

PROPOSED

DEPARTMENT OF HUMAN SERVICES

Amendments to Chapters 17-1721 and 17-1725

Hawaii Administrative Rules

1. Section 17-1721-45, Hawaii Administrative Rules, is repealed.

"[§17-1721-45 Disposal of assets for less than fair market value. (a) Any institutionalized applicant who is an inpatient at a medical institution receiving a nursing facility level of care, or is an inpatient at a nursing facility, or is a recipient of home and community based waiver services, shall be assessed a period of ineligibility for coverage of nursing facility level of care or home or community based waived services if they, or their spouse, disposed of any assets for less than fair market value within:

- (1) Thirty six months prior to the month of application for medical assistance; or
- (2) Sixty months prior to the month of application for medical assistance, if the assets were transferred to an irrevocable trust.

(b) Any recipient who becomes an inpatient at a medical institution receiving a nursing facility level of care, or is an inpatient at a nursing facility, or is a recipient of home and community based waiver services, shall be assessed a period of ineligibility for coverage of nursing facility level of care or home or community based waived services if they, or their spouse, disposed of any assets for less than fair market value within:

- (1) Thirty six months prior to the month the recipient became an institutionalized individual or received home and community based waiver services; or
- (2) Sixty months prior to the month the recipient became an institutionalized individual or received home and community based waiver services if the assets were transferred to an irrevocable trust.

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(c) The period of ineligibility shall begin with the month of transfer and be equal to the total uncompensated value of the transferred assets counted towards the personal retention level according to section 17-1721-14, divided by the latest statewide average monthly cost of nursing home care assessed to a private patient at the time of application of the institutionalized applicant or at the time the recipient becomes institutionalized.

(d) The transfer provision will apply to assets held by individuals described in subsections (a) and (b) in joint tenancy, tenancy in common or similar arrangement when any action is taken, either by such individuals or any other person that reduces or eliminates such individual's ownership or control of such asset.

(e) The transfer provision shall not be applicable when:

- (1) The asset transferred by the individual was the individual's home and title to the home was transferred to:
 - (A) The spouse;
 - (B) A child who is under age twenty-one, or a disabled or blind adult child;
 - (C) A sibling who has an equity interest in the home and who has resided in the home for at least one year prior to the date the individual became an institutionalized individual; or
 - (D) An adult child, other than a child described in subparagraph (B), who has resided in the home for at least two years prior to the date the individual became an institutionalized individual, and who provided care which allowed the individual to reside at home rather than becoming an institutionalized individual;
- (2) The assets, other than a home, were transferred:
 - (A) To the community spouse or another for the sole benefit of the community spouse;
 - (B) From the community spouse to another for the sole benefit of the community spouse;
 - (C) To the individual's child or a trust established after August 10, 1993 for

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- the individual's child who is under twenty-one years of age, blind or disabled as defined in sections 17-1721-5 and 17-1721-6; or
- (D) To a trust established after August 10, 1993 that was established solely for the benefit of an individual under sixty five years of age who is disabled as defined in section 17-1721-6;
- (3) A satisfactory showing is made to the State that the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, or the assets were transferred exclusively for a purpose other than to qualify for medical assistance;
- (4) All the assets transferred for less than fair market value have been returned; or
- (5) The State determines that denial of coverage of nursing level of care would result in undue hardship which exists but is not limited to:
- (A) When the individual is unable to pay for the medical care costs at a medical institution where the level of care provided is equivalent to nursing facility care, or at a nursing facility, or at home receiving home and community based waiver services; and
- (B) When denial of coverage would seriously threaten the continuing care or well-being of the individual.
- (f) If the community spouse of a penalized individual becomes eligible for Medicaid, the period of ineligibility for nursing level of care can be allocated between the spouses.
- (g) The transfer provision, prohibits the State from imposing a period of Medicaid ineligibility due to transfer of assets except as provided in this section which specifically applies to the institutionalized applicant or recipient who becomes institutionalized and becomes an inpatient at a medical institution receiving a nursing facility level of care, or is an inpatient at a nursing facility, or is a recipient of home and community based waiver services.]”
- [Eff 08/01/94; am 11/13/95; R] (Auth:

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HRS §346-14; 42 C.F.R. §431.10) (Imp: 42 U.S.C. §1396p(c))

2. Chapter 17-1721, Hawaii Administrative Rules, is amended by adding a new subchapter 8 to read as follows:

"SUBCHAPTER 8

TREATMENT OF ASSETS FOR INDIVIDUALS REQUESTING COVERAGE OF LONG-TERM CARE SERVICES

§17-1721-50 Purpose. The purpose of this subchapter is to establish requirements for the treatment of assets for an individual who requests coverage of long-term care services.
[Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: 42 U.S.C. §1396p(c))

§17-1721-51 Definitions. For the purpose of this subchapter:

"Actuarially sound" means an annuity, promissory note, or similar financial contract where no payments will be made beyond the life expectancy of the owner of the contract as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration.

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

"Blind child" means the child of an individual requesting coverage of long term care services who meets the categorical eligibility requirements of a blind individual in section 17-1721-5.

"Disabled child" means the child of an individual requesting coverage of long term care services who meets the categorical eligibility requirements of a disabled individual in section 17-1721-6.

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

"Fair market value" means the amount an asset is expected to sell without discount on the open market for such asset in the geographic area involved, and under the existing economic conditions. Fair market value includes valuable consideration.

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"Home equity" means the fair market value of the individual's home property less financial encumbrances.

"IRA" means an individual retirement account.

"IRC" means the Internal Revenue Code of 1986.

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

"Life interest" means a type of real property ownership that gives the owner the use of the property or the right to income generated by a property during the lifetime of the owner, or both.

"Look-back period" means the period prior to and including the month of application for medical assistance for long-term care services during which assets that were transferred for less than fair market value shall be evaluated to determine if a penalty period is applicable.

"Penalty period" means a period in which Medicaid will not provide coverage of long-term care services for an individual, who is otherwise eligible for Medicaid, because the individual or the individual's spouse transferred assets for less than fair market value.

"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.

"Remainder beneficiary" means the party that is designated to receive funds from an annuity, trust or similar legal contract, after the death of the owner.

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

"Stream of income" means income that can be anticipated to be received more than once, e.g. rental or lease payments, royalties, annuity payments, pensions, court ordered settlements.

"Valuable consideration" means the value that an individual receives in exchange for his or her interest in an asset, some act, object, service, or other benefit which has a tangible or intrinsic value to the individual that is equivalent to or greater than the value of the transferred asset. [Eff]

(Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp:
42 U.S.C. §1396p(c))

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§17-1721-52 Penalty period for the transfer of an asset for less than fair market value. (a) An individual who requests medical assistance for coverage of long-term care services shall be assessed a penalty period for coverage of these services if the individual or the individual's spouse, transferred an asset for less than fair market value within the applicable look-back period. The length of the look-back period shall be:

- (1) Thirty-six months for an asset transferred prior to February 8, 2006;
- (2) Sixty months for an asset transferred to an irrevocable trust prior to February 8, 2006; and
- (3) Sixty months for an asset transferred on or after February 8, 2006.

(b) An asset that was transferred after the look-back period shall be considered as follows:

- (1) A penalty period shall be assessed if an individual transfers an asset after being determined eligible for coverage of long-term care services.
- (2) A penalty period shall not be assessed for the transfer of an asset owned by the community spouse made after the individual has been determined eligible for coverage of long-term care services.

(c) The transfer provision shall apply to an asset held by the individual and the individual's spouse when any action is taken that reduces or eliminates such individuals' ownership or control of such asset.

(d) The transfer provision shall apply to countable assets in chapter 17-1725 owned by the individual and the individual's spouse, and to the following exempt assets in chapter 17-1725:

- (1) The home property;
- (2) The value of basic maintenance items of limited value essential for day-to-day living including but not limited to clothing, furniture, and appliances that exceeds \$5,000;
- (3) Motor vehicles except for one vehicle designated for use by the individual or their spouse; and
- (4) The equity value of a funeral plan that exceeds \$1,500.

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(e) The transfer provision shall apply to the transfer of income of the individual and the individual's spouse, or their right to receive income, either as a single payment or a stream of income, that is countable in determining Medicaid eligibility under chapter 17-1724.

(f) The unpaid portion of long-term care expenses incurred during a penalty period shall not be deducted in post-eligibility as an incurred medical expense when a penalized individual becomes eligible for coverage of long-term care services. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: 42 U.S.C. §1396p(c))

§17-1721-53 Treatment of annuities. (a) An individual who requires coverage of long-term care services or the individual's spouse shall disclose any interest in annuities on each application or recertification of Medicaid eligibility.

- (1) An individual shall not be eligible for coverage of long-term care services if the individual or the individual's spouse fails to disclose any interest in an annuity.
- (2) The disclosure shall be required regardless of whether the annuity is irrevocable or treated as an asset in chapter 17-1725.

(b) The portion of the funds of an annuity purchased prior to February 8, 2006, that is not actuarially sound and is payable beyond the life expectancy of the annuitant shall be considered transferred.

(c) All funds used to purchase an annuity on or after February 8, 2006, by the individual or the individual's spouse shall be considered transferred if the department is not named as a remainder beneficiary in the first position, or in a position behind the spouse and dependent child of the individual for the amount of medical assistance paid on behalf of the annuitant.

- (1) The department shall notify the issuer of an annuity issued on or after February 8, 2006, of the right of the department to be a preferred remainder beneficiary.
- (2) The issuer may inform other remainder beneficiaries of the department's remainder interest.

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(d) Funds used to purchase an annuity on or after February 8, 2006, by the individual or the individual's spouse, or on behalf of the individual or the individual's spouse, shall not be considered transferred if:

- (1) The annuity is considered:
 - (A) An individual retirement annuity that meets the requirements of section 408(b) of the IRC; or
 - (B) A deemed IRA under a qualified employer plan under section 408(q) of the IRC; or
- (2) The annuity purchased with proceeds from one of the following:
 - (A) A traditional IRA under section 408(a) of the IRC;
 - (B) An account or trust which is treated as a traditional IRA under section 408(c) of the IRC;
 - (C) A simplified retirement account under section 408(p) of the IRC;
 - (D) A simplified employee pension under section 408(k) of the IRC; or
 - (E) A Roth IRA under section 408A of the IRC; or
- (3) The annuity meets all of the following requirements:
 - (A) Is actuarially sound as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration;
 - (B) Is irrevocable and non-assignable; and
 - (C) Makes equal payments throughout the term of the contract and does not defer payments or allow balloon payments.
[Eff _____] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: 42 U.S.C. §1396p(c))

§17-1721-54 Treatment of promissory notes, loans and mortgages. (a) The assets used by an individual who requires coverage of long-term care services or the individual's spouse, to secure a promissory note, loan or mortgage on or after February 8, 2006, shall not be considered transferred if all of the following conditions apply to the promissory note, loan or mortgage:

- (1) The repayment term is actuarially sound;

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- (2) Is irrevocable and cannot be sold;
- (3) Equal payments are made throughout the term of the contract; and
- (4) Cannot be cancelled upon the death of the individual or the individual's spouse.

(b) If the provisions of subsection (a) are not met, the transferred amount is equal to the outstanding balance owed as of the date of the individual's request for coverage of long-term care services.

(c) The portion of the funds used to secure a promissory note, loan or mortgage prior to February 8, 2006, that is not actuarially sound and is payable beyond the life expectancy of the owner of the funds shall be considered transferred.

[Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: 42 U.S.C. §1396p(c))

§17-1721-55 Treatment of the purchase of a life interest in the home property of another. (a) The funds used by the individual who requires coverage of long-term care services or the individual's spouse to purchase a life interest in the home property of another, on or after February 8, 2006, shall be considered transferred if the purchaser did not reside on the property for a period of at least one year after the date of the purchase.

(b) For the purchase of a life interest in the property of another made on or after February 8, 2006 that meet the requirements of subsection (a), the portion of the funds that exceed the value of the life interest property based on the life estate tables published by the Social Security Administration, shall be treated as transferred assets.

(c) The portion of the funds used to purchase a life interest in the property of another by the individual or the individual's spouse prior to February 8, 2006, that exceed the value of the life interest in the property based on the life estate tables published by the Social Security Administration, shall be treated as a transferred asset.

[Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: 42 U.S.C. §1396p(c))

§17-1721-56 Treatment of the transfer of income.

(a) A penalty period shall be assessed if the individual or the individual's spouse transferred

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income in the month it was received, or transferred a right to receive income.

(b) The penalty period for the transfer of income shall be calculated by dividing the amount of income by the statewide average monthly cost of nursing facility services assessed to a private patient at the time the individual requests coverage of long-term care services.

(c) The amount of income used to calculate a penalty period shall be:

- (1) The gross amount of the income transferred in the month it was received by the individual;
or
- (2) The total amount of income expected to be received when the right to receive a single source of income was transferred.
- (3) The total amount of income expected to be received during the individual's lifetime when the right to receive a stream of income was transferred. The total amount of income is calculated by multiplying the annual amount of income by the individual's life expectancy based on the life expectancy tables established by the Social Security Administration's Office of the Actuary.
[Eff] (Auth: HRS §346-14; 42
C.F.R. §431.10) (Imp: 42 U.S.C. §1396p(c))

§17-1721-57 Transfer of assets that are not subject to the assessment of a penalty. A penalty period shall not be applied when:

- (1) The asset transferred was the individual's home and title to the individual's:
 - (A) Spouse;
 - (B) Child who is under age twenty-one, or a blind child or a disabled child;
 - (C) A sibling who has an equity interest in the home, and has resided in the home for at least one year immediately prior to the date the individual began receiving long-term care services; or
 - (D) An adult child, other than a child described in paragraph (B), who has resided in the home for at least two years immediately prior to the date the individual began receiving long-term care services and provided care which

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- allowed the individual to reside at home.
- (2) The asset, other than a home, was transferred:
 - (A) To the individual's community spouse or another individual or entity for the sole benefit of the community spouse;
 - (B) From the community spouse to another individual or entity for the sole benefit of the community spouse;
 - (C) To the individual's child who is under twenty-one years of age, a blind child or a disabled child, or to a trust established after August 10, 1993, for the child; or
 - (D) To a trust established after August 10, 1993, solely for the benefit of an individual under sixty-five years of age who is disabled as defined in section 17-1721-6.
 - (3) The individual can substantiate that the individual intended to transfer the asset either at fair market value, or for other valuable consideration, or the asset was transferred exclusively for a purpose other than to qualify for medical assistance. Circumstances that meet the requirements of this subsection include, but are not limited to:
 - (A) The individual was not receiving long-term care services at the time of the transfer;
 - (B) The individual was living independently at the time of the transfer;
 - (C) The individual did not have a pre-existing condition that could lead to the need for long-term care or assisted living at the time of the transfer;
 - (D) The transfer was not within the individual's control (e.g. court ordered); or
 - (E) A diagnosis of a previously undetected disabling condition leading to the need for long-term care eligibility occurred after the date of transfer.
 - (4) The asset transferred for less than fair market value has been returned.

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- (A) The returned asset must be evaluated for the impact on the individual's eligibility for Medicaid.
 - (B) Coverage of long-term care services shall be provided for any portion of a penalty period that was applied prior to the return of the asset.
 - (C) If only a portion of the transferred asset has been returned, and the individual is eligible for Medicaid, the penalty period shall be recalculated based on the balance of the unreturned asset.
 - (i) The end date of the recalculated penalty period shall be applicable if it exceeds the amount of the penalty period already applied;
 - (ii) Coverage of long-term services shall be provided for the portion of the penalty period that exceeds the end date of the recalculated penalty period.
- [Eff _____] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: 42 U.S.C. §1396p(c))

§17-1721-58 Determining a penalty period. (a) A penalty period shall be calculated by dividing the total uncompensated value of the asset transferred, by the statewide average monthly cost of nursing facility services assessed to a private patient at the time the individual requests coverage of long-term care services.

(b) A penalty period that results in less than a whole month shall not be rounded down or disregarded.

(c) A penalty period established for an asset that was transferred prior to February 8, 2006, shall be established for each month a non-exempted transfer occurred during the applicable look-back period specified in section 17-1721-52, and the following apply:

- (1) Multiple transfers made in the same month shall be combined to establish a penalty period for that month;
- (2) A penalty period shall commence on the first day of a month the asset was transferred; and

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- (3) A penalty period that would commence within the term of another penalty period shall commence at the end of the prior penalty period.
- (d) A penalty period established for an asset that was transferred on or after February 8, 2006, shall be applied as follows:
 - (1) The value of any asset transferred during the applicable look-back period specified in subsection 17-1721-52(a) shall be combined and a single penalty period shall be determined.
 - (2) A separate penalty period shall be determined for each month a non-exempt transfer occurred after an individual was determined eligible for coverage of long-term care services.
 - (3) The penalty period shall commence the later of:
 - (A) The first day of the month the asset was transferred;
 - (B) The date the individual would be eligible for coverage of long-term care services but for the imposition of a penalty under this subchapter; or
 - (C) The date a negative action can be taken in situations when timely notice of adverse action to the individual is required.
 - (4) A penalty period that would commence within the term of another penalty period shall commence at the end of the prior penalty period.
- (e) An established penalty period shall continue to run even in periods where the individual subject to the penalty period is not eligible for medical assistance, or is not receiving long-term care services.
- (f) The department shall send a denial notice to an individual requesting coverage of long-term care services, or an adverse action notice to an individual who is receiving long-term care coverage, when imposing a penalty period. The notices shall meet the requirements of chapter 17-1713, and must inform the individual of:
 - (1) The type and amount of the asset used to determine the penalty period;
 - (2) The length of the penalty period;
 - (3) The start and end date of the penalty period;

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- (4) The authority under the Hawaii administrative rules to impose the negative action; and
- (5) The individual's right to request a hardship waiver of the penalty period.
- (g) If the spouse of a penalized individual becomes eligible for coverage of long-term care services, the penalty period may be allocated between the individual and the spouse. [Eff]
(Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp:
42 U.S.C. §1396p(c))

§17-1721-59 Waiver of a penalty period due to undue hardship. (a) A penalty period may be waived if the department determines that the imposition of the penalty will cause undue hardship for the individual.

(b) Undue hardship exists if the application of a penalty period would deprive the individual of:

- (1) Medical care such that the individual's life or health would be endangered; or
- (2) Food, clothing, shelter, or other necessities of life.

(c) A waiver of a penalty period due to undue hardship may be granted if the individual provides satisfactory evidence to the department that the asset transferred:

- (1) Has been depleted below the resource standard specified in section 17-1721;
- (2) Has been converted to another asset that is not liquid or redeemable;
- (3) The return of the transferred assets would put the receiving party in serious deprivation such that the loss of income or the asset would qualify the receiving party for medical assistance;
- (4) The receiving party cannot be located by the individual or another, including but not limited to the individual's spouse, other family member, representative, or an agent of the nursing facility, after all attempts to locate the receiving party have been exhausted; or
- (5) The asset was transferred due to theft, fraud, or financial exploitation.

(d) The process for requesting and reviewing a waiver of a penalty period due to undue hardship is as follows:

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- (1) The department shall send the individual a notice of denial or a notice of adverse action according to the requirements of chapter 17-1713 to inform the individual of the establishment of the penalty period and the individual's right to request a hardship waiver.
 - (2) The individual shall have twenty calendar days from the mailing of the notice to request a hardship waiver and provide all documentation to support the basis of the hardship waiver request.
 - (3) The department shall make a determination of a waiver within ten business days after receiving the request for a waiver and the supporting documentation.
 - (4) An individual who is denied a hardship waiver request shall be informed of the enforcement date of the penalty period and the right to request a fair hearing under chapter 17-1703.
 - (e) Nursing facilities may request a hardship waiver on behalf of a resident upon authorization of the resident or the resident's personal representative.
- [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: 42 U.S.C. §1396p(c))

§17-1721-60 An individual with substantive equity in a home property. (a) An individual shall not be eligible for coverage of long-term care services if the individual's home equity interest exceeds \$750,000.

(b) The individual's home equity interest shall be determined by the fair market value less encumbrances.

(c) The provisions of this subsection do not apply if the individual's spouse, child under age twenty-one, a blind child, or a disabled child are residing in the individual's home.

(d) An individual affected by the provisions of this subsection is allowed to reduce their equity in the home property through the use of a reverse mortgage or a home equity loan without penalty.

(e) An individual affected by this subsection has the right to file for a waiver due to demonstrated hardship by which the individual is legally barred from taking action to access the equity in the property.

(f) Effective 2011, the amount of the equity interest shall be subject to increase each calendar

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year based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest \$1,000." [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: 42 U.S.C. §1396p(c))

3. Section 17-1725-2, Hawaii Administrative Rules, is amended by adding the definitions of "annuity", "continuing care retirement community", "irrevocable trust", "life care community", "promissory note", and "revocable trust" and amending the definition of "institutionalized individual" to read as follows:

§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.

"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.

"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 [waiver] services.

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

"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

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

"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.

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

[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] (Auth: HRS §§346-14, 346-53) (Imp: HRS §§346-14, 346-53, 346-71; 42 C.F.R. §§435.230; 435.601, 435.845)

4. Section 17-1725-10, Hawaii Administrative Rules is amended to read as follows:

"§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 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

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under sixty-five years old established under 42 U.S.C. §1396(p) 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. §1396(p) 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);
- (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);

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- (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; or
 - (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 conversion of initial purchases, or to funds or initial purchases which are inherited or transferred.

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- (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);
- (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);

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- (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;
- (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

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- 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;
 - (32) 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;
 - (33) 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; [and]
 - (34) 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
 - (35) Funds used to purchase an annuity that is irrevocable and not assignable.
 - (A) An annuity is irrevocable when the annuitant cannot void the contract and obtain the cash value of the annuity

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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] (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)

5. Section 17-1725-15, Hawaii Administrative Rules, is amended to read as follows:

"§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 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

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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
 - (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

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- 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; [and]
 - (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.
 - (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:

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- (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]
(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))

6. Materials, except source notes, to be repealed are bracketed. New material is underscored.

7. Additions to update source notes to reflect these amendments are not underscored.

8. Amendments to chapters 17-1721 and 17-1725, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.