HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 12 MED-QUEST DIVISION

CHAPTER 1705

MEDICAL ASSISTANCE RECOVERY

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Historical Note: This chapter is based substantially upon chapter 17-1352. [Eff 06/29/92; R 08/01/94]

SUBCHAPTER 1

GENERAL PROVISIONS

§17-1705-1 Purpose. The purpose of this chapter is to establish the requirements for applicants and recipients of medical assistance. Applicants and recipients shall:

(1) Assign their rights to third party payments and medical support;

(2) Cooperate in obtaining third party payments for medical assistance, pursuing any third party who may be liable for medical support, and obtaining child support; and

(3) Be required to satisfy all conditions set forth by the third party to receive coverage, to the extent coverage is available through that third party, before Medicaid reimbursement is allowed. [Eff 08/01/94; am 02/07/05] (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)

§17-1705-2 Definitions. As used in this chapter:

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

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

"Cost-sharing related to Medicare part D" means any premiums, deductibles, co-payments, co-insurance, and any cost incurred within the Part D coverage gap.

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

"Health plan" means any health plan contracted with the department to participate in QUEST.

"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 08/01/94; am 01/29/96; am 12/26/05] (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, Pub. L. 108-173)

§17-1705-3 Administrative procedures. (a) The adverse action notice requirements of chapter 17-1713 shall apply unless otherwise indicated in this chapter.

(b) The administrative hearing requirements of chapter 17-1703 shall apply.

(c) The department shall restore to the individual any future rights to benefits assigned to the department when medical assistance terminates and after all medical expenses have been met. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 C.F.R. §433.148; 45 C.F.R. §205.10)

§§17-1705-4 to 17-1705-5 (Reserved).

SUBCHAPTER 2

ASSIGNMENT OF AND COOPERATION IN OBTAINING THIRD PARTY PAYMENTS

§17-1705-6 Purpose. The purpose of this chapter is to establish the requirements for assignment of and cooperation in obtaining third party payments that applicants and recipients shall be required to meet to receive medical assistance. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: 42 C.F.R. §433.137; 433.138; 45 C.F.R. §232.13, HRS §346-37)

§17-1705-7 Medical assignment requirements. (a) All individuals applying for or receiving medical assistance shall assign to the department or health plan:

(1) The individual's rights to any third party payments; and

(2) The rights of any other family member included in the application or receiving assistance for whom the applicant or recipient can legally make an assignment.

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

(c) An applicant or recipient shall inform the department or health plan of an involvement in an accident within thirty days of the accident. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-37(b); 42 C.F.R. §§433.145, 433.146)

§17-1705-8 Cooperation requirements. (a) All applicants and recipients of medical assistance shall

be required to cooperate with the department or health plan in obtaining third party payments unless there is good cause for refusing to cooperate.

(b) Cooperation shall include:

(1) Identifying any third party who may be liable for services covered under the Medicaid or the QUEST program;

(2) Providing relevant information or attesting to the lack of information, under penalty of perjury, to assist the department or health plan in pursuing any such potentially liable third party;

(3) Appearing at a department designated location to provide information or evidence relevant to the case;

(4) Appearing as a witness at a court or other proceeding;

(5) Paying to the department or health plan any support or medical care funds received that are covered by the assignment of rights; and

(6) Taking any other reasonable steps to assist in securing medical support and payments.

(c) All applicants and recipients of medical assistance shall be required to apply, as a condition of eligibility, for Medicare coverage if:

(1) The individual may meet the eligibility criteria for the Medicare program, and

(2) The state agrees to pay any applicable premiums and cost-sharing, except for those related to Medicare part D. [Eff 08/01/94; am 01/29/96; am 12/26/05] (Auth: HRS §346-14) (Imp: 42 C.F.R. §433.138; §433.145; 45 C.F.R. §232.13; Pub. L. 108-173)

§17-1705-9 Good cause determination. (a) The department shall make a determination that cooperation is against the best interests of the individual or other family member to whom financial or medical assistance is being furnished when it is anticipated that cooperation will result in reprisal against, and cause physical or emotional harm to, the individual or other family member.

(b) When the department determines that good cause exists, the department shall make a further determination of whether collection activities could

proceed without risk of harm to the family provided the activities will not involve the family's participation.

(c) The determination shall be made on a case-by-case evaluation of the circumstances and the family shall be notified of the decision.

(d) The good cause claim procedures of subchapter 4 shall apply. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: 42 C.F.R. §433.147; 45 C.F.R. §232.40)

§17-1705-10 Denial or termination of medical assistance. (a) The department shall deny or terminate medical assistance to any applicant or recipient who refuses to cooperate in obtaining third party payments, unless good cause exists.

(b) The department shall deny or terminate medical assistance to applicants or recipients who refuse to assign the individual's own rights or the rights of any other family member for whom the applicant or recipient can legally make an assignment.

(c) The department shall provide assistance to individuals who:

(1) Cannot legally assign the individual's own rights or the rights of other family members;

(2) Have good cause for refusing to cooperate; and

(3) Would otherwise be eligible for assistance but for the refusal by a person legally able to make the assignment or to cooperate.

(d) Any individual denied or terminated for medical assistance as a result of refusal to assign the individual's rights shall have the right to a fair hearing. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: 42 C.F.R. §433.148)

§§17-1705-11 to 17-1705-15 (Reserved).

SUBCHAPTER 3

ASSIGNMENT OF AND COOPERATION IN OBTAINING MEDICAL SUPPORT

§17-1705-16 Purpose. The purpose of this subchapter is to establish the requirements for applicants and recipients of medical assistance. Applicants and recipients shall:

(1) Assign their rights to medical support; and
(2) Cooperate in obtaining medical support.
[Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-37.1; 42 C.F.R. §§433.146, 433.147; 45 C.F.R. §§232.11, 232.12)

§17-1705-17 Assignment of rights to support. (a) All individuals shall assign to the state any rights the individuals may have to receive medical support payments on the individual's own behalf or on behalf of any other family member applying for or receiving assistance.

(b) If the caretaker relative with whom the child is living, fails to complete the assignment, the caretaker relative shall be ineligible for medical assistance.

(c) The department shall provide medical assistance to individuals who would otherwise be eligible but for the refusal of the caretaker relative to complete the assignment. [Eff 08/01/94] (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)

§17-1705-18 Cooperation in obtaining support. (a) Each individual applying for or receiving medical assistance shall be required to cooperate with the department in:

(1) Identifying and locating the parent of the child for whom medical services are being claimed;
(2) Establishing the paternity of a child born out of wedlock for whom medical services are being claimed;
(3) Obtaining support payments due the individual and the child for whom medical services are being claimed; and
(4) Obtaining any other payments due the individual and the child for whom medical services are being claimed.

(b) An individual may be required to:

(1) Appear in court or at the department's child support enforcement agency as maybe necessary, to provide information and evidence, known to, possessed by, or obtainable by the individual that may be achieving 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) Report to the department any child support payments received from the absent parent.

(c) The department shall provide medical assistance to individuals who would otherwise be eligible for medical assistance but for the refusal by the caretaker relative to cooperate. [Eff 08/01/94] (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)

§17-1705-19 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 17-1705-18:

(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 interest 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 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-37.1; 42 C.F.R. §433.147; 45 C.F.R. §232.40)

§17-1705-20 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 toresolve 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 08/01/94] (Auth: HRS §346-14) (Imp. HRS §346-37.1; 42 C.F.R. §433.147; 45 C.F.R. §232.42)

§17-1705-21 Granting or continuation of assistance. The department shall not deny, delay, or discontinue medical assistance pending the final good cause determination if the individual has complied with the requirement to provide evidence and all other eligibility requirement have been met. [Eff 08/01/94] (Auth: HRS §346-14) (Imp. HRS §346-14; 42 C.F.R. §433.147; 45 C.F.R. §232.46)

§§17-1705-22 to 17-1705-25 (Reserved).

SUBCHAPTER 4

GOOD CAUSE CLAIM PROCEDURES

§17-1705-26 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 medical support. [Eff 08/01/94] (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)

§17-1705-27 Notice to applicant of right to claim good cause. (a) The department shall notify applicants and recipients of medical 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 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 17-1705-8 and 17-1705-18; 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 17-1705-29, 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 interest 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) 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 08/01/94] (Auth: HRS §346-24) (Imp: HRS §346-37.1; 42 C.F.R. §§433.147, 433.148; 45 C.F.R. §232.40)

§17-1705-28 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 17-1705-29 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; and

(4) Be notified promptly by the department of the specific types of additional evidence required.

(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 within forty-five days; or

(2) The individual cannot provide corroborative evidence within twenty days from the day the claim is made. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-37.1; 42 C.F.R. §433.147; 45 C.F.R. §§232.41, 232.43)

§17-1705-29 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 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346.37.1; 42 C.F.R. §433.147; 45 C.F.R. §232.43)

§17-1705-30 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 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 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 C.F.R. §433.147; 45 C.F.R. §232.47)

§§17-1705-31 TO 17-1705-35 (Reserved).

SUBCHAPTER 5

THIRD PARTY LIABILITY

§17-1705-36 Definitions. As used in this subchapter:

"Private insurer" means:

(1) Any commercial insurance company offering health or casualty insurance to individuals or groups;

(2) Any profit or nonprofit prepaid plan offering either medical services or full or partial payment for the diagnosis or treatment of an injury, disease, or disability; or

(3) Any organization administering health or casualty insurance plans for professional associations, unions, fraternal groups, employer-employee benefit plans, and any

similar organization offering these payments for services, including self-insured and self-funded plans.

"Third party" means any individual, entity or program that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient. [Eff 08/01/94; am 06/19/00] (Auth: HRS §346-14) (Imp: 42 C.F.R. §433.136; HRS §346-37(c) and (e))

§17-1705-37 Determining liability of third parties. The department or health plan shall determine the legal liability of third parties to pay for services under the medical assistance program. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-37; 42 C.F.R. §433.138)

§17-1705-38 Medical payment involving third party. (a) The liability of a third party shall be treated as a resource applicable to the cost of needed medical services when:

(1) It has been verified that a legal obligation actually exists; and

(2) The amount of the obligation may be determined within thirty days from the time of the recipient's need for medical care.

(b) No Medicaid payment shall be made under a refund plan for that portion of cost for which a third party has been determined to be liable and reimbursement is forthcoming.

(c) If a liability by an identified third party exists, the recipient shall be required to satisfy all conditions set forth by that third party to receive coverage, to the extent coverage is available through that third party, before Medicaid payment is allowed.

(d) When the existence or extent of third party liability is in question, medical assistance payments may be made in:

(1) Part, if the recipient has excess income and other assets; or

(2) Whole, if the recipient accepts, in writing, an assignment of the recipient's third party payment to refund the department.

However, when third party policy prohibits assignment of payment, the recipient, in writing, shall agree to refund the department or health plan upon being paid.

(e) After a claim is paid or medical services are rendered, if the department or health plan learns of the existence of a liable third party, the department or health plan shall seek reimbursement from the third party within thirty days after the end of the month it learned of the existence of the liable third party.

(f) The department or health plan shall suspend or terminate an effort to seek reimbursement from a liable third party if it determines that the effort would not be cost effective because the amount it reasonably expects to recover will be less than the cost of recovery.

(g) The department or health plan shall accumulate billings with respect to a liable third party when making a decision whether to seek recovery. When the accumulated amount is $500 or more, the department or health plan shall seek recovery. [Eff 08/01/94; am 11/25/96; am 04/11/03; am] Auth: HRS §§346-14, 346-37) (Imp: HRS §346-37; 42 C.F.R. §433.139)

§§17-1705-39 to 17-1705-43 (Reserved).

SUBCHAPTER 6

RECOVERY OF OVERPAYMENT TO PROVIDERS

§17-1705-44 Definitions. As used in this subchapter:

"Claim" means that document which is submitted by the provider for payment of health-related services rendered to a recipient.

"Noncovered services" means those services not covered under the scope and content of the medical assistance program.

"Provider" means a provider of health care services, equipment, or supplies that is participating in the medical assistance program.

"Recoupment" means to hold back or deduct what is due. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-37)

§17-1705-45 Recoupment of overpayment to providers. (a) The department shall recoup overpayment to providers when overpayment occurred for

reasons including, but not limited to one of the following:

(1) Ineligible provider;
(2) Noncovered service;
(3) Noncovered drug;
(4) No approved prior authorization when a service requires one;
(5) Incorrect payment allowance identified through post payment review by department staff; or
(6) Claim processing error.

(b) The responsibility of recoupment may be assigned to the fiscal agent with whom the department has a contract. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-44)

§§17-1705-46 to 17-1705-50 (Reserved).

SUBCHAPTER 7

RECIPIENT RECOVERY

§17-1705-51 Definitions. As used in this subchapter:

"Dependent child" means a child who is under twenty-one years old or a child who is twenty-one years and older and has been determined blind or disabled by the department.

"Discharge from the medical institution and return home" means the release of the recipient from the medical institution to the recipient's home without expectation of returning to a medical institution.

"Equity interest in home" means the value to the property less any encumbrances.

"Estate" means the real and personal property included in an estate under the State's probate law and any other real or personal property and other assets in which the individual had any title or interest in at the time of death (to the extent of such interest). This includes assets conveyed to a survivor, heir, or assign of the deceased through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangements.

"Individual's home" means the property that the recipient lived and had an equity interest in prior to becoming medically institutionalized.

"Medically institutionalized" means an individual who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or a medical facility receiving a nursing facility level of care.

"On a continuing basis" means extending without interruption or break.

"Recipient" means any individual or family receiving medical assistance.

"Residing in the home for at least one (or two) year(s)" means to continuously live in the home as the sole residence.

"Survivor" means the lawfully married spouse, parent, natural and legally adopted child, grandparent, grandchild, great-grandparent, great grandchild, and any subsequent grandparent or grandchild with the designation 'great'. [Eff 08/01/94; am 01/29/96; am 11/25/96, am 05/10/03] (Auth: HRS §346-14) (Imp: 42 C.F.R. 433.36; 42 U.S.C. §1396p)

§17-1705-52 Recovery of medical care payments from recipients. (a) Payments made to medical care providers and payments made to health plans shall be recovered by the department from individuals who:

(1) Provided erroneous information in qualifying for medical assistance;
(2) Failed to report a change in circumstances which would have rendered the individual or household ineligible for continued medical assistance;
(3) Failed to notify the department that a family member is no longer a member of the assistance household;
(4) Failed to pay the premium-share assessed to the family; or
(5) Were adversely affected by a fair hearing decision, and who received medical assistance services pending the fair hearing decision.

(b) That portion of the payment to the health plan that is assessed to the recipient as the premium-share shall be recovered from recipients who are subject to recovery.

(c) Recovery of payments shall continue even though the individual is no longer a recipient of medical assistance. [Eff 08/01/94; am 01/29/96] (Auth: HRS §346-14; 42 C.F.R. §431.230) (Imp: HRS §346-44)

§17-1705-53 Recovery of misspent funds. (a) Individuals subject to recovery of misspent funds under the medical assistance program shall be provided written notice by the department stating:

(1) The reasons, date, and the amount of the alleged misspent funds;
(2) Proposed amount to be repaid each month;
(3) Period over which the repayment shall be made;
(4) Method by which the proposed overpayment shall be recovered; and
(5) The right to request a hearing if the individual disagrees with the department's proposed action.

(b) The department may refer an individual to the comptroller of the State to recover overpayments from the individual's personal income tax refund when:

(1) There is a repayment plan initiated against the individual;
(2) The individual is delinquent in repayment; and
(3) The amount owed by the individual exceeds $25.

(c) The department may place a lien on the real and personal property of an individual subject to recovery of misspent medical assistance funds. Any lien imposed with respect to this subsection shall be dissolved upon the individual's payment of the misspent funds. [Eff 08/01/94; am 11/25/96] (Auth: HRS §§231-51, 231-53, 346-14) (Imp: HRS §346-44)

§17-1705-54 Fraud. If fraud is suspected in any misspent funds under the medical assistance program, the department shall refer the case to the appropriate agency to pursue the investigation of suspected fraud and take action as deemed appropriate. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-44)

§17-1705-55 Suspension and waiver of overpayment. (a) The collection activities on a closed medical assistance case may be suspended when:

(1) The department has sent one demand letter requesting payment for overpayments under $100, two demand letters for overpayments between $100 and $400, three demand letters for more than $400 and the department's

investigative and recovery services office determines that the cost of further collection action is likely to exceed the amount that can be recovered; or

(2) The assistance unit cannot be located. Collection activities shall not be suspended until the department has initiated action to locate the former recipients. In locating the former recipients, the department shall use appropriate data sources such as state unemployment insurance files, state automobile registration, and the Social Security Administration's benefit data exchange (BENDEX).

(b) Collection activities shall not be suspended on any case where the court has ordered an individual to repay overpayments to the department.

(c) An overpayment on a closed medical assistance case may be determined uncollectible and the overpayment waived when:

(1) Collection activities have been suspended; and

(2) No payments have been collected for at least three consecutive years; or

(3) All of the members of the assistance unit have died. [Eff 08/01/94] (Auth: HRS §§346-14, 346-44) (Imp: HRS §346-44)

§17-1705-56 Limiting provisions. (a) No liens or encumbrances shall be imposed upon both real and personal property of applicants or recipients prior to their deaths except under the circumstances described in section 17-1705-53 or 17-1705-57.

(b) No adjustment or recovery shall be made for correctly made medical assistance payments, except in the case of the following:

(1) Individuals in nursing facilities, intermediate care facilities for the mentally retarded, or other medical institutions for all individuals on or after October 1, 1993; or

(2) Benefits paid on or after October 1, 1993 for individuals age fifty-five or older at the time services were received.

(c) Adjustments or recovery under subsection (b) can be made only after the death of the surviving spouse, if any, and when there is no surviving child

who is under twenty-one years, or child who is blind or disabled as defined in chapter 17-1721.

(d) Adjustment or recovery, if any, shall be from the deceased recipient's estate or upon the sale of property subject to lien imposed under section 17-1705-57.

(e) Recovery may be waived due to hardship for the period the following conditions exist:

(1) The estate subject to recovery is the sole income-producing asset of the survivors and the following conditions are met:

(A) The estate is a family farm or other family business;

(B) The income produced by the asset is not greater than one hundred per cent of the federal poverty guidelines for the number of survivors solely dependent on such asset.

(2) The estate is a homestead of modest value that is occupied by survivors who meet the following conditions:

(A) Lawfully resided in the home for a continuous period that started at least three months immediately before the recipient's admission to a medical institution and provided care to the recipient during that period that allowed the recipient to reside at home rather than in an institution and has continuously lived in the home since the admission;

(B) Do not own any real property other than an interest in the home; and

(C) Have income not greater than one hundred per cent of the federal poverty limit.

[Eff 08/01/94; am 01/29/96; am 11/25/96] (Auth: HRS §346-14) (Imp: HRS §346-37; 42 C.F.R. §433.36; 42 U.S.C. §1396p)

§17-1705-57 Liens on real property of institutionalized individuals. (a) A lien may be placed on the real property of a medically institutionalized individual for the amount of medical assistance received, after a determination by the department that the individual cannot reasonably be expected to be discharged from the medical institution and returned home.

(b) A lien may not be placed on the home property of a medically institutionalized individual if any of the following individuals are lawfully residing in the home:

(1) The individual's spouse;

(2) The individual's dependent child; or

(3) The individual's sibling who has an equity interest in the home and who was residing in the home for a period of at least one year prior to the individuals admission to the medical institution.

(c) The department shall not recover funds from the lien when the individual has:

(1) A surviving spouse; or

(2) A surviving dependent child.

(d) The department shall not recover funds from the lien when the individual has:

(1) A sibling who was residing in the home for a period of at least one year immediately before the individual's admission to the medical institution; or

(2) A non-dependent child who was residing in the home for a period of at least two years immediately before the individual's admission to the medical institution and who provided care to the individual that allowed the individual to reside at home rather than in an institution;

who has lawfully resided in the home on a continuous basis as a sole residence, without interruption or break, since the date of the individual's admission to the medical institution.

(e) Any lien imposed with respect to this section shall be dissolved upon the individual's discharge from the medical institution and return home.

[Eff 01/29/96; am 11/25/96] (Auth: HRS §346-14) (Imp: HRS §§346-29.5, 346-37; 42 C.F.R. §433.36; 42 U.S.C. §1396p)

§§17-1705-58 to 17-1705-65 (Reserved).

SUBCHAPTER 8

THIRD PARTY LIABILITY SUBROGATION

§17-1705-66 Definitions. As used in this

subchapter:

"Subrogation" means the substitution of one creditor for another, along with a transference of the claims and rights of the old creditor. [Eff 08/01/94; am 09/14/98] (Auth: HRS §346-14) (Imp: HRS §346-44)

§17-1705-67 Accident liability. (a) An applicant or recipient shall inform the department or health plan of an involvement in an accident within thirty days of the accident.

(b) The applicant or recipient shall be required to complete the assignment of rights form to assist the department or health plan in subrogation action.

(c) Refusal to sign the assignment of rights form constitutes cause for termination of medical coverage or denial of medical assistance application.

(d) Upon receipt of the assignment of rights form, the department or health plan shall immediately pursue possible recovery of medical care expenses paid on behalf of the recipient through the appropriate agencies. [Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-44)

§17-1705-68 Termination or waiver of subrogation. (a) Pursuit of recovery shall cease if:

(1) The recoverable amount is less than the expense of pursuing the recovery;

(2) The case is more than five years old and amount recoverable is less than $1,000 and there are no outstanding federal or state issues;

(3) The department or health plan does not have any legal recourse to pursue recovery; or

(4) The whereabouts of the recipient are unknown.

(b) Pursuit of subrogation may be waived if the recoverable amount is $100 or less.

[Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §346-44)