§91-9, 91-9.5, 346-12; 42 C.F.R. §§ 431.221, 431.244)

§17-1703.1-9 Denial or dismissal of a request for hearing. (a) A hearing shall not be granted by the department when either federal or state law requires automatic adjustment in the standard of assistance for classes of beneficiaries unless the appeal is for an incorrect determination of eligibility.

(b) A hearing shall not be granted by the department when the individual has withdrawn the request in writing. Where the individual verbally communicates a desire to withdraw the hearing request through a mode of communication described in section 17-1703.1-4(a)(1) or (a)(3), the individual shall be advised that the withdrawal shall be submitted in writing or if the individual prefers, the department shall send a confirmation of the verbal request to withdraw to the individual.

(c) A hearing shall not be granted by the hearing officer when the individual has abandoned the request. Abandonment occurs when the individual, without good cause, fails to appear at the hearing scheduled for the individual.

- (1) The hearing officer shall send the individual a letter stating that the appeal

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is considered abandoned unless there was good cause for the failure to appear. The individual shall be notified that the request shall continue only if the individual presents good cause for the failure to appear and contacts the agency within fifteen (15) calendar days of the notice. If no reply is received within the fifteen (15) calendar days, the hearing request shall be considered abandoned. If the fifteenth (15<sup>th</sup>) day falls on a weekend or holiday, the fifteenth (15<sup>th</sup>) day shall then be the first working day after the weekend or holiday.

- (2) Good cause may be established on the basis of one of the following factors:
- (A) Death in the family;
  - (B) Personal injury or illness which reasonably prohibits the individual from attending the hearing; or
  - (C) Sudden and unexpected emergencies.

(d) When a request for a hearing is denied or dismissed, the department shall send the individual a notice in accordance with the provisions described in chapter 17-1713.1, stating the reasons for the denial or dismissal. Written notice shall be provided the individual within ninety (90) calendar days of the date of hearing request. [Eff 09/30/13] (Auth: HRS §346-14(9); 42 C.F.R. §§431.220, 431.223, 431.244) (Imp: HRS §346-12; 42 C.F.R. §§431.220, 431.223, 431.244)

§17-1703.1-10 Group hearings. A series of individual requests for a hearing may be consolidated into a single group hearing when the sole issue involved is one of state or federal law or policy, or changes in state or federal law. Each individual shall be permitted to present the individual's own case or be represented by an authorized representative. [Eff 09/30/13] (Auth: HRS §346-14(9); 42 C.F.R. §431.222) (Imp: HRS §346-12; 42 C.F.R. §431.222)

§17-1703.1-11 Expedited hearings. (a) An expedited hearing request may be granted within three working days of the request for hearing, if the time

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otherwise permitted for a hearing as described in section 17-1703.1-15(a)(1) or (a)(2) would jeopardize the individual's life or health or ability to attain, maintain or regain maximum function.

(b) If the department determines that the request does meet the criteria for an expedited hearing, it must:

- (1) Initiate the hearing process as described in section 17-1703.1-12; and
- (2) All matters relating to the hearing shall be heard and disposed of as expeditiously as the individual's health conditions requires, but no later than (3) working days after the department receives the request for an expedited hearing.

(c) If the department determines that the request does not meet the criteria for an expedited hearing, it must:

- (1) Initiate the standard hearing process timeframe, in accordance with 17-1703.1-15(a)(1) or (a)(2); and
  - (2) Notify the individual orally or through an electronic notice as described in section 17-1713-6 of the denial and, if oral notification is provided, the department will follow up with a written notice within two (2) calendar days of the denial.
- (d) An individual enrolled in a managed care health plan shall first be required to complete that health plan's internal expedited appeal process for any denied service. [Eff 09/30/13] (Auth: HRS §346-14(9); 42 C.F.R. §431.224) (Imp: HRS §346-12; 42 C.F.R. §431.224)

§17-1703.1-12 The hearing. (a) The hearing shall include consideration of:

- (1) Any adverse action by the department or managed care health plan which includes:
  - (A) Failure to determine eligibility within the specific time limits of the medical assistance programs;
  - (B) Refusal to consider a request for or failure to make a payment adjustment within time limits set by the medical assistance programs; or

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- (C) Discontinuance, termination, suspension, withholding, or reduction of medical assistance or coverage; and
- (2) The department's decision regarding:
  - (A) An initial and subsequent determination of eligibility for medical assistance;
  - (B) Amount of spenddown or change in spenddown;
  - (C) Amount of premium share or change in premium share; or
  - (D) The method of delivery of service, included restricted status.

(b) The individual shall be required to appear in person at the hearing unless authorization for an authorized representative was received by the department. When mutually agreed upon by the individual and the department, a hearing may be conducted over the telephone or through videoconference.

(c) Unless both the department and the individual agree to the presence of other persons in the hearing room, the hearing officer or person conducting the hearing shall limit attendance to the following individuals necessary for the conducting of the hearing:

- (1) The individual, the authorized representative, or both, interpreter, if any, legal counsel, and witnesses;
- (2) Representatives of the section or unit offices;
- (3) Representatives of the Med-QUEST Division; and
- (4) Hearing officer and staff.

(d) The individual or the authorized representative shall, upon request, be able to examine the electronic and physical case record as well as all available documentary evidence used by the department at the hearing as specified in section 17-1703.1-6.

(e) The hearing shall be conducted at a reasonable time, date, and place and generally be held in the jurisdiction of the department in which the individual is living at the time of the hearing. The hearing shall be conducted at a location or a videoconference specified by the hearing officer, or a teleconference is scheduled if the individual is unable to travel to the site because of health issues.

(f) The hearing officer shall have access to the department's information necessary to issue a proper

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hearing decision, including information concerning policies and regulations.

(g) The decision of the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. If, after a hearing has begun, additional evidence is necessary for the proper determination of the case, the hearing officer may:

- (1) Continue the hearing to a later date. The hearing officer may order further investigation and may direct either party to produce additional evidence; or
- (2) Close the hearing and hold the record open for a period not to exceed thirty (30) days to permit the receipt of additional documentary evidence. [Eff 09/30/13]  
(Auth: HRS §346-14(9); 42 C.F.R. §§431.240, 431.242, 431.241, 431.244) (Imp: HRS §346-12; 42 C.F.R. §§431.240, 431.242, 431.241, 431.244)

§17-1703.1-13 Hearing involving medical issues. When the hearing involves medical issues such as issues concerning a diagnosis, an examining physician's report, or a medical review team's decision, the hearing officer may require an additional medical assessment of the individual. The evaluation shall be conducted by someone other than the persons involved in making the original decision. The additional medical assessment shall be obtained at the expense of the Med-QUEST Division and made part of the record. [Eff 09/30/13] (Auth: HRS §34614(9); 42 C.F.R. §431.240) (Imp: HRS §346-12; 42 C.F.R. §431.240)

§17-1703.1-14 Hearing involving spousal support from institutionalized individuals. (a) A hearing may be requested if either the institutionalized spouse or the community spouse is dissatisfied with the determination of the:(1) Community spouse monthly income allowance;

- (2) Computation of the spousal share of the resources; or
- (3) Community spouse resource allowance. Any hearing request resulting from the determination of the community spouse resource allowance shall be held within

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thirty (30) days of the request for hearing.

(b) A community spouse may be allowed to maintain income that exceeds the standardized community spouse monthly income allowance when a community spouse's income needs are determined to be greater than the maximum income allowance limit.

(c) A community spouse may be allowed to retain resources in excess of the standardized community resource allowance when income generated by those resources does not cause the community spouse's income to exceed the community spouse monthly income allowance. [Eff 09/30/13] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §346-29; 42 U.S.C. §1396 r-5)

§17-1703.1-15 Hearing decision. (a) All matters relating to the hearing shall be heard and disposed of as follows:

- (1) Within ninety (90) calendar days from the date of request for a hearing that is submitted in accordance with section 17-1703.1-4;
- (2) Within forty-five (45) calendar days from the date of an appeal decision by the Health Insurance Exchange involving an earlier determination of Medicaid eligibility; or
- (3) As expeditiously as the individual's health conditions requires, but no later than three (3) working days after the department receives the request for an expedited hearing.

(b) Exception to the provision described in subsection (a), shall be when the hearing is continued or the record is held open as specified in section 17-1703.1-12(g). The time limit shall be extended only for the period of the continuance.

(c) Unless the record is held open for additional documentary evidence, after closing the hearing, the hearing officer shall prepare the decision in writing. The decision shall contain a statement concerning the individual's right to judicial review, the reasons for the decision, the evidence, and the rules supporting the decision. A copy of the written decision shall be provided the individual and the department.

(d) The transcript, recording, or an official record containing the substance of the hearing

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proceedings, together with all papers filed in the proceeding and the hearing officer's decision shall constitute the exclusive record and shall be made available to the individual during normal business hours through the hearing office.

(e) The department shall comply with the hearing decision immediately upon receipt of the decision.

(1) When the hearing decision is favorable to the individual, the department shall promptly make necessary corrections, retroactive to the date the incorrect action was taken, and shall notify the hearing office, in writing, of the action and the date the action was taken.

(2) If the hearing decision is in favor of the individual on the issue involved, but for technical reasons such as computer problems, immediate corrections are not made, the department shall submit a notice to the hearing officer and include a statement of why the department could not immediately comply with the decision.

(3) The hearing officer shall review the notice to assure that the department has correctly complied with the decision.

(f) All hearing decisions shall be accessible to the public, subject to provision of safeguarding public assistance information stated in section 346-10, HRS, and the department's confidentiality provisions specified in chapter 17-1702.

[Eff 09/30/13] (Auth: HRS §346-14(9); 42 C.F.R. §431.244) (Imp: HRS §346-12; 42 C.F.R. §431.244)

§17-1703.1-16 Decisions pending over ninety days. (a) When a final decision has not been made and implemented within ninety (90) days of the request, the department shall reduce the premium-share amount or spenddown amount to what existed prior to the hearing request or restore or grant any service which was reduced or denied, if the individual is not already receiving aid paid pending. When the hearing decision is pending over ninety (90) days, aid paid shall be determined in accordance with subsections (d) and (e).

(b) The hearing officer shall notify the Med-QUEST Division orally on the ninety-first(91<sup>st</sup>) day when a final decision is not reached within ninety

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(90) days. If the ninety-first (91<sup>st</sup>) day falls on a weekend or holiday, the ninety-first (91<sup>st</sup>) day shall then be the first working day following the weekend or holiday. A written confirmation shall be sent within three (3) working days.

(c) In situations where an individual has requested or is otherwise responsible for a delay in the hearing process, the time period shall be tolled only for the period of the delay.

(d) When a final decision is not made and implemented within ninety (90) days:

- (1) The specific medical care denied the individual which is the issue on appeal shall be authorized from the ninety-first (91<sup>st</sup>) day until the hearing decision is made and implemented; or
- (2) The individual applying for medical assistance shall be made presumptively eligible to secure assistance from the ninety-first (91<sup>st</sup>) day until the hearing decision is made and implemented.

(e) The department shall review current need and eligibility factors exclusive to the issue on appeal. If the individual is found to be currently eligible, the department shall reduce the premium-share amount or spenddown amount to what existed prior to the hearing request effective the ninety-first (91<sup>st</sup>) day. The required action shall be taken within five (5) working days after the oral notice is received from the hearing officer. The amount of premium-share or spenddown amount shall be restored to the previous level until a final decision is made, provided the individual remains eligible and no other changes become necessary.

(f) If, for reasons exclusive to the issue pending hearing, the department determines that the individual is ineligible to receive assistance, the department shall terminate or deny the assistance on or after the ninety-first (91<sup>st</sup>) day of the hearing request. The department shall send a notice indicating the reasons for not restoring assistance pending the final hearing decision.

[Eff 09/30/13] (Auth: HRS §346-14(9); 42 C.F.R. §431.244) (Imp: HRS §346-12; 42 C.F.R. §431.244)

§17-1703.1-17 Recovery of aid paid pending. (a)  
Aid paid pending a hearing decision from the date aid

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paid pending begins through the ninetieth (90<sup>th</sup>) day shall be recoverable by the department if the department's action is sustained.

(b) If, for reasons other than a settlement negotiated by the state attorney general's office, the individual withdraws or abandons the request as specified in section 17-1703.1-9, the department or the managed care health plan shall recover the aid paid pending the hearing decision.

[Eff 09/30/13] (Auth: HRS §346-14(9); 42 C.F.R. §431.230) (Imp: HRS §§346-12, 346-44; 42 C.F.R. §431.230)

§§17-1703.1-18 to 17-1703.1-22 (Reserved).