

DEPARTMENT OF HUMAN SERVICES

Amendments to Chapter 17-1722.3
Hawaii Administrative Rules

November 5, 2014

SUMMARY

1. A new subchapter 1.5 is added.

OFFICE OF THE SECRETARY

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

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RECEIVED

SUBCHAPTER 1.5

EMERGENCY ADMINISTRATIVE RULES RELATING TO STATE
MEDICAL ASSISTANCE FOR CERTAIN LAWFULLY PRESENT NON-
CITIZENS

§17-1722.3-5.1 Definitions. The following definitions shall apply to this subchapter:

"Current beneficiary" means a non-pregnant adult non-citizen who is receiving, at the time this subchapter is adopted, State medical assistance benefits that exceed the benefits provided under section 17-1722.3-18.

"Exchange" means the Hawaii health insurance exchange established under the Affordable Care Act.

"New ABD Beneficiary" means an aged, blind or disabled non-citizen who applies for benefits under section 17-1722.3-5.6 and is determined eligible for benefits under section 17-1722.3-5.7.

"Qualified health plan" means a qualified health plan or a qualified health plan issuer, as those terms are defined in 45 C.F.R. §155.20, and as the context may dictate. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.2 Basis for emergency administrative rules. (a) This subchapter is adopted as an emergency rule under section 91-3(b), Hawaii Revised Statutes, because the department finds that it must amend this chapter upon less than 30 days' notice of hearing in order to avoid imminent peril to public health or safety.

(b) Certain lawfully present non-pregnant adult non-citizens who are ineligible for federal medical assistance due to their immigration status are in receipt of State medical assistance benefits that exceed the Basic Health Hawaii benefits defined under this chapter because of an injunction order issued by the United States District Court for the District of

Hawaii in the case of Korab v. McManaman, Civil No. 10-00483 JMS/KSC.

(c) The injunction order was vacated effective November 3, 2014. Therefore, the department is required by its current administrative rules to terminate the State medical assistance benefits received by the current beneficiaries and to redetermine their eligibility for the Basic Health Hawaii program.

(d) The Affordable Care Act requires most Hawaii residents, including lawfully present non-citizens, to have minimum levels of health coverage. Basic Health Hawaii does not provide the coverage required under the Affordable Care Act. Therefore, the department intends to repeal this chapter upon expiration of these emergency rules.

(e) Current beneficiaries who are not aged, blind or disabled, are at risk of losing State medical assistance coverage before they can be enrolled in a qualified health plan through the Exchange. Those with household income of less than one hundred percent of the federal poverty level get less financial help with paying their insurance premium than other people. These emergency rules temporarily continue their current benefits while they are transitioning from State funded medical assistance to enrollment in a qualified health plan purchased through the Exchange, and temporarily provide help with paying the share of premiums due to their qualified health plan until a permanent premium assistance program is established by the department.

(f) Current beneficiaries who are aged, blind or disabled have greater and more frequent healthcare needs, and will be more severely impacted if they purchase insurance through the Exchange since that coverage will impose copayments for many services that are currently provided at no cost, excludes many services that are important to aged, blind and disabled individuals, such as medical transportation, long term care, and home and community based services. These individuals will also get less financial help with paying the premiums if their household income is

less than one hundred percent of the federal poverty level. These emergency rules temporarily continue their current benefits until a new State medical assistance program for certain lawfully present non-pregnant adult non-citizens who are aged, blind or disabled is established by the State, and allow new ABD beneficiaries to apply for this benefit.

(g) These emergency rules ensure that current beneficiaries and new ABD beneficiaries have access to needed health care, including services that are not available through the Exchange, without the burden and confusion of being terminated or excluded from existing benefits before appropriate replacement coverage is in place. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.3 Purpose. (a) This subchapter provides temporary and emergency relief by:

- (1) Continuing the same health coverage to current beneficiaries that they are receiving at the time this subchapter is adopted, pending repeal of this chapter;
- (2) Providing new ABD beneficiaries with State medical assistance that is equivalent to federal medical assistance benefits, pending adoption of administrative rules creating a new State funded medical assistance program for certain non-citizens who are aged, blind, and disabled;
- (3) Transitioning certain current beneficiaries to qualified health plans purchased through the Exchange; and
- (4) Providing premium assistance to certain non-pregnant adult non-citizens who are not aged, blind or disabled, who are determined eligible for and purchase a qualified health plan through the Exchange, pending adoption of administrative rules establishing a premium assistance program.

(b) Certain non-citizens who are eligible for federal medical assistance, including but not limited

§17-1722.3-5.3

to pregnant women and children who are citizens of COFA nations, continue to be eligible for federal medical assistance and are not affected by these emergency administrative rules. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.4 Effect of this subchapter. (a) This subchapter shall supersede any contrary administrative rules contained in this chapter, unless otherwise specifically noted in this subchapter.

(b) This subchapter shall apply to current beneficiaries, applicants under sections 17-1722.3-5.6 and 17-1722.3-5.7, new ABD beneficiaries, and individuals eligible for premium assistance under section 17-1722.3-5.14. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.5 Continuation of eligibility for current beneficiaries. Current beneficiaries shall continue to remain eligible for benefits under section 17-1722.3-5.9 provided they continue meet the applicable eligibility requirements, other than citizenship and non-citizen status, of chapter 17-1715.1 (Former Foster Care Children Group), 17-1717 (Parents and Other Caretaker Relatives Group), 17-1717.1 (Transitional Medical Assistance), 17-1718 (Adults Group), 17-1719 (Aged, Blind and Disabled Group), 17-1730.1 (Medically Need Spenddown) or 17-1735.1 (Fee For Service). [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.6 Open application period. Within fifteen calendar days after the effective date of this subchapter, the department shall publish notice of an open application period for new ABD beneficiaries as provided under, and subject to the requirements of, section 17-1722.3-10. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.7 Eligibility requirements for new aged, blind, and disabled beneficiaries. To be determined eligible for benefits under section 17-1722.3-5.9, an individual who applies during an open application period must:

- (1) Meet the requirements set forth in chapter 17-1719 (Aged, Blind and Disabled Group), with the exception of citizenship and non-citizen status under section 17-1714.1-28;
- (2) Be a qualified non-citizen, a nonimmigrant under the INA (including citizens of COFA nations), or a non-citizen paroled into the United States under section 212(d)(5) of the INA for less than one year;
- (3) Not be eligible for federal medical assistance
 - (A) Solely due to citizenship or non-citizen status; or
 - (B) Under chapters:
 - (i) 17-1715, Children Group;
 - (ii) 17-1716, Pregnant Women Group; or
 - (iii) 17-1719, Aged, Blind and Disabled Group.
- (4) Not be eligible for health coverage as an active military enlistee, a retired military personnel, or a dependent of an active or retired military enlistee.

[Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.8 Enrollment into a participating health plan. (a) All current beneficiaries and new ABD beneficiaries, except for adults identified in section 17-1735.1-2(a), shall be enrolled in a health plan as provided under chapter 17-1720.1.

(b) Current beneficiaries and new ABD beneficiaries who are adults identified in section 17-1735.1-2(a) shall not be enrolled in a health plan and will receive services on a fee-for-service basis. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.9 Benefits. (a) All current beneficiaries and new ABD beneficiaries shall be provided a standard benefits package by a participating health plan and other services when appropriate as described in chapter 17-1720.

(b) Current beneficiaries and new ABD beneficiaries who are adults identified in section 17-1735.1-2(a) shall be provided coverage under the fee-for-service provisions as described in chapter 17-1737. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.10 Eligibility review requirements. Eligibility shall be redetermined in accordance with chapter 17-1712.1 and subchapter 5 of chapter 17-1714.1. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.11 Termination of eligibility. An individual's eligibility for services under this subchapter shall be terminated for any of the following reasons:

- (1) The individual fails to meet any of the eligibility requirements of sections 17-1722.3-5.5 and 17-1722.3-5.7;
 - (2) Death of the individual;
 - (3) The individual no longer resides in the State;
 - (4) The individual voluntarily terminates coverage;
 - (5) The individual is admitted to a public institution as defined in chapter 17-1714.1;
 - (6) The individual's whereabouts are unknown;
 - (7) Lack of State funds;
 - (8) The program is terminated; or
 - (9) Expiration of these emergency rules.
- [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.12 Disenrollment from a participating health plan. An enrollee under this subchapter shall be disenrolled from a participating health plan as provided under subchapter 4 of chapter 17-1720.1. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.13 Transition of current beneficiaries who are not aged, blind, and disabled.

(a) The department shall send the individual's application information, which includes household and other applicable information, and may also send enrollment information, to the Exchange for purposes of calculating the individual's advance premium tax credit and cost-share reduction and for enrollment in a qualified health plan through the Exchange.

(b) To ensure continued health insurance coverage, individuals will need to complete the Exchange application process and enroll in a qualified health plan through the Exchange prior to termination of Basic Health Hawaii, which will occur no earlier than March 1, 2015.

(c) The department shall not be responsible for an individual completing the Exchange application process, enrolling in a qualified health plan through the Exchange, or for calculating an individual's advance premium tax credit or cost-sharing reduction. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.14 Premium assistance eligibility requirements. In order to receive the premium assistance described under sections 17-1722.3-5.14 to 17-1722.3-5.17, an eligible individual shall:

- (1) Have selected or be enrolled in a 94% actuarial value silver level qualified health plan through the Exchange;
- (2) Be determined eligible for advanced premium tax credit and the maximum cost-sharing reduction by the Exchange; and

- (3) Have household income of less than one hundred percent of the federal poverty level for the applicable household size as determined by the Exchange and communicated by the Exchange to the qualified health plan selected by the individual.
- (4) If the Exchange does not communicate this information to the qualified health plan, then the qualified health plan may contact the individual to obtain information necessary for the qualified health plan to determine whether the individual's household income is less than one hundred percent of the federal poverty level for the applicable household size. [Eff **NOV 05 2014**] (Auth: HRS §§91-3, 346.14) (Imp: HRS §346.14)

§17-1722.3-5.15 Premium assistance benefits.

(a) The department shall, upon presentation of an invoice by a qualified health plan to the department, pay to the eligible individual's qualified health plan (referred to in this section as "the health plan") the share of premium that the eligible individual is required to pay to the health plan to receive coverage.

(b) The department shall pay the eligible individual's share of premium to the health plan only upon receipt by the department of an invoice from the health plan.

(c) The department shall not make any payments directly to eligible individuals.

(d) The department shall not pay, and the eligible individual shall be responsible for, any cost-sharing including, but not limited to, deductible, co-payment or co-insurance.

(e) The department is not responsible for ensuring that the health plan timely submits an invoice for premium payment to the department. Any complaints by an eligible individual regarding the health plan billing the individual for the

individual's share of premium must be directed to the health plan. [Eff **NOV 0 5 2014**] (Auth: HRS §§91-3, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.16 Termination of premium assistance. An individual's eligibility for premium assistance shall be terminated at any time for any of the following reasons:

- (1) Fails to meet the eligibility requirements set forth in section 17-1731-5.14;
- (2) Voluntarily terminates participation in the premium assistance program;
- (3) No longer resides in the State;
- (4) Death of the individual;
- (5) Whereabouts are unknown;
- (6) Insufficient State funds; or
- (7) The premium assistance benefit under this subchapter is terminated.

[Eff **NOV 0 5 2014**] (Auth: HRS §§91-3, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.17 Administration of premium assistance. The department may contract with a third party or parties to provide the premium assistance benefit and to provide administration including, but not limited to, payment, auditing, and recovery. The department's provision of premium assistance shall be administered at no cost to the eligible individual.

[Eff **NOV 0 5 2014**] (Auth: HRS §§91-3, 346-14) (Imp: HRS §346-14)

§17-1722.3-5.18 Effective period of these emergency administrative rules. These emergency administrative rules shall take effect upon filing with the Lieutenant Governor's office and shall be effective for no longer than one hundred twenty calendar days. [Eff **NOV 0 5 2014**] (Auth: HRS §§91-3, 91-4, 346-14) (Imp: HRS §346-14)

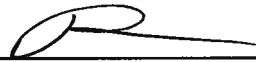
§§17-1722.3-5.19 to 17-1722.3-5.21

§§17-1722.3-5.19 to 17-1722.3-5.21 (Reserved)"

DEPARTMENT OF HUMAN SERVICES

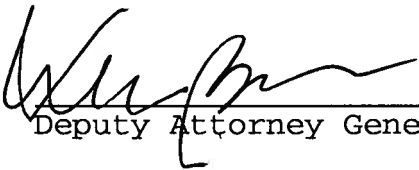
Amendments to Chapter 17-1722.3, Hawaii Administrative Rules, on the Summary page dated November 5, 2014, were adopted on November 5, 2014, without public hearing pursuant to §91-3(b), Hawaii Revised Statutes.

These amendments shall take effect upon filing with the Office of the Lieutenant Governor and shall be effective for no more than one hundred twenty calendar days after such filing, pursuant to §91-4(b)(2), Hawaii Revised Statutes.



PATRICIA McMANAMAN
Director
Department of Human Services

APPROVED AS TO FORM:



Deputy Attorney General

LIEUTENANT GOVERNOR'S
OFFICE

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NEIL ABERCROMBIE
Governor
State of Hawaii

Date: 11-5-14

Filed

On 10/10/00, the following information was received from the [redacted] regarding the [redacted] of [redacted] on [redacted] at [redacted].

The [redacted] was [redacted] by [redacted] and [redacted] on [redacted] at [redacted]. The [redacted] was [redacted] by [redacted] and [redacted] on [redacted] at [redacted].

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CHIEF OF POLICE
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<p>Med-QUEST 提供免費的雙語和簽約語言翻譯。如果你需要翻譯，請撥打 1-800-316-8005 并按 0。這是一個完全免費的電話號碼。你也可以來到附近的 Med-QUEST 辦公室獲得幫助。</p>	 Cantonese
<p>Med-QUEST mei awora chon chiaku non pworous me pwomw nge ese kamo. Ika pwe en mei osuppwangen chon chiaku kose mwochen kopwe kokkori 1-800-316-8005 me ka tiki 0. Ei ew nampan tengewa ese kamo. En mei pwan tongeni angei aninnis non an epwe nomw ewe chon aninnis non ewe ofesin Med-QUEST a kan ngonuk.</p>	 Chuukese
<p>Ti Med-QUEST ket mangted ti libre nga paraiptarus (interpreter) dagiti senias nga lengguahe (sign language) ken nadumaduma a pagsasao. No masapul yo ti paraiptarus, pangaasi yo ta awagan ti numero 1-800-316-8005 ken italmeg ti numero 0. Daytoy a numero ti telepono ket awan bayad na. Mabalin met nga personal kayo a mapan dumawat ti tulong idlay opisina ti Med-QUEST nga asideg kadakayo.</p>	 Ilocano
<p>Med-QUEST는 무료 다국어 및 수화 통역을 제공합니다. 통역자가 필요하다면 1-800-316-8005로 전화하여 0을 누르시오. 이것은 무료 전화번호입니다. 귀하는 가까운 Med-QUEST 사무소에서 담당자의 도움을 직접 받을 수 있습니다.</p>	 Korean
<p>Med-QUEST kasre kom in kuh in orekmakin kain in kas luu in kasru lungaslah ma kom ke fahk an. Kom fin enenu mwet in tutaf ku leng kas lom, nunak munas pangon nempu se inge: 1-800-316-8005 na kom tanya 0. Taclofon nacmpu se inge kom kuh in oerkmakin wangin molo. Kom oayapa ku in osun ac eis kasru sin Med-QUEST ma oan apkuran nu yurum an.</p>	 Kosraean
<p>Med-QUEST ej lejok ri-ukok ro im ejjelok wonean, ilo ruo-kajin ak "konnaan kon pa" (nan ro ejarroñroñ). Ne kwōj aikuj juon ri-ukok jouj im kūr 1-800-316-8005 im keeñe 0. Ejjelok wonean talboon nōmba in. Kwō maroñ in barainwōt bōk jipañ ilo Med-QUEST wōpij eo epaake eok.</p>	 Marshallese
<p>Med-QUEST a mo oungerachel a diak locheraol e i luches el tekoj ma dirrek el Chad el mo oleiuid a tekoj lousbech a chim. Alsekum kousbech a oleiuid a tekor e mom kedong ra 1-800-316-8005 e betir a 0. Tiang a diak locheraol a doudengua er mor ngii. Ng dirrek el sebechem el ngmai a ngeseu er a rechad er a Med-QUEST sel kmeed er kau el obis.</p>	 Palauan
<p>Med-Quest kin sawahskida kawewe de pil kaweid nin duen irail me sohte kak karohnge wasa de sign language. Ma komw anahne sawas en kawewe, komw kalangan oh eker 1-800-316-8005 oh padik 0. Nembe uet sohte pweipwei de sohte isepe ohng telepon uet. Komw pil kak ahle sawas sahng aramas ehmen sang Med-Quest ni ohpis me keieu karahni komwi.</p>	 Pohnpeian
<p>Med-QUEST e mappii dariy pulwon e girdii nima afweg e thin. Faanra bat'uf e maabweg thin ngom mag diliiy e fon numba ni 1-800-316-8005 nge 0. Irreraye toll-free numba. Kurrayog ningan pii e ayuw ko Med-QUEST office u toobem.</p>	 Yapese
<p>Med-QUEST cung cấp thông dịch viên song ngữ và ngôn ngữ ký hiệu miễn phí. Nếu quý vị cần thông dịch viên vui lòng gọi số 1-800-316-8005 và bấm 0. Đây là số điện thoại miễn phí. Quý vị cũng có thể nhờ nhân viên tại văn phòng Med-QUEST gần quý vị giúp đỡ.</p>	 Vietnamese

