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HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 12 MED-QUEST DIVISION

CHAPTER 1702

CONFIDENTIALITY

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Historical Note: This chapter is based substantially upon chapter 17-1301. [Eff 6/29/92; R 08/01/94]

§17-1702-1 Purpose. The purpose of this chapter shall be to define the conditions under which the department (DHS) may disclose information relating to applicants and recipients of medical assistance. [Eff 08/01/94] (Auth: HRS §§346-10, 346-14; 42 C.F.R. §431.301) (Imp: HRS §§346-10, 346-14; 42 C.F.R. §431.301)

§17-1702-2 Definitions. For the purpose of this chapter:

"DHS" means the department of human services.

"Department" refers to the department of human services (DHS).

"Family and adult services division (FASD)" means the work unit within the department which administers the public assistance and food stamp programs.

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"HIV/AIDS" means human immunodeficiency virus/acquired immunodeficiency syndrome, a fatal infectious disease caused by the human immunodeficiency virus that damages the body's immune system and leads to the body's inability to fight off infection.

"Medicaid" means the medical assistance program under Title XIX of the Social Security Act.

"Public assistance programs" means financial or medical assistance, child support, or social service programs.

"TPL" means a third party liability.

[Eff 08/01/94] (Auth: HRS §§346-10, 346-14, 325-101; 42 C.F.R. §431.301) (Imp: HRS §§346-10, 346-14, 325-101; 42 C.F.R. §431.301)

§17-1702-3 Maintenance of records. (a) The department of human services, med-QUEST division and family and adult services division (FASD), shall keep records to document information acquired about applicants and recipients in the administration of medical assistance programs.

(b) This information shall:

- (1) Substantiate the expenditure of public funds;
- (2) Be kept in confidential records and files of the med-QUEST division and FASD; and
- (3) Not be subject to any other law permitting inspection of public records.

(c) The applicant or recipient shall have a right to privacy and shall be informed in writing about the confidential nature of the information acquired, except as noted in section 17-1702-5. [Eff 08/01/94] (Auth: HRS §§346-10, 346-14) (Imp: HRS §346-10; 42 C.F.R. §431.17)

§17-1702-4 Confidential information. (a) The following information shall be confidential and shall not be used or disclosed except as provided in section 17-1702-5:

- (1) Names and addresses of applicants and recipients, and amounts of medical assistance provided. This includes prohibition against release of information to any federal, state, or local committee or legislative body;
- (2) Information related to the social and economic condition or circumstances of a particular individual, whether or not an applicant or recipient, including wage

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- information obtained from the state department of labor or from the Social Security Administration;
- (3) Department's evaluation of recorded or unrecorded information about a particular individual, whether or not an applicant or recipient;
 - (4) Medical, psychological, or psychiatric data, whether or not an applicant or recipient;
 - (5) Correspondence concerning a particular individual, whether or not an applicant or recipient; and
 - (6) The name of the worker or unit in which the case is or was active.
- (b) The records of any person, including all communication, or specific medical or epidemiological information contained therein, that indicates that a person has or has been tested for HIV/AIDS, shall be strictly confidential, and shall only be released in accordance with HRS section 325-101, HIV/AIDS confidentiality statute. [Eff 08/01/94] (Auth: HRS §§92F-18, 346-10, 346-14, 325-101, 42 C.F.R. §431.300) (Imp: HRS §§92F-14, 346-10, 325-101; 42 C.F.R. §431.305)

§17-1702-5 Disclosure of information to administer the public assistance or other federal programs. (a) The use or disclosure of any of the information specified in section 17-1702-4(a) shall be limited to the persons or purposes stipulated in this section and, unless otherwise stated, this excludes inspection of the entire case record.

(b) Disclosure for purposes directly connected with the administration of the medical assistance program shall be limited to:

- (1) Only the employees of the DHS and the United States government in the performance of the employees' official duties shall have access to the entire case record;
- (2) Disclosure shall be allowed to the extent necessary to provide services and to determine eligibility or the amount of assistance for applicants or recipients of the medical assistance program;
- (3) Under this paragraph, disclosure shall be permitted to the following:
 - (A) Fiscal intermediary;

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- (B) Other entities contracted by medicaid to provide a service;
- (C) Medicaid providers who require eligibility, cost share or TPL information for billing or recovery purposes;
- (D) Participating health plans in the QUEST program who require eligibility, co-payment, TPL information for billing or recovery purposes;
- (E) Private social service agencies, including purchase of service (POS) providers, from which the applicant or recipient receives services according to the department's case plan; and
- (F) Agencies administering programs under the Social Security Act under such titles as XVI-SSI (42 U.S.C. §§1381-1383), IV-A AFDC (42 U.S.C. §§630-644), or XX-Social Services (42 U.S.C. §1397).

(c) Disclosure for purposes directly connected with any investigation, prosecution, or criminal or civil proceedings conducted in connection with the administration of medical assistance program shall be permitted:

- (1) To police departments, prosecutors' offices, the attorney general's office, the ombudsman's office, or any other state or federal agency; and
- (2) For such purposes as:
 - (A) The detection, investigation, or prosecution of violations of applicable state and federal laws of regulations in connection with these programs, including any and all aspects of theft, fraud, deception, or overpayment;
 - (B) DHS' claims against estates of deceased recipients, or initiation of paternity and nonsupport actions by DHS under Title IV-D of the Social Security Act (42 U.S.C. §§651-662);
 - (C) Responding to requests for information in connection with lawsuits challenging the administration of the medical assistance program; and
 - (D) Providing information to the ombudsman's office investigating complaints about

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the administration of the medical assistance program.

(d) Disclosure may be allowed for purposes of the administration of other federal or federally assisted programs which provide assistance, in cash or in kind, or services directly to individuals on the basis of need. Disclosure shall be permitted for purposes of administering programs such as:

- (1) Social security - supplemental security income; and
- (2) Hawaii housing authority for the section 8 programs and the low income housing projects.

(e) Disclosure may be allowed for purposes of an audit or similar activity, such as a financial review or review of expenditure reports, conducted in connection with the administration of the public assistance programs by any governmental entity which is authorized by law to conduct the audit or activity.

[Eff 08/01/94; am 01/29/96; am 09/14/98] (Auth: HRS §§92F-18, 346-10, 346-14, 325-101; 42 C.F.R. §431.301) (Imp: HRS §§346-10, 571-84, 325-101; 42 C.F.R. §431.306)

§17-1702-6 Disclosure of information to individuals or agencies. (a) Disclosure to individuals or agencies other than those specified in section 17-1702-5 shall be allowed only when a written authorization has been obtained from the applicant, the recipient, or the legal guardian of the applicant or recipient. The written authorization shall specifically include the applicant's, recipient's, or legal guardian's consent to have the information released or the record reviewed;

- (1) When individuals or agencies other than applicants, recipients, or legal guardians of applicants or recipients wish to obtain information, or to review a department record, the requesting party shall submit an authorization signed and dated by the applicant, recipient, or legal guardian of the applicant or recipient specifying:

- (A) The name of the individual or agency authorized to receive the information or to review the record, and the individual's agency connection, if any;

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- (B) The specific information the department is authorized to release and the purpose for which the information is being sought;
 - (C) Applicant or recipient's social security number or birthdate, and address; and
 - (D) The expiration date, or expiration event that relates to the applicant or recipient or the purpose of the authorization, and also specifying that if no expiration date or expiration event is specified the authorization shall expire one year from the date the authorization is signed;
- (2) Reproduced copies of information requested shall be provided at a cost related to the cost of reproduction. When the information is required for the purpose of presenting the applicant's or recipient's administrative hearing appeal, there shall be no charge. In either case, actual postage cost shall be charged.
- (b) Disclosure to persons directly connected with the administration or enforcement of programs which are required to participate in the State Income and Eligibility Verification System (IEVS). Information disclosed shall be limited to that which is required to enable IEVS operations and shall be protected from unauthorized disclosure.
- (c) Disclosure to state or county law enforcement officers of the current residence and business address of a recipient, when the information is needed for:
- (1) An official administrative, civil, or criminal law enforcement purpose to identify a recipient as a fugitive felon or parole violator; or
 - (2) An official purpose and the department has informed the recipient of the circumstances in which the recipient's address may be released.
- (d) The release or use of information concerning individuals applying for or receiving medical assistance shall be:
- (1) Limited by the provisions of section 17-1702-5;

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- (2) Limited to the purposes for which they are furnished;
 - (3) Subject to the standards of confidentiality of this chapter; and
 - (4) In accordance with HRS section 325-101, HIV/AIDS confidentiality statute.
- (e) The case record or information shall not be released in a judicial or administrative proceeding, either voluntarily or in response to any subpoena unless permitted by section 17-1702-5. This includes requests or subpoenas from a governmental authority, the courts, a law enforcement official, the ombudsman's office, the attorney general's office, or from any other outside source.
- (f) Where disclosure is not permitted for the purpose of the administration of the medical assistance programs, the family or individual shall be informed whenever possible of a request for information from an outside source, and permission shall be obtained to meet the request. In an emergency situation, when the individual's consent for the release of information cannot be obtained, the individual shall be notified immediately. [Eff 08/01/94; am 09/14/98; am 10/21/05] (Auth: HRS §§346-10, 346-14, 325-101; 42 C.F.R. §431.300) (Imp: HRS §§92F-19; 346-10, 325-101; 42 C.F.R. §§431.305, 431.306, 45 C.F.R. §164.508)

§17-1702-7 Dissemination of material. All material sent or distributed to applicants, recipients, or medicaid providers, including material enclosed in envelopes containing checks, shall be limited to the administration of public assistance programs.

- (1) Mailing or distribution of holiday greetings, general public announcements, voting information, and alien registration notices shall be prohibited.
- (2) Material relating to the health and welfare of applicants and recipients, such as announcement of free medical exams, availability of surplus food, and consumer protection information may be mailed or distributed.
- (3) Only the names of the persons directly connected with the administration of the

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public assistance programs and identified in an official capacity with the DHS shall be contained in material sent or distributed to applicants, recipients, and providers.
[Eff 08/01/94] (Auth: HRS §§346-10, 346-14; 42 C.F.R. §431.300) (Imp: HRS §§346-10, 346-14; 42 C.F.R. §431.307)

§17-1702-8 Penalty. (a) Any person who fails to safeguard confidential information or who violates rules governing the confidential nature of DHS information may be prosecuted for a violation. Violators shall include, but shall not be limited to:

- (1) Any person, including any person who acquires information through authorized inspection, who, knowing the information to have been acquired from the records or files of the department, intentionally divulges the information other than as authorized by law; and
- (2) A person who intentionally and knowingly aids or abets an unauthorized person in the inspection of the records or files.

(b) If the court determines that DHS acted in a willful and intentional manner in failing to properly maintain the case record, the provisions of section 92F-17, HRS, shall apply.

(c) Any person or institution who wilfully violates any provision of the HIV/AIDS confidentiality statute shall be penalized in accordance with HRS section 325-102. [Eff 08/01/94] (Auth: HRS §§92F-17, 346-10, 346-14, 325-101) (Imp: HRS §§92F-11, 346-11, 346-14, 325-101; 42 C.F.R. §431.304)