

COMPARISON OF PERMANENCY OPTIONS

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Adults who agree to provide permanent care for a foster child who cannot be reunified with his/her family may have questions about what their options are and about what each status means. They may want to know how things will change for them and for the child if they are moving from foster care to permanent care. Below are some commonly asked questions and an opportunity to compare the answers in each category.

| | ADOPTION (HRS 578) | LEGAL GUARDIANSHIP (HRS 560) | PERMANENT CUSTODY (HRS 587) |
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| <i>What category of permanent care could I provide?</i> | May be granted to individual or married couple. | May be awarded to DHS, a married couple, an unmarried couple, an individual or an authorized agency. | May be awarded to DHS, a married couple, an unmarried couple, an individual, or an authorized agency. |
| 1. What would be the legal status of the child? | The adoptive parent becomes the legal and psychological parent of the child. The child is considered to be a legal child of the adoptive parents. | The legal guardian has the rights of a parent, but the child is not considered to be his/her legal child. The legal guardian’s responsibilities automatically terminate when the child reaches age 18. | The permanent custodian has the rights of the legal parent, but the child is not considered to be his/her legal child. The permanent custodian’s responsibilities terminate when the child reaches age 18. |
| 2. Can the status be changed? | Adoption is irrevocable; it is a permanent parent/child relationship. | Legal Guardianship is revocable, but only through Family Court. | Permanent Custody is revocable, but only through Family Court. |
| 3. Who must be notified about the fact that I am becoming the adoptive parent, legal guardian, or permanent custodian for the child? | The child’s legal and birth parents must be notified if their parental rights have not already been terminated. A child over 10 years of age must also consent unless the court dispenses with the child’s consent. | <p>The following persons must be notified:</p> <ol style="list-style-type: none"> 1) The minor who is 14 or older. 2) Any person who has had primary care and custody of the child during the 60 days prior to the filing of the petition. 3) Legal parents if parental rights have not been terminated. <ol style="list-style-type: none"> a) If a legal parent is deceased, the adult nearest in kinship to the deceased parent. b) If both parents are deceased, each of the minor’s adult siblings, who can be found. If there are no adult siblings, each adult nearest in kinship to each deceased parent, who can be found, must be notified. <p>The court may waive notice to the nearest kinship upon showing that reasonable efforts have been made to locate the kinship. The parent’s next of kin are (in order of priority):</p> | The child’s parents must be notified when DHS files a motion to terminate parental rights in a Permanent Custody hearing. |

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| | | the spouse; an adult child; either parent; an adult sibling; a grandparent or a guardian at the time of death. | |
| 4. Under each category, what are my rights and responsibilities? | <p>Rights and responsibilities of the adoptive parent include all the rights and responsibilities of a parent, such as:</p> <ul style="list-style-type: none"> ◆ Assuring that the child is provided with adequate food, clothing, shelter, psychological, physical, and medical care, supervision, and other necessities ◆ Arranging for and consenting to medical, dental, psychiatric, or psychological care or treatment, educational, recreational, or social needs ◆ Consenting to name change, marriage, and adoption | <p>Rights and responsibilities of the legal guardian include:</p> <ul style="list-style-type: none"> ◆ Assuring that the child is provided with adequate food, clothing, shelter, psychological, physical, and medical care, supervision, and other necessities ◆ Arranging for and consenting to medical, dental, psychiatric, or psychological care or treatment, educational, recreational, or social needs ◆ Consenting to name change, marriage, and adoption. If parental rights have not been terminated, parents must also consent to name change and adoption. ◆ The legal guardian cannot relocate the child outside the State without express authorization of the court. <p>If the legal guardian later decides to adopt, the legal guardian must hire an attorney to complete the adoption. The legal guardian is not obligated to support the child with his or her own money and is not liable to third persons for acts of the child.</p> | <p>Rights and responsibilities of the permanent custodian include:</p> <ul style="list-style-type: none"> ◆ Assuring that the child is provided with adequate food, clothing, shelter, psychological, physical, and medical care, supervision, and other necessities ◆ Arranging for and consenting to medical, dental, psychiatric or psychological care or treatment, educational, recreational, or social needs. ◆ Consenting to name change, marriage, and adoption of child . <p>If the permanent custodian later decides to adopt, DHS can be brought back into the case as a party (if it is not already a party), and the adoption can be completed through DHS without cost to the permanent custodian. The permanent custodian is not liable to third persons for the acts of the child.</p> |
| 5. In what ways are DHS and Family Court involved in each of these categories of permanent care? | Permanent custody to DHS is terminated upon adoption finalization and Family Court closes its case. DHS closes its social service case and a social worker is no longer assigned. | Permanent custody to DHS is terminated upon the award of legal guardianship and Family Court closes its case. DHS closes its social service case and a social worker is no longer assigned. | Upon the award of permanent custody to an individual or couple, permanent custody to DHS is terminated. Family Court does not close its case, and an annual hearing is held. DHS closes its service case and a social worker is no longer assigned. |

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| | If the adoptive parents receive adoption assistance payments for an eligible child, a DHS case is opened as a “payment-only” case and serviced by a Permanency Unit. | If the legal guardian receives permanency assistance payments for an eligible child, a DHS case is opened as a “payment-only” case and serviced by a Permanency Unit. The guardian must file a report with Family Court on the status of the child at least annually if ordered by the judge. Annual reports are required by Family Courts in Hawaii, Maui and Kauai Counties. | If the child is eligible for permanency assistance payments, a DHS case is opened as a “payment –only” case and serviced by a Permanency Unit. The permanent custodian must appear at the annual hearing (DHS must also appear if DHS is a co-permanent custodian) and must write an annual report to the court on the child’s progress. |
| 6. Will the Guardian ad Litem (GAL) still be involved? | No, the GAL will be dismissed. | No, the GAL will be dismissed. | The GAL may be retained or dismissed at the discretion of Family Court. |
| 7. What kind of financial assistance can I get? | Foster Board payments end. Adoptive parents are responsible to fully support the child unless the child has special needs. For Federal IV-E or State Adoption Assistance (AA), funds are available to children who meet DHS eligibility requirements. The prospective adoptive parents must apply for and sign the AA agreement, and a DHS representative must approve it prior to the adoption hearing. Effective 01/01/07, if high risk of medical, physical, behavioral/emotional condition or handicap is present, and the child is a foster child with DHS confirmed harm and/or threatened harm and is under the Department’s placement responsibility at the time of adoption, the child will be eligible for AA. When the adoption is completed the birth parents are no longer responsible for supporting the child. Forms that prospective adoptive parents complete: | Foster board payments end. Legal guardians are not legally responsible to support the child. A legal guardian may choose to: <ul style="list-style-type: none"> ◆ Fully support the child ◆ Apply for financial/medical assistance from the DHS BESSD (Benefit, Employment, and Support Services Division) as a non-needy caregiver if the legal guardian is related by blood to the child or ◆ Apply for Permanency Assistance (PA) of \$529/month from the DHS SSD (Social Services Division) Child Welfare Branch as long as DHS has placement responsibility. <p>Unless otherwise ordered by the court, the birth parents remain financially responsible. The Child Support Enforcement Agency (CSEA) will contact the birth parents for their contribution. The amount they are assessed is based on their income.</p> | Foster board payments end. Permanent Custodians are not legally responsible to support the child. A permanent custodian may choose to: <ul style="list-style-type: none"> ◆ Fully support the child ◆ Apply for financial/medical assistance from the DHS BESSD (Benefit, Employment, and Support Services Division) as a non-needy caregiver if related by blood to the child or ◆ Apply for Permanency Assistance (PA) of \$529/month from the DHS SSD (Social Services Division) Child Welfare Branch. <p>Unless otherwise ordered by the court, the birth parents remain financially responsible. The Child Support Enforcement Agency (CSEA) will contact the birth parents for their contribution. The amount they are assessed is based on their income.</p> |

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| <ul style="list-style-type: none"> ◆ DHS Form 1613 ◆ DHS Form 1570 ◆ DHS Form 1578 ◆ DHS Form Difficulty of Care (DOC) Worksheet (if applicable) <p>The adoptive parents of a child, who meets the eligibility requirements for adoption assistance as defined in Hawaii Administrative Rule 17-944.1 and ACYF PA-01-01, may receive:</p> <ul style="list-style-type: none"> • Federal IV-E or State funded adoption subsidy of up to \$529/month, additional Difficulty of Care payment, if applicable, up to \$570/month; ◆ Medical coverage, if applicable; ◆ Title XX services; <p>Clothing allowance is not provided.</p> <p>Adoption Assistance (AA) ends at age 18 but may extend to age 21 if the child is determined to have a physical or mental handicap that warrants continued assistance.</p> | <p>State-funded Permanency Assistance (PA) is available from DHS for children, who are under the placement responsibility (voluntary foster custody, temporary foster custody, foster custody or permanent custody) of DHS, are placed with legal guardians and meet DHS eligibility requirements. The prospective legal guardians must apply for and sign the PA agreement and a DHS representative must also approve the agreement before the guardianship hearing.</p> <p>A child, who is under DHS's placement responsibility, who is then returned home under family supervision and then placed under legal guardianship of an individual, does not qualify for permanency assistance. When the child returns home, the department no longer has placement responsibility of the child per HRS 587-2.</p> <p>Forms that prospective legal guardians should complete for Permanency Assistance are:</p> <ul style="list-style-type: none"> ◆ DHS Form 1662 ◆ DHS Form 1663 ◆ DHS Form Difficulty of Care (DOC) Worksheet, if applicable <p>The legal guardian of an eligible child may receive, subject to income resources of the child:</p> <ul style="list-style-type: none"> ◆ Permanency Assistance (PA) payment, up to \$529/month, additional Difficulty of Care payments, if applicable, up to \$570/month; ◆ Medical coverage; and | <p>State-funded Permanency Assistance (PA) is available from DHS for children, who are under the placement responsibility (permanent custody) of the department, are placed with permanent custodians and meet DHS eligibility requirements. The prospective permanent custodians must apply for and sign the PA application and a DHS representative must also approve the agreement.</p> <p>A child, who is under DHS's placement responsibility, who is then returned home under family supervision and then placed under legal guardianship of an individual, does not qualify for permanency assistance. When the child returns home, the department no longer has placement responsibility of the child per HRS 587-2.</p> <p>Forms that prospective permanent custodians should complete for Permanency Assistance are:</p> <ul style="list-style-type: none"> ◆ DHS Form 1662 ◆ DHS Form 1663 ◆ DHS Form Difficulty of Care (DOC) Worksheet, if applicable <p>The permanent custodian of an eligible child may receive, subject to income resources of the child:</p> <ul style="list-style-type: none"> ◆ Permanency Assistance (PA) payment, up to \$529/month, additional Difficulty of Care payments, if applicable, up to \$570/month; ◆ Medical coverage; and |

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| | <ul style="list-style-type: none"> ◆ Clothing allowance and special circumstances costs, if warranted. <p>The benefits will continue for the child up to the age 18 or until the child completes high school, whichever occurs last.</p> <p>Higher education board allowance payments, at the rate of \$529 per month, may extend through age 21 if the youth is attending an accredited institution of higher learning and meets DHS eligibility requirements.</p> <p>A child, who is under the legal guardianship of an individual(s) who then adopts the child, does not qualify for adoption assistance.</p> | <ul style="list-style-type: none"> ◆ Clothing allowance and special circumstances costs, if warranted. <p>The benefits will continue for the child up to the age of 18 or until the child completes high school, whichever occurs last.</p> <p>Higher education board allowance payments, at the rate of \$529 per month, may extend through age 21 if the youth is attending an accredited institution of higher learning and meets DHS eligibility requirements.</p> <p>A child, who is under the permanent custody of an individuals who then adopts the child, does not qualify for adoption assistance.</p> |
| <p>8. <i>What about medical insurance for the child?</i></p> <p>The child is covered under the adoptive parent’s medical insurance.</p> <p>If the family is receiving Adoption Assistance (AA), medical insurance is provided by DHS as secondary coverage. If the AA is deferred, medical insurance for the child may be provided by DHS.</p> <p>If the child is residing out-of-state:</p> <ul style="list-style-type: none"> ◆ Title IV-E -- eligible child is entitled to receive medical coverage from his/her new state of residence. Child Welfare Services staff needs to submit an ICAMA referral (Interstate Compact on Adoption and Medical Assistance). ◆ State-funded -- eligible child will receive Hawaii Medicaid fee-for-service coverage. | <p>The legal guardian may choose to include the child under the legal guardian’s own medical plan. Medical insurance would be provided by DHS as a secondary coverage.</p> <p>If the legal guardian chooses not to include the child under the legal guardian’s plan, medical insurance is provided by DHS.</p> <p>If the child is residing out-of-state, he or she will receive Hawaii Medicaid fee-for-service coverage.</p> | <p>The permanent custodian may choose to include the child under the permanent custodian's own medical plan. Medical insurance would be provided by DHS as a secondary coverage.</p> <p>If the permanent custodian chooses not to include the child under the permanent custodian's plan, medical insurance is provided by DHS.</p> <p>If the child is residing out-of-state, he or she will receive Hawaii Medicaid fee-for-service coverage.</p> |

10. *What can I do when I can no longer care for my child?*

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| <p>The following options are possible:</p> <ul style="list-style-type: none"> <p><u>Private arrangement:</u> Adoptive parents arrange for the child to be cared for by another family. DHS does not get involved with the family or with any aspect of the arrangement.</p> <p>Adoption assistance payments may continue as long as the adoptive parents are providing financial support to the child.</p> <p><u>Independent placement for foster care:</u> Adoptive parents provide DHS with the name of the family who will care for the child. The proposed family must meet DHS foster home licensing requirements. The adoptive parents are required to serve as case managers for the child.</p> <p>DHS pays foster board payments to the new caregivers and reports the adoptive parents to Child Support Enforcement Agency (CSEA) for reimbursement of foster board payments.</p> <p><u>Independent placement for adoption.</u> If an adoption of a child is unsuccessful, adoptive parents can identify others who are willing to adopt the child and the new adoptive parents can retain an attorney to complete the adoption.</p> <p>In order for adoption assistance payments to continue to the new adoptive family, the new home must be approved by the State, and the new adoptive family must apply for adoption assistance and the application must be approved before the adoption hearing.</p> | <p>The following options are possible:</p> <ul style="list-style-type: none"> <p><u>Private arrangement:</u> Legal guardians arrange for the child to be cared for by another family. DHS does not get involved with the family or with any aspect of that arrangement.</p> <p>Permanency assistance payments may continue as long as the legal guardians are providing financial support to the child.</p> <p><u>Independent placement for foster care:</u> Legal guardians provide DHS with the name of the family who will care for the child. The proposed family must meet DHS foster home licensing requirements. The legal guardians are required to serve as case managers for the child.</p> <p>DHS pays foster board payments to the new caregivers and reports the legal guardians to Child Support Enforcement Agency (CSEA) for reimbursement of foster board payments.</p> <p><u>Independent placement for successor guardianship:</u> If a legal guardianship is unsuccessful the legal guardians may place the child with others who are willing to provide a safe family home for the child and petition the court to withdraw as guardians and appoint successor guardians.</p> <p>Permanency Assistance cannot continue to the successor guardian.</p> | <p>If the permanent custodian can no longer care for the child, DHS can file a motion to regain Permanent Custody.</p> |

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| <p>• CWS involvement: When the adoptive parents can no longer care for the child and are unable to obtain a private arrangement or an independent placement, they may contact CWS Intake. The report is assigned for investigation of neglect or abandonment.</p> <p>Confirmation of harm or threatened harm will have an impact on foster home licensing and childcare licensing, and possibly current or future employment for the adoptive parents.</p> <p>DHS pays foster board payments to the new caregivers and reports the adoptive parents to CSEA. for reimbursement of foster board payments.</p> <p>The child is placed in a licensed foster home until other permanent arrangements can be made.</p> | <p>• CWS involvement: When the legal guardians can no longer care for the child and are unable to obtain a private arrangement or an independent placement, they may contact CWS Intake. The report is assigned for investigation of neglect or abandonment.</p> <p>Confirmation of harm or threatened harm will have an impact on foster home licensing and childcare licensing, and possibly current or future employment for the legal guardians.</p> <p>DHS pays foster board payments to the new caregivers and reports the legal guardians to CSEA for reimbursement of board payments.</p> <p>In addition, if a petition for foster custody is filed in court, the birth parents are given notice of the proceeding. If the birth parents want to be considered as caregivers for their child, CWS would assess the birth parents' current situation and their ability to provide a safe family home, now and in the foreseeable future, regardless if the birth parents' rights were terminated or they consented to the legal guardianship.</p> <p>If placement with parents is not suitable, the child is placed in a licensed foster home until other permanent arrangements can be made.</p> | |
| <p>Chapter 17-944.1 – Adoption Assistance for Children with Special Needs and Chapter 17-834 -State-Provided Foster Care Special Services (DOC)</p> | <p>Chapter 17-835 – Permanency Assistance and Chapter 17-834, State-Provided Foster Care Special Services (DOC)</p> | <p>Chapter 17-835 – Permanency Assistance and Chapter 17-834, State-Provided Foster Care Special Services (DOC)</p> |

11. Which Hawaii Administrative Rules apply to this?

12. What role will the birth parents play in the child's life once the child is in my permanent care?

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| <p><i>Will they be required to provide child support? No.</i></p> <p><i>Will consents have to be obtained from them for anything? Legal/birth parents lose all parental rights including the right to give consent for medical or psychological care or treatment, (including surgery), adoption, and marriage.</i></p> <p><i>Will birth parents have visitation rights? No – at least not automatically. Adoptive parents may decide on an open adoption, which may include communication and visits with the birth parents.</i></p> <p><i>Can the child and his or her birth parents inherit from each other when they die? Mutual rights of inheritance with parents are possible but not usual. The adopted child inherits from the adoptive parents.</i></p> | <p><i>Will they be required to provide child support? Yes. Unless otherwise ordered by the court, parents continue to be responsible to support the child, including but not limited to repayment for the cost of any and all care, treatment, or any other service supplied or provided by the legal guardian, other authorized agency, or the court for the child's benefit.</i></p> <p><i>Will consents have to be obtained from them for anything? Legal/birth parents lose the right to give consent for medical or psychological care or treatment, (including surgery) and marriage. If parental rights have not been terminated parents must consent to adoption and name change.</i></p> <p><i>Will birth parents have visitation rights? No – not automatically. Legal guardians decide if the birth parents may visit.</i></p> <p><i>Can the child and his or her birth parents inherit from each other when they die? Yes. Mutual rights of inheritance with birth parents remain in effect.</i></p> <p><i>What if I decide to return the child to the biological parents without court involvement? The guardian is responsible for the safety of the child. If the guardian allows the child to visit or live with his or her biological parent and the child is harmed resulting in CPS involvement, the guardian, not the biological parent, will have to do services with CPS.</i></p> | <p><i>Will they be required to provide child support? Yes. Unless otherwise ordered by the court, parents continue to be responsible to support the child, including but not limited to repayment for the cost of any and all care, treatment, or any other service supplied or provided by the permanent custodian, other authorized agency, or the court for the child's benefit.</i></p> <p><i>Will consents have to be obtained from them for anything? Legal/birth parents lose the right to give consent for medical or psychological care or treatment, (including surgery), adoption, and marriage.</i></p> <p><i>Will birth parents have visitation rights? A family member may be permitted visitation with the child at the discretion of the permanent custodian. This may be reviewed by Family Court which may order or prohibit parental visits depending on what the Court determines is in the child's best interests.</i></p> <p><i>Can the child and his or her birth parents inherit from each other when they die? Yes. Mutual rights of inheritance with parents remain in effect.</i></p> |

13. *What would I have to pay for court and filing fees?*

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| <p>If DHS remains a party to the case and the Attorney General (AG) files in a Hawaii Court, there is no cost to the adoptive parents.</p> <p>If EPIC `Ohana Conferencing completes the adoption, adoptive parents pay the \$175 court filing fee and the \$500 publication cost if the parents cannot be located. EPIC does only uncontested adoptions.</p> <p>If a private attorney is retained or if the adoption petition is filed in another state, DHS may reimburse eligible families for one-time nonrecurring adoption expenses, which may include attorney’s fees and adoption home study, up to a maximum of \$2,000.</p> | <p>If DHS remains a party to the case and the Attorney General (AG) files in a Hawaii Court, there is no cost to the prospective legal guardians.</p> <p>If EPIC `Ohana Conferencing completes the guardianship, the prospective legal guardians pay the \$175 court filing fee and the \$400 publication cost if the legal parents cannot be located. EPIC does only uncontested guardianships.</p> <p>If the prospective legal guardians choose to file the petition for guardianship in another state, the legal guardians must assume responsibility for all costs.</p> | <p>Permanent custody is handled by the Attorney General and DHS at no cost to the permanent custodian.</p> |