

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6 FAMILY AND ADULT SERVICES DIVISION

CHAPTER 649

NOTICE OF ADVERSE ACTION

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Historical Note: This chapter is based substantially upon chapter 17-628 [Eff 7/19/82; am 7/15/83; am 2/17/84; am 5/10/84; am 9/29/86; am 5/2/87; R 3/19/93] chapter 17-745 [Eff 7/19/82; R 3/19/93] §17-626-24 [Eff 7/19/82; R 3/19/93] §17-638-8 [Eff 7/19/82; R 3/19/93] §17-716-58 [Eff 7/19/82; R 3/19/93] §17-719-2 [Eff 7/19/82; am 10/1/83; am 10/6/89; R 3/19/93] §17-719-13 [Eff 7/19/82; am 10/1/83;

am 6/8/84; am 9/2/86; am 12/27/86; am 10/10/91;
R 3/19/93] §17-719-14 [Eff 7/19/82; am 9/2/86;
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9/2/86; R 3/19/93] §17-719-16 [Eff 7/19/82;
R 3/19/93] §17-719-17 [Eff 7/19/82; am 9/2/86;
R 3/19/93] §17-719-18 [Eff 7/19/82; am 10/1/83; am
1/19/84; R 3/19/93] §17-719-19 [Eff 7/19/82; am
7/5/83; am 10/1/83; am 6/8/84; am 9/2/86; R 3/19/93]
§17-742-9 [Eff 7/19/82; am 12/17/82; am 6/18/87; am
11/25/88; R 3/19/93]

SUBCHAPTER 1

GENERAL PROVISIONS FOR FINANCIAL ASSISTANCE AND FOOD STAMPS

§17-649-1 Purpose. The purpose of this chapter is to establish the circumstances, conditions, and deadlines under which the department shall notify the recipient of action taken to terminate, suspend, reduce, or withhold benefits. [Eff 3/19/93; am 8/1/94] (Auth: HRS §346-14) (Imp: HRS §346-12; 7 C.F.R. §273.10; 45 C.F.R. §§205.10, 206.10, 233.37)

§17-649-2 Definitions. As used in this chapter: "Adequate notice" means a written notice that includes:

- (1) A statement of the action the department has taken or intends to take;
- (2) The reason for the intended action;
- (3) The specific departmental rule supporting the action;
- (4) The household's right to request a hearing;
- (5) The name of the person to contact for additional information;
- (6) The availability of continued benefits;
- (7) The liability of the household for any overpayments received while awaiting a hearing if the hearing official's decision is adverse to the household; and
- (8) The availability of free legal representation, if applicable.

The notice may be received prior to department action,

at the time reduced benefits are received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated.

"Mass change" means a change initiated by the state or federal government which affects the eligibility criteria of the entire caseload or a significant and identifiable portion of the caseload.

"Notice of adverse action" means an adequate and timely advance notice which shall be sent to a recipient to inform them of action planned to reduce or terminate benefits within a certification period.
[Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §271.2; 42 C.F.R. §431.201; 45 C.F.R. §205.10)

§17-649-3 Notice of adverse action. (a) Prior to the action to reduce, terminate, suspend, withhold, or change the manner or form of payment to protective or vendor payment, except as provided in section 17-649-9, the branch shall provide the recipient with timely and adequate notice before the adverse action is taken.

(b) The notice of adverse action shall be considered timely when the branch mails the notice at least ten days prior to the effective date of action. For the financial assistance programs, when the department obtains facts indicating need for the action because of probable fraud, the branch shall mail a written notice at least five days before the effective date of action. If the notice period ends on a weekend or holiday and a request for a hearing and continuation of benefits is received the day after the weekend or holiday the request shall be considered timely.

(c) For the financial assistance programs, timely notice shall not be required in the following circumstances but adequate notice shall be sent not later than the date of action:

- (1) The department has verified the death of a recipient or of the AFDC payee and there is no relative available to serve as new payee;
- (2) The department receives a clear written statement signed by a recipient that:
 - (A) The recipient no longer wishes assistance; or
 - (B) Provides information which necessitates termination or reduction of assistance

and indicates that the recipient understands the consequences of supplying the information shall be reduction or termination of assistance;

- (3) The recipient has been admitted or committed to a public institution;
- (4) The recipient has been placed under skilled nursing care, intermediate care, or long-term hospitalization;
- (5) The recipient's whereabouts are unknown and mail sent to the recipient has been returned by the post office indicating no known forwarding address. When mail is returned, both timely and adequate notice shall be issued only when the recipient has provided the department with a new address. The returned benefits, however, shall be released to the recipient if the recipient's whereabouts become known during the payment period covered by the returned benefits;
- (6) The recipient has been accepted for assistance in another state and this fact has been established by the department;
- (7) The AFDC child has been removed from the home by judicial action or placed in foster care by the parent or legal guardian;
- (8) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time allowance was made that the allowance would automatically terminate at the end of the specified period;
- (9) The department establishes protective or vendor payments because of money mismanagement;
- (10) A change in the level of medical care is prescribed by the recipient's physician.
- (11) The recipient has opted to participate in grant plus and has agreed to the following:
 - (A) The payment of the financial assistance to the employer for the employer's use in paying wages to the recipient; and
 - (B) Accept \$650 as the full monthly assistance payment regardless of household size; or

- (12) The grant plus recipient is no longer participating in grant plus and the financial assistance payment is restored to the standard of assistance for the applicable family size.

(d) For the financial assistance programs, timely and adequate notice shall be given when automatic grant adjustments for classes of recipients are made due to changes in state or federal law. The notice shall be adequate if it includes a statement of:

- (1) The intended action;
- (2) Reasons for the intended action;
- (3) The specific change in law requiring the action; and
- (4) The circumstances under which a hearing may be obtained and assistance may be continued.

(e) In situations involving categorical changes in the financial assistance programs, timely and adequate notice, shall be required when a transfer is made between a federal and state category such as AFDC and GA, or between state categories such as GA and state AABD. [Eff 3/19/93; am 8/1/94; am 6/1/00]
(Auth: HRS §346-14) (Imp: HRS §346-12; 7 C.F.R. §273.13; 45 C.F.R. §§205.10, 233.37)

§17-649-4 Termination of benefits. (a) Benefits shall be terminated effective the first day of the month following the month in which the recipient is found to be ineligible if the conditions of adverse notice are met. When the conditions of adverse notice are met, termination shall be effective the first day of the month the conditions of adverse notice are met.

- (b) Benefits shall be terminated when:
- (1) The equity value of the recipient's nonexempt assets exceeds the department's asset limit;
 - (2) The recipient's net income equals or exceeds the recipient's needs according to the department's applicable standard of assistance;
 - (3) The recipient is admitted to a public institution;
 - (4) The recipient's whereabouts are unknown;
 - (5) The recipient fails to meet any one of the necessary requirements of eligibility;

- (6) An eligibility redetermination is not completed because of the recipient's failure to provide the department with requested verification or to provide a completed eligibility redetermination form;
- (7) A signed, written request for termination is received from the recipient;
- (8) The recipient fails to cooperate or provide information to federal or state personnel who review the decisions regarding eligibility for assistance;
- (c) For the financial assistance programs, benefits shall also be terminated when:
 - (1) The recipient fails to apply for and develop potential sources of assets and fails to provide the department with verification to determine the amount of the asset; or
 - (2) The recipient fails to apply for and develop potential sources of income and fails to provide the department with verification to determine the amount of the income.
- (d) State AABD payments shall be terminated when the individual:
 - (1) Dies; or
 - (2) Is institutionalized in a long term care facility. [Eff 3/19/93; am 8/1/94] (Auth: HRS §346-14) (Imp: HRS §§346-14, 346-52; 7 C.F.R. §273.21; 45 C.F.R. §§205.10, 206.10, 233.10, 233.20, 233.60)

§17-649-5 Notice requirements for recipients subject to monthly eligibility reporting. (a) The department shall send notice to recipients who are required to submit a monthly eligibility report when the department takes action.

(b) When the monthly eligibility report is received by the department by the specified filing date, the notice shall be sent to the recipient by the last working day of the report month when payment is:

- (1) Reduced based on information contained in a completed monthly eligibility report;
- (2) Terminated due to receipt of an incomplete monthly eligibility report; or
- (3) Terminated based on information contained in a completed monthly eligibility report.

(c) For the financial assistance program, when the monthly eligibility report is not received by the specified filing date, the notice shall be sent to the recipient by the last working day of the report month.

(d) For the food stamp program, when the monthly eligibility report is not received by the specified filing date, the notice shall be sent to the recipient within five working days of the filing date.

(e) When the monthly eligibility report is not received by the specified filing date, but is received within ten days of the notice, subsequent notice or notices shall be sent to the recipient to arrive no later than the date of payment when payment is:

- (1) Reduced based on information contained in a completed monthly eligibility report;
- (2) Terminated due to receipt of an incomplete monthly eligibility report; or
- (3) Terminated based on information contained in a completed monthly eligibility report.

For the financial assistance program, the date of payment shall not be delayed beyond the last day of the payment month. For the food stamp program, the date of payment shall not be delayed beyond ten days after the normal issuance date.

(f) A notice of suspension shall be sent when a payment is reduced to zero for one month, for recipients subject to monthly eligibility reporting. Following this one month suspension, a second notice shall be sent:

- (1) To terminate a payment due to non-receipt of a completed monthly eligibility report;
 - (2) To restore payment based on a completed monthly eligibility report; or
 - (3) To terminate payment based on a completed monthly eligibility report.
- [Eff 3/19/93] (Auth: HRS §346-14; 45 C.F.R. §205.10) (Imp: HRS §346-12; 7 C.F.R. §273.21; 45 C.F.R. §§205.10, 233.37)

§§17-649-6 to 17-649-8 (Reserved).

SUBCHAPTER 2

SPECIFIC PROVISIONS FOR FOOD STAMPS

§17-649-9 Exemptions from notice. Under the following circumstances a notice of adverse action shall not be required:

- (1) A mass change occurs;
- (2) The branch is notified by a reliable source of the death of all members of the household;
- (3) The branch is notified by a reliable source that the household has moved from the project area;
- (4) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate;
- (5) The household's allotment varies from month to month during the certification period to take into account changes which were anticipated at the time of certification and the household was so notified at the time of certification;
- (6) The household jointly applied for food stamps and financial assistance, has been receiving food stamp allotment pending the approval of the financial assistance, and was notified at the time of certification that food stamp allotment would be reduced upon approval of the grant;
- (7) A household member is disqualified for intentional program violation, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of the household member. The notice requirements for individuals or households affected by intentional program violation disqualifications are specified in chapter 17-604.1;
- (8) Required verification to continue increase in benefits is not received, thus, the household's benefit level shall be reduced to the original benefit level;
- (9) A household is converted from cash repayment or food stamp coupon repayment or both to

allotment reduction as a result of failure to make agreed upon repayment;

- (10) The branch terminates the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement if the facility loses either its certification from the department or the state department of health, or has its status as an authorized representative suspended by FNS, disqualifying it as a retailer. Residents of group living arrangements applying on the residents' own behalf shall remain eligible to participate;
- (11) The branch has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is dependent on its providing the verification which was initially postponed and that the branch may act on verified information without further notice;
- (12) The household is required to monthly report and is subject to adequate notice requirements. However, for any changes reported outside of the monthly reporting system, a notice of adverse action is required prior to reducing or terminating the household's benefits;
- (13) The household voluntarily requests, in writing or in the presence of an eligibility worker, that its participation be terminated. If the household does not provide a written request, the branch shall send the household a letter confirming the voluntary withdrawal. Written confirmation does not entail the same rights as a notice of adverse action except that the household may request a hearing;
- (14) The branch determines, based on reliable information, that the household will not be residing in the project area and, therefore, will be unable to obtain its next allotment. The branch shall inform the household of its termination no later than its next scheduled issuance date. While the branch may inform

the household before its next issuance date, the branch shall not delay terminating the household's participation in order to provide advance notice; or

- (15) The branch initiates recoupment of a claim as specified in section 17-683-52(d) against a household which has previously received a notice of adverse action with respect to such claim. [Eff 3/19/93; am 12/9/94]
(Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.13(b), 273.21(j)(3))

§17-649-10 Changes causing a decrease in allotment. (a) For prospectively budgeted households, if the household's allotment decreases or the household becomes ineligible as the result of a change, a notice of adverse action shall be issued not later than ten days after the change was reported. The decrease in allotment or determination of ineligibility shall be made effective with the first regular monthly allotment issued after the ten-day notice of adverse action period has expired; provided a hearing and continuation of benefits have not been requested. Any required verification shall be obtained prior to recertification. For example, a change reported on September 27, which results in a decrease in the household's allotment would affect the November issuance.

(b) For retrospectively budgeted households, if the household's allotment decreases or the household becomes ineligible as a result of a change, other than as specified in chapter 17-680, a notice of adverse action for changes that are reported by the household outside the monthly reporting requirements or an adequate notice for changes reported on the monthly eligibility report form shall be issued unless one of the exemptions to the notice of adverse action in section 17-649-9 applies.

- (1) The notice of adverse action to nonmonthly reporting households shall be issued ten days prior to the month that the change is to be effective;
- (2) The adequate notice to monthly reporting households shall be issued so that the household receives it not later than either the date the resulting benefits are to be

received or in place of the benefits if no benefits are to be issued;

- (3) When a notice of adverse action is not used due to one of the exemptions in section 17-649-9, the decrease shall be made effective no later than the month following the change.

Changes in expenses shall be budgeted in the corresponding payment month from the month the expense was billed, provided the change was reported timely by the household. If the change in expense was not reported timely by the household but the household continues to pay the decreased amount, the branch shall determine whether the household received an overpayment for the months the household failed to report the change in expense. The branch shall reflect the change in expense for the household's current benefits effective the first month following the expiration of the the notice requirements.

(c) For households required to monthly report, the decrease in allotment or determination of ineligibility shall be effective for the corresponding payment month from the month the change occurred or for the month a household is determined prospectively ineligible. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.12(c)(2), 273.21(j)(3))

§17-649-11 Mass changes. (a) Certain changes initiated by the state or federal government may affect the entire caseload or may affect significant portions of the caseload. The changes shall include:

- (1) Adjustments to the net income eligibility standards and shelter and dependent care deductions;
- (2) Adjustments to the thrifty food plan and standard deduction;
- (3) Adjustments to the state's utility standard;
- (4) Periodic cost-of-living adjustments to social security, SSI, and other federal benefits;
- (5) Periodic adjustments to assistance payments; and
- (6) Other changes in eligibility criteria based upon legislative or regulatory actions.

(b) When the department makes a mass change in food stamp eligibility or benefits by simultaneously converting the caseload or the portion of the caseload

that is affected, or by conducting individual desk reviews in place of a mass change, it shall notify all households whose benefits are reduced or terminated in accordance with the requirements of subsection (c) except for mass changes made under sections 17-649-12 through 17-649-14.

(c) The department shall inform the household of:

- (1) The general nature of the change;
- (2) Examples of the change's effect on the household's allotment;
- (3) The month in which the change will take effect;
- (4) The household's right to a hearing;
- (5) The household's right to continue benefits and under what circumstances benefits will be continued pending a hearing;
- (6) General information on whom to contact for additional information; and
- (7) The liability the household will incur for any overpaid benefits if the hearing decision is adverse.

(d) The department shall notify the household of the mass change or the result of the desk review no later than the date the household is scheduled to receive the allotment which has been changed.

(e) The department shall notify the household of the mass change as much before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance notice of adverse action.

(f) The household shall be entitled to request a hearing when it is aggrieved by the mass change.

(g) A household which requests a hearing due to a mass change shall be entitled to continued benefits at its previous level only if the household meets the following three criteria:

- (1) The household does not specifically waive its right to a continuation of benefits;
- (2) The household requests a hearing in accordance with chapter 17-602.1; and
- (3) The household's hearing is based upon improper computation of food stamp eligibility or benefits, or upon misapplication or misinterpretation of federal law or regulation. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.12(e))

§17-649-12 Adjustments to eligibility standards, allotments, and deductions. (a) The following adjustments shall become effective for all households at a specific time. A notice of adverse action shall not be required when the following changes go into effect:

- (1) Adjustments to the thrifty food plan, the standard deduction, the shelter deduction and the dependent care deduction; and
- (2) Adjustments to the income eligibility standards.

(b) Notice of the adjustments shall be published by the department through the news media, by placing posters in certification offices, issuance locations, or other sites frequented by certified households, or by issuing general notices mailed to households prior to the effective date of the changes. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.12(e)(1))

§17-649-13 Mass changes in public assistance.

(a) When the department makes an overall adjustment to financial assistance payments, corresponding adjustments to a household's food stamp benefits shall be handled as a mass change. When the department has at least thirty days advance knowledge of the amount of the adjustment, the food stamp benefits shall be recomputed to be effective in the same month as the financial assistance change. If the department does not have sufficient notice, the food stamp change shall be effective not later than the month following the month the financial assistance change was made.

(b) A notice of adverse action shall not be required when a household's food stamp allotment is reduced or terminated as a result of a mass change in financial assistance grants. Individual notices shall be sent a household to inform it of the change. If a household requests a hearing, benefits shall be continued at the former level only if the issue being appealed is the computation of allotment and not the issue of allotment reduction due to the mass change. [Eff 3/19/93] (Auth: HRS §346- 14) (Imp: 7 C.F.R. §273.12(e)(2))

§17-649-14 Mass changes in federal benefits. (a) The department shall treat cost-of-living increases and any other mass changes in social security SSI payments and other programs where information on cost of living adjustments is readily available and is applicable to all or a majority of those program's beneficiaries as a mass change for food stamp purposes.

(b) Households not subject to monthly reporting requirements shall not be responsible for reporting these changes. The department shall be responsible for automatically adjusting a household's food stamp benefit level. The change shall be reflected no later than the second allotment issued to nonmonthly reporting households issued after the month in which the change becomes effective.

(c) Monthly reporting households shall report the change on the appropriate monthly report but are not required to report these types of changes outside of the monthly report. The branch shall handle such information provided on the monthly report in accordance with chapter 17-680. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.12(e)(3))