

## HAWAII ADMINISTRATIVE RULES

## TITLE 17

## DEPARTMENT OF HUMAN SERVICES

## SUBTITLE 9 COMMUNITY LONG-TERM CARE PROGRAMS

## CHAPTER 1441

## PERSONAL CARE SERVICES

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Historical Note: This chapter is based substantially upon subchapter 10 of chapter 17-749, subtitle 8, Hawaii Administrative Rules. [Eff 12/21/84; am 6/23/86; am 5/6/91; R JUN 29 1992 ]

§17-1441-1 Goal. Personal care services provided under this chapter shall be directed at providing home and community-based long-term care services to assist persons with disabilities and severe and chronic illnesses to remain in or return home as an alternative to institutionalization. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: HRS §346-64)

§17-1441-2 Definitions. For the purpose of this chapter:

"Acuity level A" means a nursing facility level of medical care (formerly ICF), whereby clients require services to maintain, improve/safeguard health, or to minimize disability or pain, and is a lower level of services than those provided for clients at the acuity level C.

"Acuity level C" means a nursing facility level of medical care (formerly SNF), whereby clients require skilled services that are either directly provided by, or under the supervision of skilled technical or professional personnel who meet certain qualifications: registered nurse (RN), occupational therapist (OT), physical therapist (PT), speech pathologist, audiologist.

"Applicant" means an individual who has applied for personal care program services but who has not received final action on their application.

"Case management" means the assessment of client needs and planning, locating, coordinating, and monitoring all services in the client's plan of care.

"Client" means an individual who meets the eligibility criteria defined in section 17-1438-3; voluntarily selects personal care services; and is admitted to the personal care services program.

"Contractor" means any agency or organization which has entered into a written agreement with the department to provide personal care which includes skilled nursing services.

"Department" means the department of human services.

"Federal poverty level" means the official nonfarm poverty level for Hawaii, which is based on family size and annually adjusted by the federal Office of Management and Budget.

"Home" means a community-based residence excluding licensed domiciliary care facilities, and nursing facilities.

"Non-medicaid recipient" means a client whose income is at least one-hundred percent and does not exceed three hundred percent of the federal poverty level for Hawaii and whose assets do not exceed four hundred percent of the current medical assistance limit.

"Personal care" means activities, defined in section 17-1441-5(b), provided for clients residing at home.

"Plan of care" means a written plan that indicates problems and needs, goals or desired outcomes, and type, frequency, and provider of services; is agreed upon by the department or its agent, and the client; and is regularly reviewed and updated.

"Provider" means any individual deemed qualified and suitable by the client, contractor, and the department to provide personal care services in the client's home. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: HRS §346-64; 42 C.F.R. §440.170)

§17-1441-3 Eligibility for services. (a)

Personal care services shall be available to individuals who meet the following requirements:

- (1) Eligible for federally-funded medical assistance or meets non-medicaid financial eligibility requirements in section 17-1441-4;
- (2) Authorized at acuity level A or acuity level C by the department's medical consultant or appointed agent;
- (3) Resides in a home which has a means of unobstructed travel for the client to exit the dwelling;
- (4) Able to receive personal care at a cost not to exceed statutory limits;
- (5) Able to hire, supervise, and terminate the personal care provider, or be under the guardianship or supervision of a person capable of performing those duties on behalf of the non-medicaid individual, as appropriate;

(b) Continued eligibility for personal care services shall be redetermined by the department or its agent according to the following schedule:

- (1) Eligibility for federally-funded medical assistance shall be verified monthly;
- (2) Financial eligibility for the non-medicaid program shall be redetermined annually or as changes in income and asset status occur;
- (3) Cost of care shall be itemized and determined monthly;
- (4) Acuity level of care shall be redetermined and reauthorized annually or as changes in acuity level occur, using the department's designated form. [Eff JUN 29 1992 ] (Auth:

HRS §346-14) (Imp: HRS §346-64; 42 C.F.R. §440.170)

§17-1441-4 Non-medicaid financial eligibility requirements. (a) The general eligibility requirements for personal care applicants and clients are as follows:

- (1) Eligibility determination is based on income and asset status of the applicant or client and shall be supported by documentation of:
    - (A) Current and the previous month's gross income; and
    - (B) Non-exempt assets.
  - (2) Refusal to provide necessary information on sources of assets and income or refusal to permit departmental verification of incomplete or inconsistent information shall disqualify the applicant or client from services.
  - (3) A client whose eligibility was established by the department or its agent under this section shall be required to report all changes of income and asset status within 30 days from the date of receipt.
- (b) Income eligibility to receive personal care services are based on the following general income categories:
- (1) Earned income to be considered:
    - (A) Wages;
    - (B) Salaries;
    - (C) Net income received from self-employment; and
    - (D) Temporary disability benefits.
  - (2) Unearned income to be considered:
    - (A) Social security benefits;
    - (B) Unemployment insurance benefits;
    - (C) Worker's compensation benefits;
    - (D) Pensions and annuities;
    - (E) Veterans benefits and pensions;
    - (F) Dividends from stocks, royalties, or memberships in associations; and
    - (G) Interest on savings, bonds, mutual funds, or other securities.
  - (3) Income to be exempted:
    - (A) Food stamp assistance;
    - (B) Housing assistance from federal housing

- programs run by state and local authorities;
- (C) Grants, scholarships, or loans to students while student is in an academic program;
  - (D) Child support payments; and
  - (E) Refunds of taxes paid on income or real property.
- (c) Asset eligibility is based on the following general resource categories:
- (1) Assets to be considered:
    - (A) Cash on hand;
    - (B) Bank accounts (checking and savings);
    - (C) Securities: (stocks and bonds/CD and mutual funds);
    - (D) Equity value of second family car; and
    - (E) Equity value of real property that is not the individual's intended main lodging.
  - (2) Assets to be exempted:
    - (A) A home which is the individual's intended main lodging;
    - (B) Personal property and household goods;
    - (C) Cash value of a life insurance policy;
    - (D) Value of a car if used for transportation to a place of regular treatment for a specific medical problem, or for use by a person with a disability; and
    - (E) Burial plots and funeral plans.
- [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: HRS §346-64)

§17-1441-5 Provision of services. (a) The department or its authorized agent shall make a comprehensive assessment of the client and provide a written plan of care. The plan of care shall be developed to reflect the desires of the client, or the person primarily responsible for the client's care, and may provide for different levels of case management.

- (b) Personal care services shall include one or more of the following activities:
- (1) Personal hygiene and grooming, including bathing, skin care, oral hygiene, hair care, and dressing;
  - (2) Assistance with bowel and bladder care;

- (3) Assistance with ambulation and mobility;
- (4) Assistance with transfers;
- (5) Assistance with medications which are ordinarily self-administered when ordered by the client's physician;
- (6) Assistance with routine or maintenance health care services, by a provider with specific training, satisfactory documented performance and case manager consent, when ordered by the client's physician;
- (7) Assistance with feeding, nutrition, meal preparation, and other dietary activities;
- (8) Assistance with exercise, positioning, and range of motion to maintain or strengthen muscle tone, and to prevent contractures, decubiti, and deterioration;
- (9) Maintenance of daily records on tasks performed, condition of the client, total hours worked, and other information as required.
- (10) Household services, if related to a client's need, and are necessary to the client's health and welfare, including cleaning and maintenance of all adaptive equipment, when no other resource is available; and
- (11) Escort service to clinics, physician office visits or other trips for the purpose of obtaining treatment or meeting needs established in the plan of care, when no other resource is available.

(c) Non-medicaid families and other informal caregivers shall be trained by the department or its agent, to provide personal care to augment or replace program service hours.

(d) Provision of services shall be available to clients residing in a home which is equipped with a U.L. approved smoke detector. [Eff JUN 29 1992 ]  
(Auth: HRS §346-14) (Imp: HRS §346-64; 42 C.F.R. §440.170)

§17-1441-6 Contractors of personal care services.

- (a) Contractors of personal care services shall:
  - (1) Meet all applicable state and federal licensing requirements;
  - (2) Enter into a written agreement with the department for the provision of personal care

- services;
- (3) Determine non-medicaid applicant/client eligibility for services;
  - (4) Evaluate non-medicaid recipient health status and re-evaluate need for personal care at least every one hundred twenty days;
  - (5) Develop plan of care in coordination with the non-medicaid recipient;
  - (6) Assure ongoing documentation in client records;
  - (7) Determine provider's suitability and qualifications to provide personal care services;
  - (8) Provide care instructions and regularly monitor provider on each assignment;
  - (9) Apply laws of confidentiality and enforce a written code of ethics, standards of conduct and performance, a disciplinary action code, and emergency protocols for use in the delivery of personal care services;
  - (10) Maintain documentation in provider files;
  - (11) Provide the non-medicaid recipient with training, as appropriate, to:
    - (A) Recruit, supervise, and terminate their personal care provider;
    - (B) Manage their regular personal care;
    - (C) Recognize potential health problems; and
    - (D) Perform self-care at the client's maximum level of ability;
  - (12) Provide reports, invoices, and documentation as required by the department on a timely basis; and
  - (13) Comply with the requirements of the department to:
    - (A) Review records related to personal care services;
    - (B) Conduct reviews at the contractor's office; and
    - (C) Conduct home visits to evaluate the quality of care.
- (b) Reimbursement for services shall be based on a negotiated rate between the department and contractor but shall not exceed the aggregate amount in the agreement.
- (c) The contractor's written agreement with the department shall be terminated when the contractor fails to comply with the terms stipulated in the

agreement. [Eff JUN 29 1992 ] (Auth: HRS §346-14)  
(Imp: HRS §346-64; 42 C.F.R. §440.170)

§17-1441-7 Providers of personal care services.

(a) A personal care provider shall provide evidence of:

- (1) Suitability for the position and fitness to work with minimal supervision;
- (2) Absence of physical or mental impairments which interfere with the ability to perform personal care services;
- (3) Annual tuberculosis clearance; and
- (4) Annual cardiopulmonary resuscitation certification.

(b) A personal care provider shall also provide proof of satisfactory qualifications to perform the personal care tasks listed on the client's plan of care. Satisfactory qualifications shall be:

- (1) Related work experience performed within the last three years, in a hospital, health care institution, foster home, care home, home health agency, or as a home care provider that is verified and deemed satisfactory evidence of the ability to perform personal care services by the department or its agent; or
- (2) Satisfactory completion of personal care training in areas listed in the client's plan of care:
  - (A) Personal care;
  - (B) Bowel and bladder care;
  - (C) Food preparation, nutrition, and diet planning;
  - (D) Care of the chronically ill and severely disabled;
  - (E) Comfort measures;
  - (F) Methods to assist with client ambulation and transfer;
  - (G) Care of clients with cognitive disorders or with other mental or emotional conditions;
  - (H) First aid;
  - (I) Documentation and recordkeeping;
  - (J) Observational skills;
  - (K) Infection control;
  - (L) Universal precautions;



- (M) Vital signs; and
- (N) Cardiopulmonary resuscitation; and
- (3) Satisfactory demonstration of ability to perform the personal care tasks listed in the client's plan of care;
- (c) A personal care provider for a medicaid client shall not be the:
  - (1) Client's spouse; or
  - (2) Parent of a minor client.
- (d) A personal care provider shall apply laws of confidentiality and comply with the contractor's written code of ethics, standards of conduct and performance, disciplinary action code, and emergency protocols established for the provision of personal care. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: HRS §346-64; 42 C.F.R. §440.170)

§17-1441-8 Payment of personal care services.

- (a) The department shall pay for only those personal care services identified in section 17-1441-5(b) and specified in a written plan of care made between the client and the department or its agent.
- (b) Funds appropriated for the non-medicaid personal care program shall be used for non-medicaid recipients who meet the eligibility requirements defined in section 17-1441-3.
- (c) A non-medicaid recipient shall make a co-payment for personal care services based on income and family size, as determined by the department.
- (d) The maximum payment for personal care services shall not exceed limits established by statutory authority.
- (e) Personal care services shall not be reimbursed while the client is an inpatient in an acute care facility or long term care facility.
- (f) Expenditures for periods of inpatient care in an acute care hospital or long term care facility shall not be computed in the annual cost of care under the program for the client. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: HRS §346-64; 42 C.F.R. §440.170)

§17-1441-9 Availability of personal care services. Personal care services shall be made available to qualified clients within the limitations of legislative appropriations for personal care

services and the availability of personal care services providers. [Eff JUN 29 1992 ] (Auth:HRS §346-64)  
(Imp: 42 C.F.R. §440.170)

§§17-1441-10 to 17-1441-14 Reserved

§17-1441-15 Decrease or termination of personal care services. (a) Personal care services to clients shall be decreased or terminated when one or more of the following occur:

- (1) Friends or relatives of the client express willingness to and are able to care for the client without charge in lieu of program services;
  - (2) The estimated or actual annual cost of care exceeds the aggregate program expenditure ceiling placed on the client care costs by the department;
  - (3) The contractor refuses to provide the requested services;
  - (4) The contractor agreement is terminated and no other options are available through contractual agreement; or
  - (5) The non-medicaid recipient is delinquent paying their co-payment to the provider for a period of two months;
- (b) Personal care services to clients shall be terminated when one or more of the following occur:
- (1) The client no longer meets the eligibility conditions of section 17-1441-3;
  - (2) The client or person primarily responsible for the client's care requests termination from the program;
  - (3) The client or person primarily responsible for the client's care chooses institutional long-term care in lieu of community-based services;
  - (4) The case management staff determines that a regime of services which will assure the safety and well-being of the client in their community-based residence cannot be provided by the program. Termination can occur after another feasible alternative has been arranged;
  - (5) The client leaves the State; or

(6) The client dies.

(c) Personal care services shall be decreased or terminated upon mutual agreement between the client and the department or its agent, or after written notice of the department or its agent's intent to decrease or terminate services has been given to the client. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: HRS §346-64; 42 C.F.R. §440.170)

§17-1441-16 Hearings and appeals. An appeal for applicants and clients shall be available when the department denies, suspends, decreases or terminates services for any reason except a change in state or federal law or a lack of state or federal funding. The appeal shall be conducted in accordance with departmental rules. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: HRS §346.64; 42 C.F.R. §440.170)

§17-1441-17 Authorization of services. Personal care services for medicaid-eligible clients shall be authorized by the Health Care Financing Administration, under the nursing home without walls home and community-based services waiver (section 1915(c)) of the Social Security Act and by the Hawaii Revised Statutes. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: HRS §346-64; Pub. L. No. 97-35, §2176 (1981); 42 C.F.R. §440.170)

