

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6 FAMILY AND ADULT SERVICES DIVISION

CHAPTER 653

CHILD SUPPORT, MEDICAL SUPPORT, AND
THIRD-PARTY LIABILITY REQUIREMENTS

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Historical Note: This chapter is based substantially upon §§17-640-14, 17-640-15, 17-640-16, 17-640-17, 17-640-18, 17-640-19, 17-640-20, 17-640-21, 17-640-22, 17-640-23 [Eff 7/19/82; am 12/24/84; am 8/15/87; R 3/19/93] §17-742-3 [Eff 7/19/82; am 9/7/85; am 10/23/87; am 6/11/88; am 1/1/90; am 10/4/90; am 5/13/91; R 3/19/93] §§17-753-1, 17-753-2, 17-753-3, 17-753-4, 17-753-46, 17-753-47, 17-753-48 [Eff 12/21/84; R 6/29/92]

SUBCHAPTER 1

GENERAL PROVISIONS

§17-653-1 Purpose. The purpose of this chapter is to establish the requirements for applicants and recipients of financial assistance. Applicants and recipients shall:

- (1) Assign their rights to third party payments, child, spousal, and medical support; and
- (2) Cooperate in obtaining third party payments for medical assistance, pursuing any third party who may be liable for medical support, and obtaining child or spousal support. [Eff 3/19/93; am 8/1/94; am 7/16/99] (Auth: HRS §346-14) (Imp: §§42 C.F.R. 433.138, 433.145, 433.146, 433.147; 45 C.F.R. §§232.11, 232.12)

§17-653-2 Definitions. As used in this chapter:

"Assignment" means assigning to the department, in writing, the right to obtain child, spousal, or medical support and other third party payments.

"Caretaker relative" means a relative who provides care and supervision to children.

"Family" means person or persons applying for or receiving assistance.

"Third party" means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished.

"Title IVD" means title IVD of the Social Security Act, child support enforcement program (42 U.S.C. §§651 through 658, 660, 664, 666, 667, 1302, and 1396a(25)) [Eff 3/19/93; am 7/16/99] (Auth: HRS §346-14) (Imp: 42 C.F.R. §§433.138, 433.145, 433.146, 433.147; 45 C.F.R. §§232.11, 232.12)

§17-653-3 Administrative procedures. (a) The advance notice requirements of chapter 17-649 shall apply unless otherwise indicated in this chapter.

(b) The administrative hearing requirements of chapter 17-602.1 shall apply.

(c) The department shall restore to the individual any future rights to benefits assigned to the department when financial assistance terminates and after all medical expenses have been met. [Eff 8/01/94] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 C.F.R. §433.148; 45 C.F.R. §205.10)

§§17-653-4 to 17-653-5 (Reserved)

SUBCHAPTER 2 REPEALED

§17-653-6 REPEALED. [R 7/16/99]

§17-653-7 REPEALED. [R 7/16/99]

§17-653-8 REPEALED. [R 7/16/99]

§17-653-9 REPEALED. [R 7/16/99]

§17-653-10 REPEALED. [R 7/16/99]

§§17-653-11 to 17-653-15 REPEALED. [R
7/16/99]

SUBCHAPTER 3

ASSIGNMENT OF AND COOPERATION IN OBTAINING CHILD, SPOUSAL AND MEDICAL SUPPORT

§17-653-16 REPEALED. [R 7/16/99]

§17-653-17 Assignment of rights to support. (a)
All individuals shall assign to the state any rights
the individuals may have to receive child, spousal, or
medical support and any other third party payments on
the individual's own behalf or on behalf of any other
family member applying for or receiving assistance, and
any support payments which may have accrued at the time
the assignment is executed.

(b) Assignment of rights to payments shall not
include assignment of rights to medicare benefits.

(c) An applicant or recipient shall inform the
department of an involvement in an accident within
thirty days of the accident.

(d) The department shall deny or terminate
financial assistance to the entire household of an
individual who refuses to assign the individual's own
rights or the rights of any other family member who is
receiving assistance or for any person for whom the
individual has applied or is receiving assistance.

(e) The department shall deny or terminate
medical assistance to an individual who refuses to
assign the individual's own rights or the rights of any
other family member for whom the individual can legally
make an assignment. [Eff 3/19/93; am 8/1/94; am
9/26/97; am 7/16/99] (Auth: HRS §346-14) (Imp: HRS
§346-37.1; 42 C.F.R. §433.148; 45 C.F.R. §§232.11,
232.13, 234.60)

§17-653-18 Cooperation in obtaining support. (a)
Each individual applying for or receiving financial

assistance shall be required to cooperate with the department in:

- (1) Identifying and locating the parent of the child for whom aid is being claimed;
 - (2) Establishing the paternity of a child born out of wedlock for whom aid is being claimed;
 - (3) Obtaining child, spousal, and medical support payments due the individual and the child for whom aid is being claimed;
 - (4) Obtaining any other payments due the individual and the child for whom aid is being claimed; and
 - (5) Identifying any third party who may be liable for services covered under the medicaid program.
- (b) An individual may be required to:
- (1) Appear in court or at the department's child support enforcement agency as may be necessary, to provide information and evidence, known to, possessed by, or obtainable by the individual that may achieve the objective of enforcing child support obligations;
 - (2) Appear as a witness in any legal proceedings;
 - (3) Provide information, or attest to the lack of information, possessed or reasonably obtainable by the individual under penalty of perjury; and
 - (4) Pay directly to the department any support payments or medical care funds received that are covered by the assignment of rights.

(c) The department shall deny or terminate financial assistance to the entire household of an individual who fails to comply with the requirements of subsections (a) and (b).

(d) The department shall deny or terminate medical assistance to the applicant or recipient who fails to comply with the requirements of subsection (a) and (b) unless good cause exists. [Eff 3/19/93; am 8/01/94; am 9/26/97; am 7/16/99] (Auth: HRS §346-14) (Imp: HRS §346-37.1; 42 C.F.R. §§433.147, 433.148; 45 C.F.R. §§232.12, 234.60)

§17-653-19 Determination of good cause for refusing to cooperate. (a) The department shall determine whether good cause exists for the family's failure to comply with the requirements of section 17-653-18:

- (1) With respect to establishing paternity or securing support for a child, the department shall make a determination that good cause exists only if the evidence establishes that cooperation is against the best interests of the child.
- (2) With respect to securing support for individuals not covered by paragraph (1), the department shall make a determination that good cause exists only if the evidence establishes that cooperation will result in reprisal against or cause physical or emotional harm to the applicant or recipient.

(b) When the department determines that good cause exists, the department shall make a further determination of whether child or medical support enforcement could proceed without risk of harm to the family provided the enforcement or collection activities will not involve the family's participation.

(c) The good cause determination shall be made on a case-by-case evaluation of the circumstances and evidence provided. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: HRS §346-37.1; 42 C.F.R. §433.147; 45 C.F.R. §232.40)

§17-653-20 Circumstances under which cooperation may be against the best interest of the child. (a) Cooperation shall be against the best interest of the child only if it is reasonably anticipated to result in physical or emotional harm to the child or to the parent or caretaker relative, and the harm reduces the parent's or caretaker relative's capacity to care for the child adequately.

(b) Physical or emotional harm shall be of a serious nature that would affect the parent's or caretaker relative's ability to function if cooperation is required.

- (c) A determination that good cause exists shall also be applied in cases where:
- (1) The child was conceived as a result of incest or forcible rape;
 - (2) Legal proceedings for the adoption of the child are pending before a court; or
 - (3) The individual is currently being assisted by a public or private licensed social agency to resolve the issue of whether to keep the child or relinquish the child for adoption. The discussions on whether to keep or give up the child shall not have gone on for more than three months. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: HRS §346-37.1; 42 C.F.R. §433.147; 45 C.F.R. §232.42)

§17-653-21 Granting or continuation of assistance. The department shall not deny, delay, or discontinue financial assistance pending the final good cause determination if the individual has complied with the requirement to provide evidence and all other eligibility requirements have been met. [Eff 3/19/93; am 8/01/94] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 C.F.R. §433.147; 45 C.F.R. §232.46)

§§17-653-22 to 17-653-25 (Reserved)

SUBCHAPTER 4

GOOD CAUSE CLAIM PROCEDURES

§17-653-26 Purpose. This subchapter establishes the procedures for providing notice and processing an individual's good cause claim for refusing to cooperate in obtaining third party payments for medical assistance or securing child or medical support. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 C.F.R. §433.147; 45 C.F.R. §§232.40, 232.41, 232.43, 232.47)

§17-653-27 Notice to applicant of right to claim good cause. (a) The department shall notify applicants and recipients of financial assistance of the right to claim good cause as an exception to the cooperation requirement.

(b) The applicant or recipient shall be informed in writing that:

- (1) The potential benefits a child may derive from establishing paternity and securing support and the potential benefits for providing information to assist the department in pursuing third party liability for medical services;
- (2) By law, cooperation in establishing paternity, securing support, and identifying and providing information to assist the department in pursuing third party liability for medical services is a condition of eligibility;
- (3) An unexcused refusal to cooperate shall result in loss of financial and medical eligibility for the needy caretaker relative;
- (4) The individual has the right to claim good cause for refusing to cooperate and if the department determines there is good cause, the individual shall be excused from the cooperation requirements of sections 17-653-8 and 17-653-18; and
- (5) Upon an individual's request or following receipt of a good cause claim, the department shall provide further notice to the individual with additional details concerning a good cause claim.

(c) A second notice shall be provided in writing, to applicants or recipients who claim good cause or who notify the department of the individual's intention to claim good cause.

(d) The second notice shall be provided promptly, without the applicant or recipient having to reschedule a follow-up appointment. The notice shall inform the individual that:

- (1) The individual shall be required to provide corroborative evidence of a good cause circumstance as specified in section 17-653-

29, and when requested, shall furnish sufficient information in order to allow the department to investigate the circumstances of the claim;

- (2) Upon the individual's request, the department will provide reasonable assistance in obtaining the corroborative evidence;
- (3) The department shall determine whether cooperation would be against the best interests of the child for whom child or medical support would be sought or the individual for whom third party liability for medical services would be sought based on the corroborative evidence supplied;
- (4) The circumstances under which cooperation shall be determined to be against the best interests of the child or individual;
- (5) The state title IVD child support enforcement agency (CSEA) may review the department's findings and basis for a good cause determination and may participate in any administrative hearings concerning the issue of good cause; and
- (6) The CSEA may attempt to establish paternity and collect support and the department may attempt to collect third party information and payment when the department determines that this can be done without risk to the applicant or recipient if done without their participation. [Eff 3/19/93; am 8/01/94]
(Auth: HRS §346-14) (Imp: HRS §346-37.1; 42 C.F.R. §§433.147, 433.148; 45 C.F.R. §232.40)

§17-653-28 Processing good cause claims. (a) An applicant or recipient who refuses to cooperate and who claims to have good cause shall:

- (1) Specify the circumstances which the individual believes establishes good cause to be excused from the cooperation requirement;
- (2) Provide corroboration of the good cause circumstances in accordance with section 17-653-29 within twenty days from the day a good cause claim is filed;

- (3) Provide additional corroborative evidence the department deems necessary to make a good cause determination;
- (4) Be notified promptly by the department of the specific types of additional evidence required; and

(b) Where a claim is based upon the individual's anticipation of physical harm and corroborative evidence is not submitted, the department may at its own discretion, determine good cause based upon the individual's statement and upon further investigation.

(c) The department's determination of whether good cause exists shall be made within forty-five calendar days from the day the good cause claim is made except when:

- (1) The department determines it needs additional time because the information required to verify the claim cannot be obtained and evaluated within the forty-five days; or
- (2) The individual cannot provide corroborative evidence within twenty days from the day the claim is made. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: HRS §346-37.1; 42 C.F.R. §433.147; 45 C.F.R. §§232.41, 232.43)

§17-653-29 Evidence. Good cause shall be corroborated with the following types of evidence:

- (1) Birth certificates or medical or law enforcement records which indicate that the child was conceived as a result of incest or forcible rape;
- (2) Court documents which indicate legal proceedings for adoption are pending before a court;
- (3) Court, medical, child protective services, social services, psychological, or law enforcement records which indicate that the alleged father, absent parent, or others may inflict physical or emotional harm on the child or other family member;
- (4) Medical records which indicate emotional health history and present emotional health status of the child or family member or

written statements from mental health professionals indicating a prognosis concerning the diagnosis or emotional health of the individual or family if cooperation is required;

- (5) A written statement from a public or licensed private social agency that the parent or other caretaker is being assisted to resolve the issue of where to keep the child or relinquish the child for adoption; or
- (6) Sworn notarized statements from persons other than the individual with knowledge of the circumstances which provide the basis for the good cause claim. [Eff 03/19/93] (Auth: HRS §346-14) (Imp: HRS §346.37-1; 42 C.F.R. §433.147; 45 C.F.R. §232.43)

§17-653-30 Renewal of good cause claim. (a) In all cases where an initial determination has been made that there is good cause for refusal to cooperate, the recipient shall have the responsibility of renewing a good cause claim at each six-month or annual redetermination of eligibility.

(b) If the department determines that circumstances have changed and good cause no longer exists, the department shall proceed to enforce the cooperation requirements. [Eff 03/19/93; am 3/14/94] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 C.F.R. §433.147; 45 C.F.R. §232.47)