SUBCHAPTER 2

REIMBURSEMENT RELATED REVIEW PROCEEDINGS
FOR HOSPITAL AND INSTITUTIONAL PROVIDERS

§17-1321-27 Determination of medicaid reimbursement. The provider shall be notified of the reimbursement determination (NPR) and notice of PPS rate through the fiscal agent. The notices shall be sent to the provider by certified mail. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431-10) (Imp: 42 C.F.R. §431.10)

§17-1321-28 Provider's right to review. (a) A provider may request an administrative hearing if it is dissatisfied with the department's determination of medicaid reimbursement:

(1) Following any request for rate reconsideration determination under PPS; or
(2) Following the issuance of an NPR under cost reimbursement; and
(3) The amount in dispute is at least $1,000.

(b) A written request for administrative hearing must be received by the department within ninety days from the date of the rate reconsideration determination or NPR as provided in subsection (a) and shall refer to that specific notification.

(c) The provider's request for an administrative hearing shall include the following:

(1) Individual adjustment items and the specific reimbursement issue and the dollar amount entailed;
(2) The reasons for the disagreement;
(3) Any material or evidence the provider considers necessary to support its position; and
(4) The notice with which the provider disagrees.

(d) A group of providers may request an administrative hearing if the issue involves a common question of fact or interpretation, and the amount in controversy is in the aggregate of $50,000 or more. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: 42 C.F.R. §447.258)

§17-1321-29 Limitation of the right to review. A provider shall not have the right to an administrative

hearing as provided under this subchapter if:

(1) The provisions of section 17-1321-28 are not met; or

(2) The administrative hearing concerns the following:

(A) A determination of non-payment for items or services provided a recipient but which are not covered by the medicaid program;

(B) The constitutionality of the law, rules, or medicaid reimbursement methodology;

(C) Issues not addressed on the NPR or in the notice of rate reconsideration determination;

(D) Issues related to DHHS rules or policies; or

(E) Issues not addressed in the Hawaii Administrative Rules. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: 42 C.F.R. §447.258)

§17-1321-30 Appearance by representatives of the provider and the department. (a) In all matters involving an administrative hearing, a provider may choose representation by itself or by an attorney or other person. A provider shall not have a right to legal counsel appointed at state expense.

(b) If the provider is represented by another person, that person's name, address, and telephone number shall be provided to the DHS health care administrator prior to the administrative hearing.

(c) Upon receipt of the name of the provider's representative, the health care administrator shall provide to that representative, the name, address, and telephone number of the department's representative. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: 42 C.F.R. §447.258)

§17-1321-31 Forms for papers. An original and two copies of all papers filed in any proceeding under this subchapter shall be filed with the department and shall be typewritten on one side only. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: HRS §91.9; 42 C.F.R. §447.258,)

§17-1321-32 Notice, service, and proof of

service. (a) All papers, notices, and other documents shall be served by the party offering them upon all other parties to the proceeding. Proof of service upon the parties shall be filed with the DHS.

(b) Service of process may be accomplished by any manner permitted by law. The department shall serve the provider in person or by mail. If the provider is represented by an attorney or other person, service upon that attorney or other person shall be sufficient.

(c) Proof of service of any document shall be by certificate of attorney, affidavit, or acknowledgement.

(d) Where written notice is required by these rules, notice shall be considered effective on the date of mailing. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: HRS §91.9; 42 C.F.R. §447.258)

§17-1321-33 Notice of formal hearing; notice of results of formal hearing. (a) The department shall notify any provider who is entitled to an administrative hearing of the scheduled date and location of the administrative hearing. The notice shall be in writing and mailed to the provider not less than thirty calendar days before the scheduled date of hearing.

(b) The department shall notify by mail any provider who has received an administrative hearing of the hearing officer's decision. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: HRS §91.9; 42 C.F.R. §447.258)

§17-1321-34 Waiver of the right for oral hearing. (a) A provider may request that the hearing officer base the decision solely upon the documentary evidence submitted for the record without an oral hearing or appearance by either party. The request may be made at any time before or during the hearing. A waiver of an oral hearing is valid only if all parties agree with the request and if it is approved by the hearing officer.

(b) Approval of the request shall rest exclusively with the hearing officer.

(c) Where a request has been made and approved, the parties shall file with the hearing officer a written waiver of their right to a personal appearance before the hearing officer. The waiver may be withdrawn by any party with adequate notice to the opposing party and to the hearing officer as specified

in section 17-1321-33.

(d) Once a waiver has been withdrawn, as provided in subsection (c), the hearing officer shall promptly notify all parties of the withdrawal and the need for an oral hearing. The hearing shall be held within one hundred eighty calendar days following the date of withdrawal of the waiver. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: HRS §91.9; 42 C.F.R. §447.258)

§17-1321-35 Prehearing conference. (a) At any time before the actual formal hearing as specified in section 17-1321-34 or 17-1321-36, a prehearing conference may be held to clarify the issues under dispute.

(b) The conference shall be informal in nature, and a record as described in section 17-1321-41 shall not be required.

(c) The decision to have, or to not have a prehearing conference shall rest solely with the hearing officer. The decision shall not be subject to appeal.

(d) The decision to record or not record the prehearing conference shall rest solely with the hearing officer. The decision shall not be subject to appeal.

(e) At the sole discretion of the hearing officer, a prehearing order regarding the proceedings may be issued. The order shall control the subsequent course of the evidentiary hearing unless modified at the hearing to prevent manifest injustice. The prehearing order regarding the proceedings shall not be subject to appeal. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: HRS §91.9; 42 C.F.R. §447.258)

§17-1321-36 Conduct of hearing. (a) The hearing shall be conducted by an impartial hearing officer appointed by the DHS director. Before conducting the hearing, the hearing officer shall become familiar with sections 84-1 to 84-19, HRS, and the published opinions of the State's ethics commission and determine that participation as an administrative hearing officer shall not create conflicts of interest or ethical violations.

(b) Testimony shall be taken only on oath or affirmation and the testimony shall be subject to sections 710-1060, 710-1061, and 710-1062, HRS.

(c) Each party may:

(1) Call and examine witnesses;
(2) Introduce exhibits into evidence;
(3) Cross-examine witnesses called by the other party;
(4) Object to the presentation of any evidence deemed by the party to be not properly admitted;
(5) Present rebuttal evidence to the opposing party's case-in-chief; and
(6) Present an opening statement to the hearing officer before the taking of evidence, and a closing argument to the hearing officer at the conclusion of the taking of evidence.

(d) The hearing officer shall not require strict adherence to any rules of evidence. The hearing officer shall admit all evidence having any bearing on the hearing including, but not limited to, testimony, documents, photographs, opinions, objects, or diagrams. The hearing officer may allow the presentation of hearsay evidence, allow cross-examination beyond the scope of direct examination, and allow the party calling a witness to cross-examine or impeach that witness. Rulings on evidence made by the administrative hearing officer shall not be subject to appeal.

(e) The hearing officer may ask questions of any witness or request production of evidence by any party to the hearing.

(f) The administrative hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence as provided in section 91-10(1), HRS.

(g) In administrative hearings, the provider shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The amount of proof necessary to prevail shall be a preponderance of the evidence in accordance with section 91-10(5), HRS. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: HRS §91.10; 42 C.F.R. §447.258)

§17-1321-37 Prehearing discovery. Any party may request data from any other party to the proceeding. If the requested party does not respond within fifteen calendar days of the request, the requesting party may notify the hearing officer. Upon notice, the hearing officer shall allow the requested party fifteen calendar days to state why the requested data was not furnished. If inadequate or no response is received, the hearing officer may take one of the following

actions:

(1) Subpoena the requested data under section 17-1321-38;

(2) Issue an order that the matters regarding which the request was made or any designated facts shall be taken to be established for the purposes of the hearing in accordance with the claim of the requesting party;

(3) Issue an order prohibiting the non-compliant party from supporting or opposing designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(4) Issue an order continuing or suspending further proceedings in the provider's request for review until the requested data is furnished as provided for in section 17-1321-40.

(5) The hearing officer, on the application of one of the parties, shall have the authority to determine that the request is unduly burdensome. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: HRS §91.10; 42 C.F.R. §447.258)

§17-1321-38 Witnesses and subpoenas. (a) Each party to the administrative hearing shall arrange for the presence of its witnesses at the hearing.

(b) The DHS director shall designate the hearing officer as a representative of the director and empowered to conduct a hearing. Any party to the administrative hearing may request of the hearing officer a subpoena to compel the attendance of a witness or the production of books, papers, documents, or other objects deemed relevant to the investigation, except that no subpoena shall affect any privilege established by law. Each subpoena shall be signed by the administrative hearing officer who at any point in the proceedings may, subpoena witnesses, books, papers, documents, correspondence, memoranda, or other records in furtherance of the administrative hearing.

(c) Applications for subpoenas for the production by a witness of books, papers, documents, correspondence, memoranda, or other written records, shall be made by affidavit to the hearing officer and shall contain all of the following:

(1) The name and address of the person or organization upon whom the subpoena is to be

served;

(2) A description of the documents, papers, books, correspondence, memoranda, photographs, or other written records that are desired;

(3) A statement by the affiant that to the best of the affiant's knowledge and belief, the person to be subpoenaed has information about or possesses the documents, papers, books, correspondence, memoranda, photographs, or other objects that the subpoena seeks; and

(4) The basis for the affiant's belief that the person or organization has information about or possesses the documents, papers, books, correspondence, memoranda, photographs, or other objects that the subpoena seeks.

(d) Each party to the administrative hearing shall arrange for the service of all subpoenas issued on its behalf. A copy of the affidavit in support of the issuance of the subpoena shall be served along with the subpoena.

(e) All witnesses who are summoned to an administrative hearing by subpoena may claim witness fees and mileage allowance at the same rate established for witnesses in the circuit court of the first circuit of the State.

(f) The parties shall bear their own costs.

[Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: 42 C.F.R. §447.258)

§17-1321-39 Amendments. (a) If, subsequent to the provider's request for hearing under section 17-1321-28(b), the provider identifies further issues with which it disagrees, the provider, with notice to the opposing party and to the hearing officer, may include those issues in the appeal. The provider shall only amend the appeal if the initial request was made in accordance with section 17-1321-28, and the additional issues are not excluded as specified in section 17-1321-29. The provider shall not amend the appeal following the close of the formal hearing. Final determination of the right to amend shall be at the sole discretion of the hearing officer.

(b) Where the issues are amended pursuant to subsection (a), the administrative hearing process shall be continued for a length of time as the hearing office deems appropriate to afford all parties notice and a chance to examine and address the additional

issues.

(c) Notice of amendments shall be served in accordance with §17-1321-32. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: 42 C.F.R. §447.258)

§17-1321-40 Continuances or further hearings. (a) At any time during the administrative hearing, if the hearing officer determines that the hearing shall be held at another time or at any other location in the State, the hearing officer shall have discretion to continue the hearing.

(b) If the hearing officer determines at any point in the hearing that it is necessary to seek additional evidence, the hearing may be continued at a later date or one or both parties may be directed to seek further evidence, provided the hearing officer furnish written justification on the record for any continuance under this section lasting in excess of thirty days. Failure of either party to provide additional evidence as directed by the hearing officer shall not be used as the sole basis for an adverse decision against that party on the issues presented at the hearing. In the event that further evidence is not produced as directed, the hearing office shall proceed to a decision based upon the entirety of the evidence presented at the hearing.

(c) Written notice of the time and place of any continued or additional hearings shall be given in accordance with section 17-1321-33, except when a continuance or additional hearing to a certain date is ordered during a hearing, then oral notice of the time and place of the hearing shall be sufficient for all parties present at the hearing. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: 42 C.F.R. §447.258)

§17-1321-41 Record of hearing. A verbatim record of all portions of the hearing shall be made. The record may be in the form of a transcript of verbatim shorthand, or by an audio or video recording. If any party to the hearing notifies the hearing officer in writing of an intent to file exceptions to the hearing officer's findings of fact as provided in section 91-11, HRS, or if a party appeals an agency decision, as provided in section 91-14, HRS, a verbatim written transcript shall be prepared. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: HRS §91; 42 C.F.R. §447.258)

§17-1321-42 Decision of the hearing officer. (a) At the conclusion of the evidence and argument by the parties, the hearing officer shall declare the hearing closed, at which time each party shall have thirty calendar days, not counting the day that the hearing is closed, to present written proposed findings of fact.

(b) At the conclusion of the thirty day period prescribed in subsection (a), the hearing officer shall have sixty calendar days to prepare a written decision accompanied by separate findings of fact, conclusions of law, and basis for findings. The hearing officer, if clarification of any evidence or any proposed finding of fact is desired, may reconvene the hearing to clarify the existing evidence. The period of time during which the hearing has been reconvened shall toll the time within which the hearing officer is required to prepare the written decision.

(c) The hearing officer shall not have informal, unrecorded conversations with any party concerning the case. All discussions concerning the evidence shall be at sessions of record with all parties to the hearing present, except to the extent those discussions are required for the disposition of ex parte matters authorized by law. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: HRS §§91-12, 91.13; 42 C.F.R §447.258)

§17-1321-43 Dismissal upon failure to appear at hearings. (a) If, after timely, proper written notice, a provider fails to appear at a scheduled hearing, the hearing officer may issue a written dismissal of the provider's request for an administrative hearing, which shall be mailed to each party with notice that the provider may request written consideration.

(b) In order to request written consideration, the provider shall, within ten days of the mailing of written dismissal, appeal to the hearing officer in writing showing good cause for the provider's failure to appear at the hearing. At the sole discretion of the hearing officer, the hearing officer may either sustain the dismissal or reinstate the hearing with proper written notice to parties. If the hearing officer sustains the dismissal, the hearing officer shall provide a written dismissal order including the circumstances upon which the dismissal is based. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: 42 C.F.R. §447.258)

§17-1321-44 Administrative review by the director. (a) The DHS director shall have the authority to review the hearing officer's written decision. The review may take place following issuance of the decision as specified in section 17-1321-33.

(b) The director shall have thirty calendar days following the date of the hearing officer's decision to mail notice of review to the parties of the director's intention to review the decision. The director's review shall be based upon the applicable rules and the facts as established in the record, provided that the director may communicate with the hearing officer during the review.

(c) The director may sustain, reverse, modify, or remand the decision of the hearing officer and in any event shall mail notice of his intention to review within thirty calendar days following the date of the hearing officer's decision.

(d) The director's decision shall be mailed to all parties within thirty days following the notice of review.

(e) The decision of the hearing officer and DHS director shall be subject to judicial review as provided in section 91-14, HRS. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: 42 C.F.R. §447.258)

§17-1321-45 Reopenings. (a) A hearing officer may reopen a decision at any time within three years after the date of the decision.

(b) Notice shall be given to all parties of the hearing officer's intent to reopen and the reasons therefore.

(c) The decision to reopen, or not to reopen rests solely with the hearing officer and shall not be subject to appeal.

(d) The three years time limit shall be waived if the reopening is due to evidence of fraud. [Eff JUN 29 1992] (Auth: HRS §346-14) (Imp: 42 C.F.R §447.258)