

UNOFFICIAL

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 12 MED-QUEST DIVISION

CHAPTER 1725

ASSETS

Subchapter 1 General Provisions

- §17-1725-1 Purpose
- §17-1725-2 Definitions
- §17-1725-3 (Reserved)

Subchapter 2 Evaluation Of Assets

- §17-1725-4 Purpose
- §17-1725-5 Evaluating assets
- §§17-1725-6 to 17-1725-8 (Reserved)

Subchapter 3 Assets To Be Exempted

- §17-1725-9 Purpose
- §17-1725-10 Assets to be exempted
- §17-1725-11 Repealed
- §§17-1725-12 to 17-1725-14 (Reserved)

Subchapter 4 Assets To Be Considered

- §17-1725-15 Assets to be considered
- §17-1725-16 Determining equity in any business
- §17-1725-17 Treatment of trust established after
August 10, 1993
- §17-1725-18 Assets of sponsor of an alien
- §§17-1725-19 (Reserved)

Subchapter 5 Evaluation Of Real Property

UNOFFICIAL

§17-1725-20	Equity value of real property
§17-1725-21	Treatment of some special forms of ownership of real or personal property
§17-1725-22	Special provision for removal of legal impediments to availability
§17-1725-23	Real property used as a home
§§17-1725-24 to 17-1725-26	(Reserved)

Subchapter 6 Evaluation Of Motor Vehicles

§17-1725-27	Repealed
§17-1725-28	Repealed

Historical Note: This chapter is based substantially upon subchapter 3 of chapter 17-744 [Eff 7/19/82; am 8/20/83; am 10/14/83; am 5/18/84; am 8/23/84; am 12/21/84; am 8/9/85; am 9/7/85; am 6/23/86; am 6/18/87; am 9/28/87; am 10/23/87; am 11/25/88; am 4/15/89; am 10/1/89; am 6/12/90; am 10/4/90; am 3/22/91; R 3/19/93], subchapter 4 of chapter 17-744 [Eff 7/19/82; am 8/20/83; am 8/23/84; am 4/17/86; am 6/18/87; am 6/11/88; am 5/13/91; R 3/19/93] and §17-744-44 [Eff 7/19/82; am 3/28/83; am 9/29/86; am 10/23/87; am 2/22/88; am 6/5/89; am 10/1/89; am 10/4/90; R 3/19/93]

SUBCHAPTER 1

GENERAL PROVISIONS

§17-1725-1 Purpose. This chapter describes the types and amount of assets that an individual or a family may retain when establishing eligibility for medical assistance. [Eff 08/01/94; am 01/29/96; am 03/30/96] (Auth: HRS §346-53) (42 C.F.R. §431.10)

§17-1725-2 Definitions. For the purpose of this chapter:

“Annuity” is a financial contract where the purchaser is assured a scheduled amount of payments for the duration of the contract.

UNOFFICIAL

"Asset" means cash and any other personal property, as well as real property, that an individual or family:

- (1) Owns;
- (2) Has the right, authority, or power to convert to cash (if not already cash); and
- (3) Is not legally restricted from using for the individual's or family's support and maintenance.

"Continuing care retirement community" means a residential community that offers a long-term continuing care contract, usually for a resident's lifetime, that provides for housing, residential services, and nursing care.

"Encumbrances" means a financial claim or lien upon real or personal property.

"Equity" means fair market value minus encumbrances against the property.

"Fair market value" means the amount for which an item of real or personal property is expected to sell on the open market in the geographic area involved and under the existing economic conditions.

"Financial institution" means any bank, savings and loan association, credit union, or other similar organization.

"Institutionalized individual" means an individual who is an inpatient likely to remain in a medical facility for more than thirty consecutive days, in a medical facility receiving nursing facility level of care services, is an inpatient in a nursing facility, or is a recipient of home and community based services.

"Irrevocable trust" means a trust whose term and conditions cannot be amended under any circumstances, to include a court order.

"Joint tenancy" means equal, undivided interest in real property by two or more persons throughout each respective owner's life. Upon the death of an owner, title automatically passes to the surviving owner or owners. Owners may sell their interest in the property without the consent of the other owners, but in doing so will break the joint tenancy and leave the new owner as a tenant in common with the remaining owners.

"Life care community" means a continuing care retirement community that offers an insurance-type contract and provides all levels of care. Little or no change is made in the monthly fee, regardless of the

UNOFFICIAL

level of medical care required by the resident, except for cost of living increases.

"Life estate" means the value of a property that is allocated between the life tenant and the remainderman.

"Life tenant" means a life estate holder who is entitled to certain property rights and the right to reside on the property for the duration of his, hers or someone else's life.

"Liquid asset" means cash and any other personal property that can be quickly converted to cash. Examples are bank accounts, bonds, and stocks.

"Medicaid qualifying trust" means a trust or similar legal device, established on or before August 10, 1993 by an individual or an individual's spouse under which the individual is the beneficiary of all or part of the payments from the trust and the distribution of the trust is determined by trustee(s) permitted to exercise any discretion in the distribution to the individual.

"Personal property" means any asset that is not real property.

"Personal reserve" means the amount of countable assets held by an individual or family while establishing or maintaining eligibility for medical assistance.

"Promissory note" means a written agreement signed by a person who promises to pay a specific sum of money at a specified time, or on demand, to the holder of the note.

"Real property" means land, buildings and anything else erected on or affixed to the land or buildings.

"Remainderman" means an individual who is given a remainder interest in a property which he or she will inherit upon the death of the life estate holder.

"Revocable trust" means a trust whose terms and conditions can be amended.

"SSI" mean the federal supplemental security income program for the aged, blind, and disabled, administered by the Social Security Administration.

"Student" means a child under age nineteen, enrolled in a public or private elementary or secondary school, or equivalent level of vocational or technical training.

"Tenancy" means the right to possession of real property or otherwise, permanently or temporarily, with or without title to the property.

UNOFFICIAL

"Tenancy in common" means ownership of property by two or more persons whose undivided interests in the property may not be proportionate. The owners may sell their interest without the consent of the other owners.

"Tenancy in the entirety" means the ownership of real or personal property by husband and wife, acquired by the couple at the same time through the same legal document. The right of survivorship is automatic. Neither spouse can convey their interest in the property without the consent of the other spouse. The ownership changes to tenancy in common with the dissolution of the marriage. [Eff 08/01/94; am 11/13/95; am 03/30/96; am 11/25/96; am 06/19/00; am 05/10/03; am 10/19/09] (Auth: HRS §§346-14, 346-53) (Imp: HRS §§346-14, 346-53, 346-71; 42 C.F.R. §§435.230; 435.601, 435.845)

§17-1725-3 (Reserved).

SUBCHAPTER 2

EVALUATION OF ASSETS

§17-1725-4 Purpose. This subchapter describes the individuals whose assets will be considered and when those assets will be evaluated for eligibility determination purposes. [Eff 08/01/94] (Auth: HRS §§346-14, 346-53) (Imp: HRS §§346-29, 346-53; 20 C.F.R. §416.1202)

§17-1725-5 Evaluating assets. (a) Assets of applicants and recipients will be considered as of the first moment of the calendar month for which medical assistance is being requested or received.

(b) The assets of applicants, recipients and their legally responsible family members, all of whom reside in the same household, shall be considered when determining eligibility for medical assistance.

(c) When joint ownership of liquid assets is legally defined and an applicant or recipient has access to all of the assets, those assets are considered to be resources available to the applicant or recipient.

UNOFFICIAL

(d) When joint ownership of liquid assets is legally defined and an applicant or recipient only has access to the legally defined portion of those assets, only that portion legally accessible is considered to be assets available to the applicant or recipient.

(e) When joint ownership of non-liquid assets, including real property and personal property that is legally defined, only the portion of the assets owned by the applicant or recipient shall be considered to be assets available to the applicant or recipient.

(f) Applicants and recipients shall apply for and develop potential sources of assets. [Eff 08/01/94; am 01/29/96; am 03/30/96; am 06/19/00; am 05/10/03] (Auth: HRS §346-14) (Imp: 42 C.F.R. §§435.121, 435.230, 435.602, 435.608, 435.840, 435.845)

§§17-1725-6 to 17-1725-8 (Reserved).

SUBCHAPTER 3

ASSETS TO BE EXEMPTED

§17-1725-9 Purpose. This subchapter describes assets which are exempt in the determination of eligibility for medical assistance. [Eff 08/01/94] (Auth: HRS §346-53) (Imp: HRS §346-53)

§17-1725-10 Assets to be exempted. The following assets shall be exempted from consideration in the individual or family personal reserve:

- (1) Basic maintenance items of limited value essential to day-to-day living including but not limited to clothing, furniture, stove, refrigerator, computer, or washing machine;
- (2) One wedding ring and one engagement ring;
- (3) All motor vehicles, with the exception of watercrafts or air transportation vehicles, including but not limited to, cars, trucks, vans, or motorcycles;
- (4) Any equity in the home which is the usual residence of the individual, family, or household, as described in subchapter 5 except the home of a individual receiving

UNOFFICIAL

- long-term care services that is placed in a trust;
- (5) All funds contained in a trust established after August 10, 1993 for a disabled (as defined in section 17-1721-6) individual under sixty-five years old established under 42 U.S.C. §1396p that meet the following conditions:
 - (A) The trust was established with the assets of the disabled individual solely for the benefit of the disabled individual by a parent, grandparent, legal guardian, or court; and
 - (B) The State will receive all amounts remaining in the trust upon the death of the disabled individual up to an amount equal to the total medical assistance received by the individual;
 - (6) All funds contained in a trust established after August 10, 1993 for a disabled (as defined in section 17-1721-6) individual under sixty-five years old that are established and managed by a non-profit organization established under 42 U.S.C. §1396p that meets the following conditions:
 - (A) A separate account is maintained for each beneficiary of the trust, but for purposes of investment and management of funds, the trust may pool these accounts;
 - (B) The accounts in the trust were established with the assets of the disabled individual solely for the benefit of the individual by a parent, grandparent, legal guardian, or court; and
 - (C) The State will receive all amounts remaining in the disabled individual's account in the trust upon the death of the disabled individual up to an amount equal to the total medical assistance received by the individual;
 - (7) The value of the food stamp payments under the Food Stamp Act of 1977 (7 U.S.C. §§2011-2027);
 - (8) The value of the U. S. Department of Agriculture donated foods (surplus commodities);

UNOFFICIAL

- (9) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4601-4655);
- (10) Payments distributed per capita to or held in trust for a member of any Indian tribe under 25 U.S.C. §§459-459e, 1179, 1261-1265, 1305, 1401-1407, and 1626 and Pub. L. No. 94-540. Effective October 17, 1975, pursuant to Pub. L. No. 94-114, §6 (89 Stat. 577, 25 U.S.C. §459e) receipts distributed to members of certain Indian tribes which are referred to in Pub. L. No. 94-114, §5 (89 Stat. 577, 25 U.S.C. 459d);
- (11) Certain Indian judgment funds, as provided under Pub. L. No. 83-134, §7 and amended by Pub. L. No. 458, §4 (25 U.S.C. §1407), including those funds:
 - (A) Held in trust by the Secretary of the Interior (including interest and investment income accrued while such funds are so held in trust); or
 - (B) Distributed per capita to a household or member of an Indian tribe in accordance with a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress; and
 - (C) Initial purchases made with such funds. This exclusion does not apply to the proceeds from the sale of initial purchases, or to funds or initial purchases which are inherited or transferred;
- (12) As provided by Pub. L. No. 98-64, §2 (25 U.S.C. §1179), all funds:
 - (A) Held in trust (including interest and investment income accrued while the funds were held in trust) by the Secretary of the Interior for an Indian tribe;
 - (B) Distributed per capita to a household or member of an Indian tribe; or
 - (C) Initial purchases made with such funds. This exclusion does not apply to proceeds from the sale of initial purchases, subsequent purchases made with funds derived from the sale or

UNOFFICIAL

- conversion of initial purchases, or to funds or initial purchases which are inherited or transferred.
- (13) Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. §1620);
 - (14) As provided by Pub. L. No. 100-241, §15 (43 U.S.C. §1626), any of the following distributions made to a household, an individual Native, or a descendent of a Native by a Native Corporation established in accordance with the Alaska Native Claims Settlement Act (Pub. L. No. 92-203 as amended):
 - (A) Cash distributions (including cash dividends on stock from a Native Corporation) received by an individual to the extent that such cash does not, in the aggregate, exceed \$2,000 in a year. Cash which, in the aggregate, is in excess of \$2,000 in a year is not subject to the above exclusion;
 - (B) Stock, including stock issued or distributed by a Native Corporation as a dividend or distribution of stock;
 - (C) A partnership interest;
 - (D) Land or an interest in land, including land or an interest in land received by a Native Corporation as a dividend or distribution of stock; and
 - (E) An interest in a settlement trust;
 - (15) Payments made to volunteers under the Domestic Volunteer Service Act of 1973 (Volunteers In Service to America (VISTA), student volunteers enrolled in institutions of higher education who participate in the University Year for Action (UYA) program, foster grandparents, senior health aides, senior companions) (42 U.S.C. §§4951-5085) and under the Small Business Act (Service Corps of Retired Executives (SCORE), and Active Corps of Executives (ACE)) (15 U.S.C. §637);
 - (16) Value of free school lunches, provided under the Child Nutrition Act of 1966 and the National School Lunch program (42 U.S.C. §§1771-1789);

UNOFFICIAL

- (17) Any meals provided to senior citizens, such as congregate meals, or home delivered meals funded by the Older Americans Act of 1965 (42 U.S.C. §§3001-3057);
- (18) Pursuant to Pub. L. No. 94-114, §6 (89 Stat. 577, 25 U.S.C. §459e) receipts distributed to members of certain Indian tribes which are referred to in Pub. L. No. 94-114, §5 (89 Stat. 577, 25 U.S.C. §459d);
- (19) Refunds of utility and rental deposits paid by the department;
- (20) Bonafide loans from any source including but not limited to educational loans, shall be exempt from consideration in the individual's or family's personal reserve. A bonafide loan is a debt that the borrower has an obligation to repay;
- (21) Cash payments to the assistance unit responsible for household bills by a non-unit household member for his or her share of common household expenses;
- (22) Restitution payments provided under the Civil Liberties Act of 1988, Title I of Pub. L. No. 100-383, and the Aleutian and Pribilof Islands Restitution Act, Title II of Pub. L. No. 100-383;
- (23) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) effective to January 1, 1989;
- (24) Effective August 1, 1994, payments to victims of Nazi persecution under Pub. L. No. 103-286;
- (25) One burial space (including plots, vaults, and niches) per family member if intended for a member of the immediate family of the applicant or recipient;
- (26) The value of bonafide funeral or burial plans or agreements;
- (27) Payments received by aged, blind or disabled individuals under paragraphs 500 to 506 of the Austrian General Social Insurance Act to compensate individuals who suffered losses during the period March 1933 and May 1945 due to political, religious, or ethnic reasons;

UNOFFICIAL

- (28) Payments received under the Radiation Exposure Compensation Act (Pub. L. No. 101-426) to compensate individuals for injuries or death resulting from the exposure to radiation from nuclear testing or uranium mining;
- (29) Assistance payments received as a result of a declared federal major disaster or emergency from the Federal Emergency Management Agency (FEMA) and other comparable disaster assistance provided by any state or local government agency or disaster assistance organizations;
- (30) Any grant made to an undergraduate or graduate student and made or insured under programs administered by the United States Secretary of Education, Title IV of the Higher Education Act, the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. §2301), or the Bureau of Indian Affairs student assistance programs;
- (31) Pursuant to Title IV, section 4735 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33), payments received as a result of the settlement in the case of Susan Walker v. Bayer Corporation, et al, to compensate individuals who contracted the H.I.V. from contaminated blood products; Unspent portions of any retroactive RSDI or SSI benefits retained in the form of cash or deposited into a bank account is exempt for a period of six calendar months following the month of receipt;
- (32) Unspent portions of any VA payments received by or on behalf of certain Vietnam veteran's natural children for any disability resulting from spina bifida under Pub. L. 104-204 is exempt except for any interest that is earned on the unspent portion;
- (33) Pursuant to Title IV, section 4735 of the Balance Budget Act of 1997 (Pub. L. No. 105-369), payments received from the Ricky Ray Hemophilia Relief Fund Act of 1998 (the Ricky Ray Act) to compensate individuals who contracted the H.I.V. from contaminated blood products; and
- (34) Funds used to purchase an annuity that is irrevocable and not assignable.

UNOFFICIAL

- (A) An annuity is irrevocable when the annuitant cannot void the contract and obtain the cash value of the annuity less early withdrawals and surrender fees.
- (B) An annuity is not assignable when the annuitant cannot sell the annuity on the open market. [Eff 08/01/94; am 11/13/95; am 01/29/96; am 03/30/96; am 11/25/96; am 05/02/98; am 06/19/00; am 05/10/03; am 10/19/09; am 04/12/13] (Auth: HRS §346-53) (Imp: HRS §346-29; 20 C.F.R. 16.1201, 42 C.F.R. §431.10; 45 C.F.R. §233.20)

§17-1725-11 REPEALED. [Eff 08/01/94; R 03/30/96] (Auth: HRS §346-53) (Imp: HRS §346-29; 42 C.F.R. §431.10; 45 C.F.R. §233.20)

§§17-1725-12 to 17-1725-14 (Reserved).

SUBCHAPTER 4

ASSETS TO BE CONSIDERED

§17-1725-15 Assets to be considered. The following assets shall be considered in the individual or family personal reserve:

- (1) Cash on hand;
- (2) Cash in savings and checking accounts;
- (3) Stocks and bonds. The individual shall obtain verification of the value of stocks and bonds from a stock brokerage firm;
- (4) Time deposits and savings certificates. The individual shall obtain verification of the value of assets from the financial institution where the funds are deposited;
- (5) State tax refunds, including state excise tax credits and state income tax credits;
- (6) The equity value of life insurance policies. Equity value of a life insurance policy shall be determined by subtracting any outstanding loans or encumbrances from the cash value of the policy. The individual shall obtain

UNOFFICIAL

- verification of the equity value of the policy from the insurance company;
- (7) Governmental debenture bonds, such as savings bonds, treasury notes, or municipal bonds. The individual shall obtain verification of the value of these assets from financial institutions or stock brokerage firms;
 - (8) Mutual fund shares. The individual shall obtain verification of the value of the mutual fund shares from a stock brokerage firm;
 - (9) The equity in burial plots or burial vaults, and the value of funeral plans not exempt in section 17-1725-10. Equity shall be determined by subtracting all encumbrances from the market value. Value shall be determined by subtracting encumbrances from the original purchase price;
 - (10) Any equity in personal property, such as jewelry, watercrafts or air transportation vehicles not exempt in subchapter 3;
 - (11) Any equity in real property not used as the family home, not exempt in section 17-1725-22 or section 17-1725-23;
 - (12) Moneys or assets in trust funds. For trusts established on or before August 10, 1993 if an irrevocable trust is involved, or there is some other impediment to the current availability of money or assets of the trust, the recipient shall provide proof of the irrevocable trust or provide evidence of the legal impediments to acquiring the value of the trust fund. Medical assistance shall be provided to an otherwise eligible individual or family while legal or other impediments to the current availability of the assets are being removed, or title is being cleared on condition the applicant or recipient submits a plan of action within thirty days of the date of application to remove such legal or other impediments to current availability.
 - (A) Failure to meet the deadline shall disqualify the individual or family from receiving further medical assistance, medical assistance provided shall constitute an ineligible payment recoverable by the department; and

UNOFFICIAL

- (B) The department shall periodically review the plan of action and a recipient's failure to take appropriate action shall disqualify the recipient from further medical assistance;
For any Medicaid qualifying trust the maximum amount permitted to be distributed to the applicant or recipient shall be counted regardless of whether the trust is irrevocable or established for purposes other than to qualify for medical assistance. An exception to this is any Medicaid qualifying trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded. Treatment of trusts established after August 10, 1993 is described in section 17-1725-17;
- (13) Stocks or equity in any profit sharing plan. The value of any profit sharing plan shall not be counted as an asset as long as the individual continues to be employed by the firm which controls the profit sharing plan. Any payments made to the individual or family from the profit sharing plan shall be counted as part of the personal reserve;
- (14) Money received by the individual or family from the sale of assets shall be counted as part of the personal reserve;
- (15) Investments in diamonds, gold, silver, or other precious metals;
- (16) Any equity in any business;
- (17) The equity value of any assets not exempt under sections 17-1725-10 and 17-1725-11. The individual shall submit verification of the value of these assets;
- (18) Federal tax refunds;
- (19) Cash dividends from stocks, life insurance, or other sources;
- (20) Refunds of utility and rental deposits not paid by the department;
- (21) Funds used to purchase an annuity that is revocable and assignable.
(A) An annuity is revocable when the annuitant can obtain the cash value of the annuity less early withdrawals and surrender fees.

UNOFFICIAL

- (B) An annuity is assignable when the annuitant can sell the annuity on the open market.
 - (C) An annuity that does not address issues of revocability or the ability to sell the annuity is considered assignable.
- (22) The value of the funds owed on a promissory note to the individual who holds the promissory note; and
- (23) Entrance fees of an individual residing in a continuing care retirement community or life care community under the following conditions:
- (A) The entrance fee may be used to pay for care if the individual's other resources or income is insufficient to pay for the care;
 - (B) The entrance fee or any remaining portion is refundable when the individual dies or terminates the contract and leaves the continuing care retirement community or life care community; and
 - (C) The entrance fee does not assign an ownership interest in the continuing care retirement community or life care community. [Eff 08/01/94; am 11/13/95; am 11/25/96; am 06/19/00; am 05/10/03; am 10/19/09] (Auth: HRS §§346-53,346-71) (Imp: HRS §§346-29, 346-71; 20 C.F.R. 416.1201 42 C.F.R. §431.10, 435.601; 45 C.F.R. §233.20; 42 U.S.C. §1396p(c))

§17-1725-16 Determining equity in any business. (a) Equity in a business shall be determined by subtracting current liabilities from the current book value of the assets.

(b) The department shall exempt the following assets essential to the production of goods or services in determining equity in a business:

- (1) Stock and inventory; and
- (2) Tools and equipment.

(c) The applicant or recipient shall be responsible for submitting the applicant's or recipient's information to the department.

(d) Failure on the part of the applicant or recipient

UNOFFICIAL

to provide information to determine the interest in a business shall disqualify the individual from receiving medical assistance. [Eff 08/01/94; am 05/10/03] (Auth: HRS §346-53; 42 C.F.R. §431.10; 45 C.F.R. §233.20) (Imp: HRS §§346-29, 346-53; 42 C.F.R. §§435.601, 435.811, 435.840, 435.845)

§17-1725-17 Treatment of trusts established after August 10, 1993. (a) An individual shall be considered to have established a trust if assets of the individual form all or part of the corpus of the trust and if the trust was formed other than by a will by any of the following:

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

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

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

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

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

- (1) The corpus of the trust is considered an available asset;
- (2) Payments from the trust to or for the benefit of the individual shall be considered income of the individual; and
- (3) Any other payments from the trust shall be considered assets disposed and subject to

UNOFFICIAL

penalty under circumstances described in chapter 17-1721, subchapter 8.

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

- (1) If payments could be made to or for the benefit of the individual the portion of the corpus from which the payment could be made is considered an available asset;
- (2) If payments could be made to or for the benefit of the individual the income on the corpus from which the payment could be made is considered an available asset;
- (3) The payments in paragraphs (1) and (2) from the corpus or from the income on the corpus is considered income to the individual; and
- (4) The portion of the corpus from which no payments could be made to or on behalf of the individual is considered assets disposed and subject to penalty under circumstances described in section 17-1721, subchapter 8.
[Eff 08/01/94; am 11/13/96] am 04/12/13]
(Auth: HRS §346-53; 42 U.S.C. §1396p; C.F.R. §431.10) (Imp: HRS §346-53; 42 U.S.C. §1396p)

§17-1725-18 Assets of sponsor of an alien. (a) The assets of a sponsor of an alien, who executed an affidavit of support form on or after December 19, 1997, shall be deemed to be the assets of an alien requesting medical assistance. The assets of the sponsor's spouse shall also be deemed available to the alien.

(b) The assets of a sponsor of an alien and the sponsor's spouse shall be deemed available to the alien until such time as the alien:

- (1) Achieves United States citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act; or
- (2) Has worked forty qualifying quarters of coverage as defined under Title II of the Social Security Act or can be credited with such qualifying quarters as provided under 8 U.S.C. §1645. In the case of any such qualifying quarter beginning after December 31, 1996, the alien must not have received any Federal means-tested public benefit during any such period.

UNOFFICIAL

- (c) The alien's failure to provide information and verification regarding the alien sponsor's assets shall disqualify the alien from receiving medical assistance.
- (d) The assets of a sponsor of an alien and the sponsor's spouse shall not be deemed available to an alien for coverage of emergency medical assistance as described in chapter 17-1723.
- (e) Special provisions in the case of an indigent alien. The deeming of assets in subsection (a) shall not be applicable for a twelve-month period for an alien who is determined to be indigent.
 - (1) The department may determine an alien to be indigent when the alien is unable to obtain food and shelter because the alien's own assets plus assets provided by other individuals, including the sponsor and the spouse of the sponsor, does not exceed one hundred per cent of the asset retention limit for the alien's household's size;
 - (2) When an alien is determined to be indigent, the department will only count the actual amount of the contribution of the sponsor's and sponsor's spouse for a twelve month period, which begins in the month of the alien's application for assistance;
 - (3) Each indigence determination is renewable for additional twelve month periods; and
 - (4) The department must notify the federal Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved.
- (f) Special provisions in the case of a battered alien. The deeming of assets in subsection (a) shall not be applicable for a twelve month period to an alien spouse, an alien parent, or alien child who is battered or subjected to extreme cruelty in the United States by a spouse or parent, or a member of the spouse or parent's family residing in the same household:
 - (1) The non-deeming of the assets of the sponsor and the sponsor's spouse in this subsection only applies to assets of the batterer and the spouse of batterer, and only for the periods the alien is not residing in the household of the batterer;

UNOFFICIAL

- (2) An alien whose child has been battered or subjected to extreme cruelty in the United States by the spouse or parent of the alien must not have actively participated in such battery or cruelty;
- (3) An alien who is a child whose parent has been battered or subjected to extreme cruelty in the United States by that parent's spouse must reside with the battered parent;
- (4) The department determines that the battering is substantially connected to the need for benefits. The need for benefits means that without the assets of the batterer, the alien is unable to obtain food and shelter because the alien's own assets, or other assets provided by other individuals, including the sponsor and the spouse of the sponsor, does not exceed one hundred per cent of the assets retention limit for the alien's household's size; and
- (5) After twelve months, the department shall not deem the batterer's assets if the battery is recognized by a court or the Immigration and Naturalization Service and still has a substantial connection to the need for benefits. [Eff 12/03/01; am 04/11/03](Auth: HRS §346-14) (Imp: 8 U.S.C. §§1631, 1632)

§17-1725-19 (Reserved).

SUBCHAPTER 5

EVALUATION OF REAL PROPERTY

§17-1725-20 Equity value of real property. (a) The equity value of real property shall be determined by subtracting all encumbrances from the fair market value.

(b) The equity value of any real property not designated within this chapter to be exempt shall be considered assets countable toward the family's or household's personal reserve.

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

- (1) Geographic location;
- (2) Land use;
- (3) Amenities; and

UNOFFICIAL

(4) Land configuration.

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

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

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

(3) A licensed realtor's written appraisal of the current fair market value of the property. [Eff 08/01/94, am 09/10/09] (Auth: HRS §346-53) (Imp: HRS §346-29; 42 C.F.R. §§431.10, 435.601; 45 C.F.R. §233.20)

§17-1725-21 Treatment of some special forms of ownership of real or personal property. (a) The individual's interest in property held in joint tenancy shall be determined by:

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

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

(b) The individual's interest in property held in tenancy by the entirety shall be determined by dividing the current fair market value of the property between the husband and wife.

(c) The current value of property under an agreement of sale shall be allocated between the buyer and seller in accordance with their respective interests as follows:

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

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

(d) The current value of property subject to life estates with remainder shall be allocated between the life tenant and the remainderman by determining the present worth of their respective interests using the Life Estate and Remainder Interest Table (26 C.F.R 20.2031-7 and 49 FR Vol. 49 No. 93/5-11-84), that corresponds to the age of the life tenant (located at the end of this chapter).

(e) The individual's interest in property held in

UNOFFICIAL

tenancy in common shall be determined by:

- (1) An appraisal of the current fair market value of the individual's percentage share of the property; or
 - (2) A calculation based on the current fair market value of the property and the percentage of ownership of the individual owners.
- (f) The individual's interest in real property shall not be considered available as an asset if a co-owner would be affected by the sale of the individual's interest under the following conditions:
- (1) The co-owner resides on the property;
 - (2) The co-owner would have to move if the property was sold; and
 - (3) The co-owner owns no other real property that could be used as the co-owner's home property. [Eff 08/01/94; am 06/19/00; am 09/10/09] (Auth: HRS §346-53) (Imp: HRS §346-53; 20 C.F.R. §§416.1201, 1245; 42 C.F.R §§435.230, 435.601, 435.840, 435.845)

§17-1725-22 Special provision for removal of legal impediments to availability. Medical assistance shall be provided to an otherwise eligible individual or family while legal impediments to the current availability of real property are being removed, or title is being cleared, on condition the applicant or recipient submits a plan of action within thirty days of the date of request for the plan by the department to remove those legal impediments or to clear title.

- (1) Failure to meet the deadline shall disqualify the individual or family from receiving further medical assistance.
- (2) The department shall periodically review the plan of action and a recipient's failure to take appropriate action shall disqualify the recipient from further medical assistance. [Eff 08/01/94] (Auth: HRS 346-14; 42 C.F.R. §431.10) (Imp: 42 C.F.R. §435.851

§17-1725-23 Real property used as a home. (a) Real property, which is considered the home or usual place of residence of the applicant or recipient family or household,

UNOFFICIAL

is generally exempt from consideration as a countable asset except for the home property of an institutionalized individual that is in a trust.

(b) The home property exemption is extended to the land and all structures on the parcel of land. The home property exemption may include contiguous parcels of property, regardless of whether legally considered separate parcels of property, provided the individual or family considers the parcels to be part of the home property.

- (1) For the purpose of this subsection, whether an applicant or recipient is living on or away from real property shall determine whether the real property is to be considered home property or not, regardless of the form of the individual's interest such as a life tenant, remainderman, a buyer or seller under an agreement of sale, settler or beneficiary under a trust, or any other form of lessor or divided interest.
- (2) For institutionalized individuals, home property shall not be considered other property if:
 - (A) The individual intends to return to the home; or
 - (B) A spouse or dependent relative is living in the home.
- (3) For persons in the community who are not residing on their home property, home property may continue to be exempt if the individual states intent to return home. Exemptions based on intent to return home shall be re-evaluated every six months.
[Eff 08/01/94; am 05/10/03] (Auth: HRS §346-53; 42 C.F.R. §431.10) (Imp: HRS §346-53; 42 C.F.R. §§435.841; 435.851; 45 C.F.R. §233.20; 42 U.S.C. §1396p)

§§17-1725-24 to 17-1725-26 (Reserved).

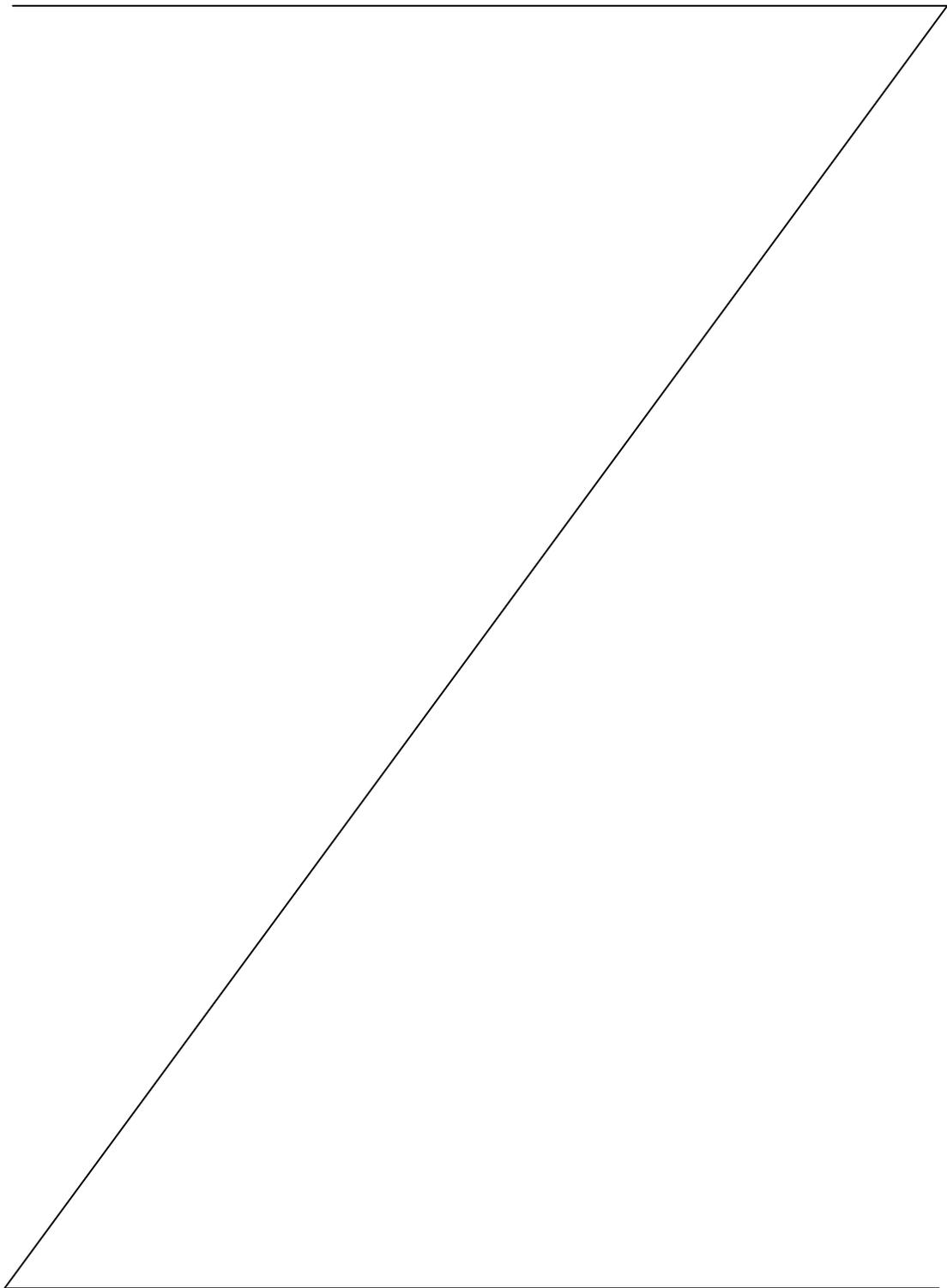
SUBCHAPTER 6

EVALUATION OF MOTOR VEHICLES Repealed

§17-1725-27 REPEALED. [Eff 08/01/94; am 03/30/96;
am 10/26/01; R 05/10/03]

UNOFFICIAL

§17-1725-28 REPEALED. [Eff 08/01/94;
R 03/30/96]



UNOFFICIAL

LIFE ESTATE AND REMAINDER INTEREST TABLE

(26 CFR 20.2031-7 and 49 FR Vol. 49 No. 93/5-11-84)

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
0	.97188	.02812	40	.91571	.08429
1	.98988	.01012	41	.91030	.08970
2	.99017	.00983	42	.90457	.09543
3	.99008	.00992	43	.89855	.10145
4	.98981	.01019	44	.89221	.10779
5	.98938	.01062	45	.88558	.11442
6	.98884	.01116	46	.87863	.12137
7	.98822	.01178	47	.87137	.12863
8	.98748	.01252	48	.86374	.13626
9	.98663	.01337	49	.85578	.14422
10	.98565	.01435	50	.84743	.15257
11	.98453	.01435	51	.83674	.16126
12	.98329	.01671	52	.82969	.17031
13	.98198	.01802	53	.82028	.17972
14	.98066	.01934	54	.81054	.18946
15	.97937	.02063	55	.80046	.19954
16	.97815	.02185	56	.79006	.20994
17	.97700	.02300	57	.77931	.22069
18	.97590	.02410	58	.76822	.23178
19	.97480	.02520	59	.75675	.24325
20	.97365	.02635	60	.74491	.25509
21	.97245	.02755	61	.73267	.26733
22	.97120	.02880	62	.72002	.27998
23	.96986	.03014	63	.70696	.29304
24	.96841	.03159	64	.69352	.30648
25	.96678	.03322	65	.67970	.32030
26	.96495	.03505	66	.66551	.33449
27	.96290	.03710	67	.65098	.34902
28	.96062	.03938	68	.63610	.36390
29	.95813	.04187	69	.62086	.37914
30	.95543	.04457	70	.60522	.39478
31	.95254	.04746	71	.58914	.41086
32	.94942	.05058	72	.57261	.42739
33	.94608	.05392	73	.55571	.44429
34	.94250	.05750	74	.53862	.46138
35	.93868	.06132	75	.52149	.47851
36	.93460	.06540	76	.50441	.49559
37	.93026	.06974	77	.48742	.51258
38	.92567	.07433	78	.47049	.52951
39	.92083	.07917	79	.45357	.54643

UNOFFICIAL

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
80	.43659	.56341	95	.22887	.77113
81	.41967	.58033	96	.22181	.77819
82	.40295	.59705	97	.21550	.78450
83	.38642	.61358	98	.21000	.79000
84	.36998	.63002	99	.20486	.79514
85	.35359	.64641	100	.19975	.80025
86	.33764	.66236	101	.19532	.80468
87	.32262	.67738	102	.19054	.80946
88	.30859	.69141	103	.18437	.81563
89	.29526	.70474	104	.17856	.82144
90	.28221	.71779	105	.16962	.83038
91	.26955	.73045	106	.15488	.84512
92	.25771	.74229	107	.13409	.86591
93	.24692	.75308	108	.10068	.89932
94	.23728	.76272	109	.04545	.95455