

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6 BENEFIT, EMPLOYMENT AND SUPPORT SERVICES
DIVISION

CHAPTER 649

NOTICE OF ADVERSE ACTION

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Historical Note: This chapter is based substantially upon chapter 17-628 [Eff 7/19/82; am 7/15/83; am 2/17/84; am 5/10/84; am 9/29/86; am 5/2/87; R 3/19/93] chapter 17-745 [Eff 7/19/82; R 3/19/93] §17-626-24 [Eff 7/19/82; R 3/19/93] §17-638-8 [Eff 7/19/82; R 3/19/93] §17-716-58 [Eff 7/19/82; R 3/19/93] §17-719-2 [Eff 7/19/82; am 10/1/83; am 10/6/89; R 3/19/93] §17-719-13 [Eff 7/19/82; am 10/1/83; am 6/8/84; am 9/2/86; am 12/27/86; am 10/10/91;R 3/19/93] §17-719-14 [Eff 7/19/82; am 9/2/86;R 3/19/93] §17-719-15 [Eff 7/19/82;

am 10/1/83; am 9/2/86; R 3/19/93] §17-719-16 [Eff 7/19/82; R 3/19/93] §17-719-17 [Eff 7/19/82; am 9/2/86; R 3/19/93] 17-719-18 [Eff 7/19/82; am 10/1/83; am 1/19/84; R 3/19/93] §17-719-19 [Eff 7/19/82; am 7/5/83; am 10/1/83; am 6/8/84; am 9/2/86; R 3/19/93] §17-742-9 [Eff 7/19/82; am 12/17/82; am 6/18/87; am 11/25/88; R 3/19/93]

SUBCHAPTER 1

GENERAL PROVISIONS FOR FINANCIAL ASSISTANCE AND FOOD STAMPS

§17-649-1 Purpose. The purpose of this chapter is to establish the circumstances, conditions, and deadlines under which the department shall notify the recipient of action taken to terminate, suspend, reduce, or withhold benefits. [Eff 3/19/93; am 8/1/94; comp 11/09/06] (Auth: HRS §346-14) (Imp: HRS §§346-12, 346-29 ; 7 C.F.R. §273.13; 42 U.S.C. §§601 through 619)

§17-649-2 Definitions. As used in this chapter: "Adequate notice" means a written notice that includes:

- (1) A statement of the action the department has taken or intends to take;
- (2) The reason for the intended action;
- (3) The specific departmental rule supporting the action;
- (4) The household's right to request a hearing;
- (5) The name of the person to contact for additional information;
- (6) The availability of continued benefits;
- (7) The liability of the household for any overpayments received while awaiting a hearing if the hearing official's decision is adverse to the household; and
- (8) The availability of free legal representation, if applicable. An adequate notice may be received prior to department action, at the time reduced benefits are received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated.

"Change reporting" means the reporting requirement for households who are not subject to simplified reporting, who must report a change in circumstance within ten days of the date that the change becomes known to the household.

"Mass change" means a change initiated by the state or federal government which affects the eligibility criteria of the entire caseload or a significant and identifiable portion of the caseload.

"Notice of adverse action" means a written notice that is sent to a recipient to inform the recipient of action the department is planning to take to reduce or terminate benefits. A notice of adverse action shall always meet the definition of an adequate notice, and in certain situations must also meet the definition of a timely notice as specified in section 17-649-3.

"Report month" means any calendar month in which a change must be reported or in which a six month report or eligibility review form is due.

"Simplified reporting" means the reporting requirement for households specified in section 17-650-12, to report changes as specified in section 17-650-14, no later than six months prior to the end of the certification period or eligibility review due date and to report other changes as specified in section 17-650-18, within ten days of the date the change becomes known to the household.

"Six month report" means the report form that simplified reporting households are required to complete no later than six months prior to the end of the certification period or eligibility review due date as specified in section 17-650-14. [Eff 3/19/93; am and comp 11/09/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§271.2, 273.12, 273.13; 42 U.S.C. §§601 through 619)

§17-649-3 Timely notice of adverse action. (a) Timely notice is an adequate notice that is mailed to the recipient at least ten days prior to the effective date of action to:

- (1) Reduce, terminate, suspend, or withhold payment; or
- (2) Change the manner or form of payment to protective or vendor payment; or (3) Transfer the program of assistance between AFDC and GA, AFDC and AABD, or GA and AABD.

(b) The department shall not provide timely notice when the department:

- (1) Is required to provide only adequate notice; or
- (2) Obtains facts indicating the need for action because of probable fraud in the financial assistance program. The department shall mail a written notice at least five days before the effective date of action.

(c) For the financial assistance programs, timely and adequate notice shall be given when automatic grant adjustments for classes of recipients 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 hearing may be obtained and assistance may be continued. [Eff 3/19/93; am 8/1/94; am 6/1/00; am and comp 11/09/06] (Auth: HRS §346-14) (Imp: HRS §346-29; 7 C.F.R. §273.13; 42 U.S.C. 601 through 619)

§17-649-3.1 Exemption from timely notice. (a) For the financial assistance programs, timely notice shall not be required, but adequate notice shall be sent in the following circumstances:

- (1) The department has verified the death of a recipient or of the AFDC payee and there is no relative available to serve as new payee;
- (2) The department receives a clear written statement signed by a recipient that:
 - (A) The recipient no longer wishes assistance; or
 - (B) Provides information which necessitates termination or reduction of assistance and indicates that the recipient understands the consequences of supplying the information shall be reduction or termination of assistance;
- (3) The recipient has been admitted or committed to a public institution;
- (4) The recipient has been placed under skilled nursing care, intermediate care, or long-term hospitalization;

- (5) The recipient's whereabouts are unknown and mail sent to the recipient has been 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;
- (6) The recipient has been accepted for assistance in another state and this fact has been established by the department;
- (7) The AFDC child has been removed from the home by judicial action or placed in foster care by the parent or legal guardian;
- (8) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time allowance was made that the allowance would automatically terminate at the end of the specified period;
- (9) The department establishes protective or vendor payments because of money mismanagement;
- (10) The recipient has opted to participate in grant plus and has agreed to the following:
 - (A) The payment of the financial assistance to the employer for the employer's use in paying wages to the recipient; and
 - (B) Accept \$650 as the full monthly assistance payment regardless of household size; or
- (11) The grant plus recipient is no longer participating in grant plus and the financial assistance payment is restored to the standard of assistance for the applicable family size.
- (12) The household is a simplified reporting household and is subject to adequate notice requirements as specified in section 17-649-5. However, for any changes reported outside of simplified reporting, a timely and adequate notice is required prior to reducing or terminating the household's benefits;
 - (b) For the food stamp program, a timely notice shall not be required under the following circumstances, but an adequate notice shall be sent.
 - (1) A mass change occurs;

- (2) The department is notified by a reliable source of the death of all members of the household;
- (3) The department is notified by a reliable source that the household has moved from the project area;
- (4) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate;
- (5) The household's allotment varies from month to month during the certification period to take into account changes which were anticipated at the time of certification and the household was so notified at the time of certification;
- (6) The household jointly applied for food stamps and financial assistance and has been receiving a food stamp allotment pending the approval of the financial assistance, and was notified at the time of certification that the food stamp allotment would be reduced upon approval of the grant;
- (7) A household member is disqualified for intentional program violation, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of the household member. The notice requirements for individuals or households affected by intentional program violation disqualifications are specified in chapter 17-604.1;
- (8) Required verification to continue an increase in benefits is not received, so that the household's benefit level must be reduced to the original benefit level;
- (9) A household is converted from cash repayment to food stamp allotment reduction as a result of failure to make agreed upon repayment;
- (10) The department terminates the eligibility of a resident of a drug or alcohol treatment center or a group living arrangement if the facility loses either its certification from the department or the state department of health, or has its status as an authorized representative suspended by FNS, disquali

fyng it as a retailer. Residents of group living arrangements applying on the residents' own behalf shall remain eligible to participate;

- (11) The department has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is dependent on its providing the verification which was initially postponed and that the department may act on verified information without further notice;
- (12) The household is a simplified reporting household and is subject to adequate notice requirements as specified in section 17-649-5. However, for any changes reported outside of simplified reporting a timely and adequate notice is required prior to reducing or terminating the household's benefits;
- (13) The household voluntarily requests, in writing or in the presence of an eligibility worker, that its participation be terminated. If the household does not provide a written request, the department shall send the household a letter confirming the voluntary withdrawal. Written confirmation does not entail the same rights as a notice of adverse action, except that the household may request a hearing. [Eff and comp 11/09/06] (Auth: HRS §346-14) (Imp: HRS §346-29; 7 C.F.R. §§273.13; 42 U.S.C. 601 through 619)

§17-649-4 Termination of benefits. (a) Benefits shall be terminated effective the first day of the month following the month in which the recipient or household is found to be ineligible, provided the household has been sent the appropriate notice of adverse action:

- (1) A timely and adequate notice shall be required for all change reporting households and for simplified reporting households when the termination is based on information received outside of the six month report. If a timely and adequate notice cannot be sent the month the recipient is found to be

- ineligible, termination shall be effective the first day of the month in which a timely and adequate notice can be sent;
- (2) An adequate notice shall be required for simplified reporting households when the termination is based on information contained in the six month report or for failure to submit a completed six month report.
 - (b) Benefits shall be terminated when:
 - (1) The equity value of the recipient's nonexempt assets exceeds the department's asset limit;
 - (2) The recipient's net income equals or exceeds the recipient's needs according to the department's applicable standard of assistance;
 - (3) The recipient is admitted to a public institution;
 - (4) The recipient's whereabouts are unknown;
 - (5) The recipient fails to meet any one of the necessary requirements of eligibility;
 - (6) An eligibility redetermination is not completed because of the recipient's failure to provide the department with requested verification or to provide a completed eligibility redetermination form;
 - (7) A signed, written request for termination is received from the recipient;
 - (8) The recipient fails to cooperate or provide information to federal or state personnel who review the decisions regarding eligibility for assistance;
 - (c) For the financial assistance programs, benefits shall also be terminated when:
 - (1) The recipient fails to apply for and develop potential sources of assets and fails to provide the department with verification to determine the amount of the asset; or
 - (2) The recipient fails to apply for and develop potential sources of income and fails to provide the department with verification to determine the amount of the income.
 - (d) State AABD payments shall be terminated when the individual:
 - (1) Dies; or
 - (2) Is institutionalized in a long term care facility. [Eff 3/19/93; am 8/1/94; am and

comp 11/09/06] (Auth: HRS §346-14) (Imp:
HRS §346-29; 7 C.F.R. §273.13; 42 U.S.C.
§§601 through 619)

§17-649-5 Notice requirements for recipients
subject to simplified reporting.

(a) When a completed six month report is received by the department by the specified filing date, an adequate notice shall be sent to the household when payment is reduced or terminated based on information contained in the completed six month report.

(b) If a household fails to file a six month report or files an incomplete report by the specified filing date, the department shall give the household at least ten days from the date the department mails the notice, to file a completed six month report.

(c) When a completed six month report is not received by the specified filing date, but is received within ten days of the notice specified in subsection (b), an adequate notice shall be sent to the household to arrive no later than the date of payment when payment is:

- (1) Reduced based on information contained in a completed six month report;
- (2) Terminated due to receipt of an incomplete six month report; or
- (3) Terminated based on information contained in a completed six month report.

(d) When a completed six month report is not received within the ten day extended filing period, an adequate notice shall be sent to the household to terminate benefits.

(e) A notice of suspension shall be sent when a payment is reduced to zero for one month, for recipients subject to simplified reporting. Following this one month suspension, a timely and adequate second notice shall be sent to the household to restore or terminate benefits. [Eff 3/19/93; am and comp 11/09/06] (Auth: HRS §346-14; 45 C.F.R. §205.10) (Imp: HRS §346-29; 7 C.F.R. §273.12; 42 U.S.C. §§601 through 619)

§§17-649-6 to 17-649-8 (Reserved).

SUBCHAPTER 2

SPECIFIC PROVISIONS FOR FOOD STAMPS

§17-649-9 REPEALED. [R 11/09/06]

§17-649-10 REPEALED. [R 11/09/06]

§17-649-11 Mass changes. (a) Certain changes initiated by the state or federal government may affect the entire caseload or may affect significant portions of the caseload. The changes shall include:

- (1) Adjustments to the net income eligibility standards and shelter and dependent care deductions;
- (2) Adjustments to the thrifty food plan and standard deduction;
- (3) Adjustments to the state's utility standard;
- (4) Periodic cost-of-living adjustments to social security, SSI, and other federal benefits;
- (5) Periodic adjustments to assistance payments; and
- (6) Other changes in eligibility criteria based upon legislative or regulatory actions.

(b) When the department makes a mass change in food stamp eligibility or benefits by simultaneously converting the caseload or the portion of the caseload that is affected, or by conducting individual desk reviews in place of a mass change, it shall notify all households whose benefits are reduced or terminated in accordance with the requirements of subsection (c) except for mass changes made under sections 17-649-12 through 17-649-14.

- (c) The department shall inform the household of:
- (1) The general nature of the change;
 - (2) Examples of the change's effect on the household's allotment;
 - (3) The month in which the change will take effect;
 - (4) The household's right to a hearing;
 - (5) The household's right to continue benefits and under what circumstances benefits will be continued pending a hearing;
 - (6) General information on whom to contact for additional information; and

(7) The liability the household will incur for any overpaid benefits if the hearing decision is adverse.

(d) The department shall notify the household of the mass change or the result of the desk review later than the date the household is scheduled to receive the allotment which has been changed.

(e) The department shall notify the household of the mass change as much before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required to provide adequate notice.

(f) The household shall be entitled to request a hearing when it is aggrieved by the mass change.

(g) A household which requests a hearing due to a mass change shall be entitled to continued benefits at its previous level only if the household meets the following three criteria:

- (1) The household does not specifically waive its right to a continuation of benefits;
- (2) The household requests a hearing in accordance with chapter 17-602.1; and
- (3) The household's hearing is based upon improper computation of food stamp eligibility or benefits, or upon misapplication or misinterpretation of federal law or regulation. [Eff 3/19/93; am and comp 11/09/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.12(e))

§17-649-12 Adjustments to eligibility standards, allotments, and deductions. (a) The following adjustments shall become effective for all households at a specific time. A timely notice shall not be required when the following changes go into effect:

- (1) Adjustments to the thrifty food plan, the standard deduction, the shelter deduction and the dependent care deduction; and
- (2) Adjustments to the income eligibility standards.

(b) Notice of the adjustments shall be published by the department through the news media, by placing posters in certification offices, issuance locations, or other sites frequented by certified households, or by issuing general notices mailed to households prior

to the effective date of the changes. [Eff 3/19/93; am and comp 11/09/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.12(e)(1))

§17-649-13 Mass changes in public assistance. (a) When the department makes an overall adjustment to financial assistance payments, corresponding adjustments to a household's food stamp benefits shall be handled as a mass change. When the department has at least thirty days advance knowledge of the amount of the adjustment, the food stamp benefits shall be recomputed to be effective in the same month as the financial assistance change. If the department does not have sufficient notice, the food stamp change shall be effective not later than the month following the month the financial assistance change was made.

(b) A timely notice shall not be required when a household's food stamp allotment is reduced or terminated as a result of a mass change in financial assistance grants. An adequate notice shall be sent a household to inform it of the change. If a household requests a hearing, benefits shall be continued at the former level only if the issue being appealed is the computation of allotment and not the issue of allotment reduction due to the mass change. [Eff 3/19/93; am and comp 11/09/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.12(e)(2))

§17-649-14 Mass changes in federal benefits. (a) The department shall treat cost-of-living increases and any other mass changes in social security benefits or SSI payments and other programs where information on cost of living adjustments is readily available and is applicable to all or a majority of those program's beneficiaries as a mass change for food stamp purposes.

(b) Change reporting households shall not be responsible for reporting these changes. The department shall be responsible for automatically adjusting a household's food stamp benefit level. The change shall be reflected no later than the second allotment issued to change reporting households issued after the month in which the change becomes effective.

(c) Simplified reporting households shall report the change on the appropriate six month or eligibility review report but are not required to report these types of changes outside of simplified reporting. The department shall handle such information provided on the six month or eligibility review report in accordance with chapters 17-650 and 17-680. [Eff 3/19/93; am and comp 11/09/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.12(e)(3))