HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 9 COMMUNITY LONG-TERM CARE PROGRAMS

CHAPTER 1416

GENERAL PROVISIONS FOR SOCIAL SERVICES

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§17-1416-1 Purpose. (a) The purpose of this chapter shall be to establish the general conditions for the provision and receipt of social services identified in chapters 17-1417 to 17-1421.

(b) Specific social service program requirements shall be identified in chapters 17-1417 to 17-1421. [Eff 6/29/92; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-2 Goals of social services. Social services shall be directed at helping eligible persons:

(1) Achieve or maintain economic self-support to prevent, reduce, or eliminate dependency on public assistance;
(2) Achieve or maintain self-sufficiency, including reduction or prevention of dependency;
(3) Prevent or remedy abuse, neglect, or exploitation of dependent adults unable to protect their own interests;
(4) Prevent or reduce inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; or
(5) Secure admission to institutional care when other forms of care are not appropriate. [Eff 6/29/92; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397)

§17-1416-3 Definitions. For the purpose of chapters 17-1416 to 17-1421:

"Application" means a specific request made by an individual for social services for the individual or on behalf of another person.

"Family" means one or more adults and children, if any, related by blood, marriage, or adoption, who reside in the same household. Related adults other than spouses, unrelated adults residing together, and adults participating in the department's medicaid waiver programs shall each be considered separate family units.

"Primary recipient" means an eligible individual for whom a specific goal is established and who is provided specified social services in order to achieve that goal.

"Purchase of service provider" means an agency or organization which offers social services on behalf of the department under the terms of a valid written contract.

"Relative" means father, mother, brother, sister, stepfather, stepmother, stepbrother, stepsister, half brother, half sister, uncle, aunt, uncle half blood, aunt half blood, grandfather, grandmother, great grandfather, great grandmother, first cousin, niece, nephew, including the spouse of any of the above, even though the marriage ended in divorce or death. [Eff

6/29/92; am 8/5/93; am and comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C §1397a)

§17-1416-4 Range of social services. The department shall provide a range of services to eligible individuals in accordance with the State's current social services block grant report of intended use and with provisions of the social services programs specified in chapters 17-1417 to 17-1421. [Eff 6/29/92; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §§627, 1397c)

§17-1416-5 Methods of service provision. (a) Services shall be provided to eligible individuals directly by department staff or by purchase of service providers. Services provided by purchase of service providers shall be limited by the terms, scope, and funding specified in the purchase of service contracts.

(b) Specific services such as chore services may also be provided by individuals or agencies through independent arrangements made by the recipient. In these instances, the department shall reimburse the eligible recipient for the cost incurred in securing the services according to the department's payment rates for the service. [Eff 6/29/92; am and comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§§17-1416-6 to 17-1416-8 (Reserved).

SUBCHAPTER 1

APPLICATION FOR SERVICES

§17-1416-9 Declaration of need for services. (a) All persons wishing to apply for social services shall be given the opportunity to do so.

(b) The application shall be in writing on a form prescribed by the department. The form shall be dated and signed under penalty of perjury and shall include all information needed by the department necessary to establish eligibility for the services.

(1) The application form shall be signed by one of the following persons:
(A) The applicant;
(B) A representative authorized by the applicant; or
(C) When the applicant is incompetent or incapacitated, by someone acting responsibly for the individual, including department staff.
(2) Submission of a signed application form shall formalize the application except in situations of protective services for dependent adults. In lieu of a signed application form in protective service situations, the department shall document the date and nature of the protective service referral.

(c) Acceptance of social services shall not be a prerequisite for receipt of any other services or assistance such as medicaid or food stamps.

(d) Individuals shall have the right to decide the need for social services, except for those individuals receiving services which are in accord with a court order. [Eff 6/29/92; am 7/25/94; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-10 Applicant as primary source of information. (a) The applicant shall be the primary source of information in determining eligibility and need for initial and continuing receipt of services.

(b) The applicant or the applicant's authorized representative shall provide the department with the necessary information in writing on the department's prescribed application form to:
(1) Establish eligibility for social services; and
(2) Identify the nature or type of services needed from the department.

(c) If the individual is legally adjudicated an incapacitated person, the following conditions shall be met:
(1) The application for services shall be completed by the legal guardian; and
(2) The incapacitated person shall be involved in the application process and planning for

services to the extent of the incapacitated person's capabilities. [Eff 6/29/92; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-11 Handling applications. (a) When the application is received for social services which have available resources, the date of application shall be the date the signed application form is received by the department, except for services provided without regard to income.

(b) Upon receipt, the application shall be assigned to a worker for a determination of:

(1) The applicant's eligibility for social services according to departmental eligibility requirements;
(2) The nature of the problem as stated by the applicant;
(3) Whether the identified problem may be appropriately addressed by services offered by the department;
(4) Which of the department's services may best meet the applicant's problem;
(5) The service goals of the applicant; and
(6) The need to inform the applicant of and refer the applicant to other community resources if appropriate, in order to:
    (A) Provide freedom of choice for the applicant; and
    (B) Help the applicant secure services not provided by the department.

(c) For services provided without regard to income, the date of application shall be the date the complaint or request for services is received orally or in writing.

(d) When the application is received for social services which do not have available resources, the applicant shall be placed on a department waiting list until sufficient resources become available. The date of application shall be the date sufficient resources become available for the applicant. Upon request, the department shall assist the applicant to consider other community or department resources. [Eff 6/29/92; am 7/25/94; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-12 Disposition of application. The department shall dispose of applications by taking one of the following actions:

(1) Applicants shall be determined eligible for social services when:
  (A) All required forms and verifications submitted to the department:
    (i) Are received within thirty days of the date of application; and
    (ii) Contain all information necessary for determining eligibility; and
  (B) The applicant meets all eligibility requirements specified by the department for the services for which the individual applied;

(2) Applicants shall be determined ineligible for social services when:
  (A) It is clearly established and recorded that the applicant does not meet the eligibility requirements specified either under subchapter 2, general eligibility requirements, or the eligibility requirements of the particular services applied for; or
  (B) The applicant leaves the State or the applicant's whereabouts are unknown; or
  (C) Verification necessary to determine eligibility is submitted after thirty days from the date of application. If so, a new application may be submitted; or
  (D) A request is made for services which are not included in the scope of the department's services;

(3) The department shall discontinue applications which are withdrawn because the applicant decides not to use the services of the department; or

(4) Applicants shall be placed on a department waiting list in accordance with section 17-1416-11(d). [Eff 6/29/92; am 7/25/94; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-13 Time limits for application disposition. (a) The disposition of all applications

for social services provided by the department shall be made within thirty calendar days from the date of application.

(b) For applicants determined eligible, services shall be initiated or arranged within:

(1) Fifteen calendar days after the decision on eligibility has been made; or

(2) Thirty calendar days after date of the application. [Eff 6/29/92; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-14 Notice to the applicant of application disposition. (a) The department shall notify applicants about the application disposition within fifteen calendar days after the department makes a decision.

(b) The applicant shall be sent a written notice that contains a statement of the action taken, the reasons for the action, the specific rules supporting the action, and of the right to appeal the department's decision through established fair hearing procedures. [Eff 6/29/92; am 7/25/94; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-15 Presumptive eligibility. (a) Any applicant not determined eligible or ineligible by the thirtieth day from the date of application shall be determined presumptively eligible for the social service for which the individual applied effective the thirty-first day from the date of application.

(b) A determination of presumptive eligibility shall not constitute a final disposition. The application shall be processed and disposition of the application shall be made as soon as possible. The applicant shall remain presumptively eligible until the application is either approved or denied. The applicant shall be informed of the decision.

(c) On the thirty-first day from the date of application, the department shall send a written notice of presumptive eligibility to all applicants who have not been notified of approval or denial.

(d) The cost of services for which the application was made shall be authorized for services

received beginning the thirty-first day until presumptive eligibility is no longer effective when:

(1) The applicant submits to the department a bill or receipt for payment within thirty days of the date indicated on the bill or receipt; and

(2) The amount paid does not exceed the department's rate of payment for the kind of service received.

(e) The following conditions shall apply in order to terminate presumptive eligibility when the applicant is determined eligible:

(1) Presumptive eligibility shall end on the day the disposition is made. The applicant shall be notified of full eligibility; and

(2) The cost of services for which the application was made shall be authorized from the date of application according to the department's rate of payment, if the client submits a bill or receipt for services received during that time.

(f) The following conditions shall apply in order to terminate presumptive eligibility when the applicant is determined ineligible:

(1) On the day the department determines the applicant ineligible, the department shall mail the applicant notice to this effect;

(2) Presumptive eligibility shall terminate three days from the date the notice is mailed;

(3) The cost of services for which the individual applied and received during presumptive eligibility shall be authorized if the applicant submits a bill or receipt for payment within thirty days of the date indicated on the bill or receipt. Payment shall be made according to the rate of payment for the kind of service rendered;

(4) If a fair hearing is requested, no payments shall be made for service received after presumptive eligibility terminated and while the fair hearing request is pending;

(5) If a fair hearing decision is in the applicant's favor, the applicant shall be determined eligible from the date of application. Costs for services received

from the date of application shall be paid at the department's rate of payment for that particular service when:
(A) The services are the kind of services for which the individual applied; and
(B) The applicant submits a bill or receipt to the department; and

(6) If a fair hearing decision is adverse to the applicant, the applicant shall remain ineligible and responsible for costs incurred prior to as well as after the period of presumptive eligibility. [Eff 6/29/92; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-16 Right to a fair hearing. Every applicant or recipient shall be informed in writing at the time a decision is made regarding a social service application or request for additional services and at the time of any department action affecting the service the recipient is receiving:

(1) Of the applicant's or recipient's right to a fair hearing;
(2) Of the method for obtaining a hearing as specified in chapter 17-1402; and
(3) That the applicant or recipient may be represented by legal counsel, relatives, a friend, any other spokesperson the applicant or recipient chooses, or that the applicant or recipient may be self-represented. [Eff 6/29/92; am 8/5/93; comp 10/28/95; am 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12; 42 U.S.C. §1397c)

§§17-1416-17 to 17-1416-19 (Reserved).

SUBCHAPTER 2

GENERAL ELIGIBILITY REQUIREMENTS

§17-1416-20 Eligibility requirements for social services. In order to be determined eligible for

specific social services, individuals and families shall meet the following requirements:

(1) Program eligibility requirements as specified in chapters 17-1417 to 17-1421; and

(2) Income eligibility requirements as follows:

(A) Income maintenance status for individuals or families who are:

(i) Recipients of or eligible for supplemental security income; or

(ii) Recipients of or eligible for medical assistance under the department's medicaid program; or

(iii) Recipients of or eligible for financial assistance from the department; or

(B) Without regard to income status for individuals and families who require protective services to prevent or remedy abuse, neglect, or exploitation of dependent adults as specified in chapter 17-1421. [Eff 6/29/92; am 11/29/93; am and comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-21 Establishment and implementation of the service plan. (a) The department shall establish with the client a service plan which shall be recorded and shall include:

(1) Identification of the problem as presented by the client;

(2) Goals to be achieved:

(A) Self-support;

(B) Self-sufficiency;

(C) Protection;

(D) Prevention or reduction of premature or inappropriate institutional care; and

(E) Institutional care; and

(3) Barriers that stand in the way of achieving goals.

(b) The service plan form need not be fully completed at the point of application or before the initial service cost or purchase of service payment is authorized. The worker shall assess the problem and define the goals to be achieved prior to determining approval of application for service. The remainder of

the service plan form shall be completed as soon as possible thereafter.

(c) The social worker and client shall carry out the mutually identified tasks to remove barriers for goal achievement and the social worker shall assist the client where appropriate to carry out the tasks.

(d) Implementation of the service plan shall be carried out in accordance with rules specified in chapters 17-1417 to 17-1421. [Eff 6/29/92; am and comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§§17-1416-22 to 17-1416-24 (Reserved).

SUBCHAPTER 3

TREATMENT OF INCOME

§17-1416-25 REPEALED. [Eff 6/29/92; R 10/28/95]

§17-1416-26 REPEALED. [Eff 6/29/92; am 4/22/94; R 10/28/95]

§17-1416-27 REPEALED. [Eff 6/29/92; am 4/22/94; R 10/28/95]

§17-1416-28 REPEALED. [Eff 6/29/92; R 10/28/95]

§§17-1416-29 to 17-1416-31 (Reserved).

SUBCHAPTER 4

AUTHORIZATION FOR SERVICE

§17-1416-32 Service authorization. (a) The department shall provide services only as part of a social service plan for individuals and families

meeting the eligibility requirements for specific services subject to the availability of resources.

(b) The social service plan shall include only those services which are described in chapters 17-1417 to 17-1421 as being available through the department.

(c) The services shall be authorized by the department social worker and shall be for a predetermined period during which services are necessary. Services authorized shall not cover a period prior to the actual date on which the individual or family was determined eligible for the service.

(d) No payment shall be made for services which are not included in the service plan and which are provided the recipient without prior written authorization of the department.

(e) Payment for services shall be provided:

(1) Through cash payment, directly to the recipient after service is received;

(2) By purchase order payment made on behalf of the recipient directly to a vendor with a written purchase agreement with the department; or

(3) By purchase of service payment made on behalf of the recipient directly to a purchase of service provider.

(f) When cash payments are made to the client who is receiving services in the client's own home, such payments shall be made at the current state minimum hourly wage rate. In addition, the department shall:

(1) Provide employer payment for state unemployment taxes (SUTA), federal unemployment taxes (FUTA), and Social Security taxes (FICA), which shall be paid directly by the department, in the recipient's behalf, to the appropriate tax agencies; and

(2) Deduct mandatory employee taxes from the monthly payment to cover federal withholding, state withholding and Social Security taxes.

(A) The amount of federal and state taxes withheld shall be based on information submitted to the department regarding provider's marital status, number of provider dependents, and relationship between client and provider.

(B) The monthly payment the client receives shall reflect the required number of hours of care multiplied by the state

minimum hourly wage rate, less the mandatory employee taxes withheld as stipulated in this paragraph. [Eff 6/29/92; am 7/25/94; am and comp 10/28/95; am 7/1/02] (Auth: HRS §§346-14, 346-63)(Imp: HRS §§346-14, 346-63; 42 U.S.C. §1397c)

§§17-1416-33 to 17-1416-35 (Reserved).

SUBCHAPTER 5

OTHER PROVISIONS

§17-1416-36 Request for additional services. (a) There shall be written documentation of a recipient's request for services in addition to the services the recipient is already receiving. The documentation may be:

(1) A written request completed by the recipient; or

(2) A recording of the request by departmental staff.

(b) Disposition of requests for additional services shall be made in the same manner as an application and section 17-1416-13 shall apply. Disposition shall be made within thirty calendar days from the date the oral or written request is received by the department. [Eff 6/29/92; comp 10/28/95] (Auth: HRS §346-14)(Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-37 Redetermination of eligibility for social services. (a) The department shall redetermine income and program eligibility for continued social services:

(1) When information is obtained that there are anticipated changes in the individual's or family's situation;

(2) Promptly, not to exceed thirty days, after information is received that changes have

occurred in the individual's or family's circumstances which may result in ineligibility for services; and

(3) At least once every year from the month eligibility for service was determined.

(b) Redetermination of eligibility for a specific service shall be made in the same manner as the disposition of an application including signing and dating a form prescribed by the department. [Eff 6/29/92; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C §1397c)

§17-1416-38 Confidentiality. The provisions of chapter 17-1401 shall be applicable to the specific services identified in chapters 17-1416 to 17-1421. [Eff 6/29/92; comp 10/28/95; am 12/5/97] (Auth: HRS §§346-10, 346-14) (Imp: HRS §§346-10, 346-14)

§17-1416-39 Reporting changes. (a) Social service recipients shall be responsible to report to the department within thirty days of occurrence any changes in:

(1) Income maintenance status as specified in section 17-1416-20(2)(A);

(2) Address, including:

(A) Place of residence; and

(B) Mailing address;

(3) Family member size;

(4) Marital status;

(5) Providers of the service the recipient is receiving; and

(6) Circumstances which may affect the recipient's eligibility for continuing services, including, but not limited to:

(A) Changes in number of hours of service required;

(B) Changes in hours of employment; and

(C) Anticipated changes in the individual's situation which may affect the individual's eligibility for continued services.

(b) Failure to report information, as specified in subsection (a), which may affect the recipient's eligibility for services or amount of social services

payments shall be investigated by the department as a suspected fraud.

(c) In situations where fraud is suspected, the provisions of chapter 17-1404 shall be applicable. [Eff 6/29/92; am 8/5/93; am and comp 10/28/95; am 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§17-1416-40 Overpayments and recoupment. (a) An overpayment shall occur when a recipient receives social service cash payments or receives social services through a purchase of service provider to which the person is not entitled.

(b) Overpayments shall be collected from the individual in the following manner:

(1) As a refund from the currently available social service cash payment at a rate of ten per cent of the monthly social service payment for individuals who continue to be eligible for social service costs; or

(2) As a reduction in the current monthly service hours being authorized from the purchase of service provider at a rate of ten per cent for individuals who continue to be eligible for social services; or

(3) Recovered for the department by the investigations office (INVO) for individuals who are no longer eligible for cash payments.

(c) Overpayments resulting from the receipt of social services through a purchase of service provider shall not be collected from individuals who are no longer eligible for the services.

(d) Overpayments that meet the definition of fraud as defined in chapter 17-1404 shall be referred to the investigations office (INVO) for investigation. [Eff 6/29/92; am 8/5/93; am and comp 10/28/95; am 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-44)

§17-1416-41 Claim against the estate of a deceased recipient. (a) If a recipient dies leaving an estate and does not have a surviving spouse, child, father, mother, grandfather, grandmother, grandchild, stepfather, stepmother, or designated heir, the department may file a claim against the estate for the

amount of social service benefits provided the deceased recipient.

(b) If a recipient fraudulently received social service benefits because of the recipient's withholding of information, the department may file a claim against the estate of the deceased recipient, notwithstanding subsection (a), for the amount of social service benefits overpaid. [Eff 12/5/97] (Auth: HRS §§346-14, 346-44) (Imp: HRS §§346-37, 346-44)

§§17-1416-42 to 17-1416-43 (Reserved).

SUBCHAPTER 6

TERMINATION, SUSPENSION, OR REDUCTION OF SERVICE

§17-1416-44 Advance notice of action to terminate, suspend, or reduce social services. (a) The department shall give timely and adequate notice prior to initiating action to terminate, suspend, or reduce social services unless the provisions of subsection (d) apply. Under this requirement:

(1) "Timely" means that:

(A) The department shall mail a written notice at least ten days prior to the effective date of action. The date of action shall be the date on which services shall be terminated, reduced, or suspended; and

(B) When the department obtains facts indicating need for the action because of probable fraud, the department shall mail a written notice at least five days before social service is actually terminated, suspended, or reduced. Where possible, these facts shall have been verified through collateral sources; and

(2) "Adequate" means a written notice that includes statements of:

(A) What action the department intends to take;

(B) Reasons for the intended action;

(C) The departmental rules supporting the intended action;
(D) The individual's right to request an informal review, a fair hearing, or both; and
(E) The circumstances under which social services shall be continued if a fair hearing is requested.

(b) Unless specified otherwise, timely notice shall not be required under the following circumstances but adequate notice shall be sent no later than the date of action when one of the following conditions is met:

(1) The department receives a clear written statement signed by a recipient that:
(A) The recipient no longer wishes social services; or
(B) Provides information which necessitates termination or reduction of social services and indicates that the recipient understands the consequences of supplying the information shall be reduction or termination of social service;
(2) The recipient is admitted or committed to a public institution;
(3) The recipient is placed in a nursing facility or is hospitalized on a long-term basis;
(4) The recipient's whereabouts are unknown and mail sent the recipient is returned by the post office indicating no known forwarding address. When mail is returned, both timely and adequate notice shall be issued only when the recipient has provided the department with a new address. The returned social service assistance check, however, shall be released to the recipient if the recipient's whereabouts become known during the payment period covered by the returned check;
(5) The recipient is accepted for social services in another state and this fact is established by the department; or
(6) A special allowance granted for a specific period is terminated and the recipient is informed in writing at the time the allowance is made that the allowance would

automatically terminate at the end of the specified period.

(c) Timely and adequate notice shall be given when automatic grant adjustments are made due to changes in state or federal law. The notice shall be adequate if it includes a statement of:

(1) The intended action;

(2) Reasons for the intended action;

(3) The specific change in law requiring the action; and

(4) The circumstances under which a fair hearing may be obtained and assistance may be continued.

(d) Neither timely nor adequate notice shall be required nor shall aid be paid pending a fair hearing when changes in state or federal law or funding result in changes such as deletions or reductions in current social services, reduction or elimination of eligible groups, or changes in eligibility requirements for social services provided that:

(1) At the beginning of a program year, the department issues a public report specifying the social services to be provided and the individuals eligible for the social services during that year;

(2) Changes which are made during a program year are identified for the public by a press release prior to the effective date of change; and

(3) Recipients to be affected by the changes in the program are informed in writing at least ten days prior to the effective date of change.

The determination that the change meets the criteria of this subsection and that no aid shall be paid pending a fair hearing shall be made by the department. [Eff 6/29/92; am and comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1416-45 <u>Basis for reduction or termination of services.</u> (a) Services shall be reduced or terminated when one or more of the following occurs:

(1) When it is determined that the individual is ineligible for continued services;

(2) The recipient moves and leaves no forwarding address or the recipient's whereabouts are unknown;
(3) The service is no longer included in the department's scope of service;
(4) The recipient is unwilling or unable to make constructive use of the service;
(5) The department social worker has determined that the recipient's need for the service has decreased;
(6) The purchase of service provider no longer has a valid contract with the department to provide the service;
(7) The recipient requests termination of services;
(8) The recipient leaves the State;
(9) The recipient dies; or
(10) The department lacks available funds to provide services.

(b) Services shall be reduced or terminated upon mutual agreement between the recipient and the department or after written notice, specified in section 17-1416-44, of the intent to reduce or terminate services has been given the recipient. [Eff 6/29/92; am 7/25/94; comp 10/28/95] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 U.S.C. §1397c)

§§17-1416-46 to 17-1416-48 (Reserved).