

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 9 COMMUNITY LONG-TERM CARE PROGRAMS

CHAPTER 1421

PROTECTIVE SERVICES FOR DEPENDENT ADULTS

Subchapter 1 General Provisions

- §17-1421-1 Goal
- §17-1421-2 Definitions
- §17-1421-3 Eligibility requirements
- §17-1421-4 Geographic areas of service
- §17-1421-5 Authorization for service

Subchapter 2 Reports

- §17-1421-6 Screening of reports
- §17-1421-7 Registration of reports
- §17-1421-8 Reporting of dependent adult abuse

Subchapter 3 Scope of service

- §17-1421-9 Investigation
- §17-1421-10 Provision of services
- §17-1421-11 Court intervention
- §17-1421-12 Confidentiality
- §17-1421-13 Coordination with and referral to other agencies

Subchapter 4 Termination

- §17-1421-14 Termination of payment
- §17-1421-15 Termination of service

Historical Note: Chapter 17-1421 is based substantially upon chapter 17-919.1. [Eff 12/21/89; am and comp 10/5/91; R JUN 29 1992]

SUBCHAPTER 1

GENERAL PROVISIONS

§17-1421-1 Goal. The goal of protective services offered by the department is to remedy abuse, neglect, or exploitation of dependent adults. [Eff JUN 29 1992] (Auth: HRS §§346-14(6), 346-253)
(Imp: 42 U.S.C. §1397; HRS §346-14)

§17-1421-2 Definitions. As used in this chapter:
"Abuse" shall be as defined in section 346-222,

HRS.

"Capacity" shall be as defined in section 346-222,

HRS.

"Court" shall be as defined in section 346-222,

HRS.

"Dependent adult" shall be as defined in section 346-222, HRS.

"Financial exploitation" shall be as defined in the definition for "abuse" in section 346-222, HRS.

"Imminent abuse" shall be as defined in section 346-222, HRS.

"Legal guardian" means a person appointed by the court who has the rights and responsibilities over the dependent adult as a parent has over an unemancipated minor subject to the limitations on the powers of the guardian ordered by the court.

"Negligent treatment" or "maltreatment" means the failure to provide that degree of care toward a dependent adult which a reasonable person with the responsibility of a caregiver would exercise in providing necessary food, shelter, clothing, supervision, health care, access to health care, prescribed medication, or in protecting the dependent adult from health and safety hazards, including acts of abuse by third parties, as defined in the definition for "abuse" in section 346-222, HRS.

"Protective service incident" means any new occurrence of reported abuse of a dependent adult to the department.

"Protective services plan" shall be as defined in section 346-222, HRS.

"Psychological abuse and neglect" means extreme mental distress which includes a consistent pattern of actions or verbalizations including threats, insults, or harassment, that humiliates, provokes, intimidates, confuses, and frightens the dependent adult as defined in the definition for "abuse" in section 346-222, HRS.

"Sexual abuse" means non-consensual sexual contact or conduct with the dependent adult including but not limited to sexual assault, molestation, sexual fondling, incest, prostitution, obscene or pornographic photographing, filming, or depiction, or other similar forms of sexual exploitation as defined in the definition of "abuse" in section 346-222, HRS. [Eff 6/29/92] (Auth: HRS §§346-14(6), 346-253) (Imp: 42 U.S.C. §1397a; HRS §§346-14, 346-222, 560:5-101)

§17-1421-3 Eligibility requirements. Protective services shall be available to dependent adults who are abused without regard to income as specified in section 17-1416-20(2)(B). [Eff 6/29/92; am 10/28/95] (Auth: HRS §§346-14, 346-253) (Imp: 42 U.S.C. §1397c; HRS §346-14)

§17-1421-4 Geographic areas of service. Protective services for dependent adults shall be available throughout the State subject to the availability of resources. [Eff 6/29/92] (Auth: HRS §§346-14(6), 346-253) (Imp: 42 U.S.C. §1397c; HRS §346-14)

§17-1421-5 Authorization for service. (a) Protective services shall be authorized for dependent adults following a referral or request for protective services.

(b) Subject to the availability of funds, payment for protective service resources shall be authorized for each protective service incident when:

- (1) The dependent adult meets the eligibility requirements specified in section 17-1421-3;
- (2) The department determines that protective service resources are necessary and appropriate for the dependent adult; and

(3) No other method of payment is available such as medicaid assistance or purchase of service.

(c) Payment for the provision of services not provided directly by the department shall be at a rate specified by the department and shall be authorized for a period not to exceed forty-five calendar days. [Eff 6/29/92] (Auth: HRS §§346-14(6), 346-253) (Imp: 42 U.S.C. §1397c; HRS §346-14)

SUBCHAPTER 2

REPORTS

§17-1421-6 Screening of reports. (a) The department shall screen each report of dependent adult abuse received to determine whether:

(1) The subject of the report is a dependent adult; and

(2) Abuse has occurred and is imminent.

(b) When the provisions of subsection (a) are met, the dependent adult abuse report shall be accepted for investigation by the department.

(c) When the provisions of subsection (a) are not met, the department shall provide information, referral, or consultation services as appropriate.

[Eff 6/29/92] (Auth: §§346-14(6), 346-253) (Imp: 42 U.S.C. §1397c; HRS §§346-14, 346-227)

§17-1421-7 Registration of reports. Each report of dependent adult abuse accepted for investigation by the department as specified in section 17-1421-6 shall be registered with the central registry on dependent adult abuse within sixty calendar days from the date of the referral. [Eff 6/29/92] (Auth: HRS §§346-14(6), 346-253) (Imp: 42 U.S.C. §1397c; HRS §§346-14, 346-224)

§17-1421-8 Reporting of dependent adult abuse. Instances of dependent adult abuse which may involve a crime shall be reported to the police or county prosecutor's office with or without the individual's

consent. [Eff 6/29/92] (Auth: §§346-14-(6), 346-253)
 (Imp: 42 U.S.C. §1397c; HRS §346-14)

SUBCHAPTER 3

SCOPE OF SERVICE

§17-1421-9 Investigation. An investigation shall include but not be limited to:

- (1) Reasonable efforts to have face to face contact with the dependent adult using police assistance as necessary in accordance with section 346-229, HRS;
- (2) Collateral contacts as needed with others such as family members, friends of the dependent adult, and professionals who may have information about the dependent adult relevant to the investigation; and
- (3) An assessment of the need for protective services and referrals to appropriate resources. [Eff 6/29/92] (Auth: HRS §§346-14(6), 346-253) (Imp: 42 U.S.C. §1397c; HRS §§346-14, 346-226 to 346-229)

§17-1421-10 Provision of services. (a) Protective services for dependent adults shall include the development of a protective services plan.

(b) Services such as the following shall be provided as determined necessary by the department to prevent further abuse:

- (1) Providing counseling to the dependent adult alone, and where appropriate, to family members and other collaterals to assist the individuals in recognizing the problems resulting in abuse and in developing alternative means of handling the situation; and
- (2) Assisting the dependent adult, the dependent adult's family or friends, or legal guardian in locating and arranging for needed services in the dependent adult's home or in an alternate living arrangement; and
- (3) Assisting the dependent adult in the initial adjustment to services provided.

(c) When the department has determined that another agency is more appropriate to provide services following an investigation, the department may arrange with that agency for the delivery of service. The arrangement shall be noted in the protective services plan.

(d) Services identified in subsections (a) through (c) shall not be provided the dependent adult against the person's expressed wishes unless:

- (1) An order for immediate protection is made by the court as specified in section 17-1421-11; or
- (2) The legal guardian, appointed by the court following a determination that the dependent adult lacks the capacity to make decisions concerning the dependent adult's person, agrees to the provision of services. [Eff 6/29/92] (Auth: HRS §§346-14(6), 346-253) (Imp: 42 U.S.C. §1397c; HRS §§346-14, 346-228)

§17-1421-11 Court intervention. (a) The department shall initiate court action by petitioning for an order for immediate protection when, in accordance with sections 346-231 and 346-232, HRS, the social worker determines that there is reason to believe the dependent adult has been abused and is threatened with imminent abuse unless immediate action is taken.

(b) The department may initiate court action for the appointment of a legal guardian in accordance with article V of chapter 560, HRS, and may consolidate this action with the proceedings for an order for immediate protection. [Eff 6/29/92] (Auth: HRS §§346-14(6), 346-253) (Imp: 42 U.S.C. §1397c; HRS §§346-14, 346-231, 346-232)

§17-1421-12 Confidentiality. (a) All information relating to cases of dependent adult abuse shall be confidential and unauthorized disclosure shall be punishable as provided in section 346-225, HRS.

(b) The name of a reporter shall be disclosed only with the reporter's written consent or pursuant to a court order.

(c) The general provisions of chapter 17-601 shall apply to this chapter. In addition, the specific provisions in subsections (d) through (f) shall apply.

(d) Information related to dependent adult abuse, except as specified in subsection (b), may be disclosed or copies of the case record and other information may be released on a need to know basis and only as necessary to serve and protect the dependent adult, at the discretion of the department, to the following:

- (1) Consultants under contract or arrangement with the department to give consultation to department social workers handling dependent adult abuse;
- (2) Properly constituted authorities or agencies investigating a report of dependent adult abuse or providing services to a dependent adult who is the subject of a report;
- (3) Any licensed physician or other medical authority who is treating a dependent adult whom the physician or other medical authority reasonably suspects of being abused; and
- (4) A person, including but not limited to, a guardian ad litem, legal guardian, or adult residential care home operator, who is responsible for the welfare of the dependent adult named.

(e) Copies of written reports from individuals or agencies shall not be released without the written consent of the originator of the report.

(f) Information related to dependent adult abuse may be disclosed to a person, agency, or organization engaged in research or training of students where prior written approval has been secured from the director specifying the limits and scope of the project and methods to maintain confidentiality. [Eff JUN 29 1992

] (Auth: HRS §§346-10; 346-14, 346-253) (Imp: HRS §346-225)

§17-1421-13 Coordination with and referral to other agencies. (a) The department may enter into written agreements or purchase of service contracts with other agencies for the provision of services, including screening of reports and investigation, as specified in sections 17-1421-6, 17-1421-9, and 17-1421-10.

(b) Upon termination of protective services for dependent adults by the department, the dependent adult shall be referred to the agency responsible for follow-up services as appropriate. For the mentally ill and developmentally disabled adult, the designated state agency to provide services is the department of health. [Eff JUN 29 1992] (Auth: HRS §§346-14(6), 346-253) (Imp: 42 U.S.C. §1397; HRS §§346-14, 346-230)

SUBCHAPTER 4

TERMINATION

§17-1421-14 Termination of payment. Payment for protective service resources for dependent adults shall be terminated under one of the following conditions:

- (1) The dependent adult no longer meets eligibility requirements for protective services as specified in this chapter;
- (2) Protective services for the dependent adult are terminated as specified in section 17-1421-15;
- (3) The dependent adult has been the recipient of services for the maximum days allowed under section 17-1421-5;
- (4) The court orders an individual, agency or organization other than the department to continue payment for protective service resources;
- (5) The department lacks available funds to provide payment for protective service resources;
- (6) Termination of payment for services is in accordance with the protective services plan;
- (7) The dependent adult withdraws consent for the continuation of services;
- (8) The placement resource no longer meets applicable state licensing requirements; or
- (9) The placement resource is no longer able to accommodate the dependent adult. [Eff JUN 29 1992] (Auth: HRS §§346-14(6), 346-253) (Imp: 42 U.S.C. §1397, HRS §§346-14, 346-230)

§17-1421-15 Termination of service. Protective services shall be terminated under one of the following conditions:

- (1) When, after reasonable effort is made by the department to provide protective services, the social worker determines through personal observation, discussion with the dependent adult and available family members, friends, other collaterals or legal guardian that the dependent adult does not require or no longer needs protection and is able to manage in an alternate living arrangement or at home, with or without supportive services, without danger;
- (2) When, after reasonable effort is made by the department to provide protective services, the dependent adult continues to resist contact with the department, and there are insufficient grounds to pursue legal guardianship;
- (3) The dependent adult withdraws consent for the provision of services and there are insufficient grounds to pursue legal guardianship;
- (4) The court dismisses the petition for legal guardianship and the dependent adult refuses to accept services from the department;
- (5) The court terminates its authorization to provide necessary services and the dependent adult refuses to accept services from the department;
- (6) The dependent adult leaves the State; or
- (7) The dependent adult dies. [Eff JUN 29 1992
] (Auth: HRS §§346-14(6),
346-253) (Imp: 42 U.S.C. §1397c; HRS §§346-14, 346-230)

