

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 11 CHILD WELFARE SERVICES PROGRAMS

CHAPTER 1617

FOSTER CARE MAINTENANCE AND RELATED PAYMENTS

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§17-1617-1 Goals. The department shall provide services to the child who has been the subject of a report of abuse, neglect, or threatened harm and to the child's family to ensure the child's:

- (1) Safety;
- (2) Permanency; and
- (3) Well-being. [Eff **DEC 09 2010**] (Auth:

HRS §§346-14,350-2) (Imp: HRS §350-2)

§17-1617-2 Definitions. As used in this chapter:

"Adoptive home" means a home, which has been studied and approved by the department or a licensed child-placing organization for the placement of children for the purpose of adoption.

"Aid to families with dependent children" or "AFDC" means federally funded aid to families with dependent children based on meeting requirements

defined in 45 Code of Federal Regulations (C.F.R) Part 233 and in effect on July 16, 1996.

"Caregiver" means any adult other than the legal custodian authorized to provide care or oversee the care of children.

"Child" means a person who is born alive and is less than eighteen years of age.

"Child-caring institution" or "group home" means any institution or group home licensed by the department, for the purpose of receiving six or more unrelated minor children for temporary substitute supervision, care, and maintenance apart from their legal custodians on a twenty-four hour basis for monetary payment. This term shall not apply to any boarding school which is primarily engaged in educational work or to any resource family home, detention facility, forestry camp, training school, or facility operated primarily for the detention of delinquent children. This term shall also exclude public child care institutions that accommodate more than twenty five children.

"Constructive removal" means a non-physical removal of custody from a legal parent or legal custodian with whom the child resided within six months of the constructive removal. A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

"Date child is considered to have entered foster care" means the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is 60 days after the date on which the child is removed from the home.

"Difficulty of care payments" or "difficulty of care" means payments in addition to the basic foster care maintenance board rate based on the level of care and supervision a child requires as determined by an assessment of the child's level of overall functioning. Payments for difficulty of care can be

issued when the child requires an increased level of care and supervision that is over and above the average level needed by a child due to physical or mental health conditions, or emotional, psychological, or behavioral needs, which are being treated by a professional. Payments for difficulty of care may also be issued when the child requires academic or educational assistance that is over and above the average assistance needed for a child as documented by appropriate school personnel.

"Emergency shelter home" means a licensed resource family home or child-caring institution where temporary care, apart from the legal custodian, is provided to abused or neglected or other dependent children in need of care and protection on a twenty-four hour basis, until more suitable plans are made for the children.

"Federally funded foster care maintenance payments" means the financial assistance program administered by the department under Title IV-E of the Social Security Act (42 U.S.C. sections 670-672 in effect July 16, 1996). For purposes of Titles XIX and XX, any child with respect to whom Title IV-E foster care maintenance payments are made under this section will be deemed a dependent child as defined in section 406 of the Act (as so in effect 7/16/1996) and shall be deemed to be a recipient of aid to families with dependent children under Part A of this Title (as so in effect 7/16/1996). Titles XIX and XX services will be available to such child in the State in which the child resides.

"Foster care" and "foster care services" means temporary substitute supervision, care, and maintenance apart from the child's legal custodians on a twenty-four hour basis for monetary payment in a licensed resource family home, or group home licensed by the department or other appropriate agency, to an eligible child pursuant to this chapter, whose legal custodians are unwilling or unable to provide a safe family home for the child's safety, welfare and protection as determined by the department pursuant to the child protective act.

"Foster care maintenance payments" means payments issued by the department to compensate eligible caregivers for the provision of care and supervision to eligible foster children. Foster care maintenance payments consist of a basic board rate, and if appropriate, difficulty of care payments based on an assessment of the child's need for higher level of care and supervision.

"Foster care related payments" means payments for specified related costs not covered in the foster care maintenance payments for an eligible child, including but not limited to clothing, transportation, limited medical expenses, and activity fees.

"Foster child" means:

- (1) Any child under eighteen years of age in out-of-home care who is under the placement responsibility of the department, or
- (2) A youth under the placement responsibility of the department receiving state-funded foster care who is under the age of 20 and remains enrolled in high school.

"Independent placement" means placement of a child into a licensed resource family home directly by the child's legal custodian, and not through a child-placing agency.

"Initial date of entry into out-of-home care" means the initial date on which the department assumed placement responsibility of a child:

- (1) By receipt of custody of the child from the police;
- (2) Pursuant to a voluntary agreement with the legal custodian;
- (3) By order of the court; or
- (4) By placing a child in foster care and thereby assuming temporary foster custody of a child subject to court ordered family supervision, pursuant to section 587A-4, HRS.

"Legal custodian" means the child's parent(s), permanent custodian(s), legal guardian(s), or other entities that have legal and physical custody of the child.

"Out-of-home care" means placement which is apart from the child's legal custodian which provides twenty-four hour parenting care, including, but not limited to a licensed relative's home, a resource family home, or a child-caring institution.

"Parental deprivation" means depriving a child of parental support or care by reason of death, continued absence from the home (other than absence based solely on performance of active duty in the uniformed services of the United States), physical or mental incapacity of a parent, or unemployment of the parent who is the principal wage earner, as defined in 45 C.F.R., section 233.100.

"Periodic review" means a judicial review of the status of each child in out-of-home care under the placement responsibility of the department which is held within six months of the initial date of entry into out-of-home care and at least every six months thereafter.

"Placement responsibility" means the authority of the department or other agency or individual to determine the placement and care of the child.

"Provisionally licensed resource family home" means a home approved for placement of a child that has been determined appropriate by the department for a placement of a child while completing the requirements to become a licensed resource family home.

"Reasonable efforts" means appropriate and available services offered or provided to prevent the placement of a child, to reunify a family, or to finalize the permanency plan for the child.

"Resource family home" means a home which has met the state licensing requirements in chapter 17-1625, HAR, in which minor children are received for temporary substitute supervision, care and maintenance apart from their legal custodians on a twenty-four hour basis for monetary payment.

"Resource family" or "resource caregiver" means a family or person who is:

- (1) Licensed by the department to provide temporary safe foster care services for

children under the jurisdiction of the department in out-of-home care; and

- (2) Paid foster care maintenance payments by the department for such services.

"Respite care payments" means the payments provided by the department to reimburse licensed resource families for the cost of obtaining an alternate caregiver for the temporary care of a foster child under the placement responsibility of the department. These funds are limited each fiscal year and respite care payments may not be available once the allotted funds have been expended.

"Specified relative" means father, mother, brother, sister, half-brother, half-sister, uncle, aunt, uncle half-blood, aunt half-blood, great uncle, great aunt, great uncle half-blood, great aunt half-blood, grandfather, grandmother, great grandfather, great grandmother, first cousin, first cousin once removed, nephew or niece, great-great grandmother, great-great grandfather, great-great-great grandmother, great-great-great grandfather, great-great aunt, great-great uncle, great-great aunt half-blood, great-great uncle half-blood, stepfather, stepmother, stepbrother, and stepsister; the adoptive parents of a legally adopted child as well as other natural or legally adopted children and relatives of the adoptive parents; and the legally married spouse of any of the persons specified in this subsection even after the marriage has ended in death or divorce.

"Voluntary foster custody agreement" means a written agreement, binding on the parties to the agreement, between the Department, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

"Voluntary placement" means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement.

[Eff DEC 09 2010] (Auth: HRS §§346-14, 346-17)
(Imp: HRS §§346-14, 346-17; 45 C.F.R. §§233.10,
233.39, 1355.20, 1356.20, 1356.21, 1356.30; 42 U.S.C.
§675)

§17-1617-3 Scope of service for foster care maintenance payments. (a) The basic functions performed by resource families include, but are not limited to, the provision of:

- (1) Warmth, security, emotional nurturing;
- (2) Intellectual stimulation;
- (3) Training by example to develop social skills; and
- (4) Encouragement to participate in family life.

(b) Foster care maintenance payments shall be made for the care and maintenance of eligible children in out-of-home care under the placement responsibility of the department in provisionally licensed resource family homes, licensed resource family homes, emergency shelter homes and child caring institutions; and

(c) Foster care maintenance payments shall be made for the care and maintenance of eligible children. Payment covers the following:

- (1) Food, including lunches and milk;
- (2) Shelter, including utilities;
- (3) Use of household furnishings and equipment;
- (4) Expenses involved in household operations;
- (5) Personal essentials, including, but not limited to, toothbrush, soap, brush/comb, haircuts, hygienic supplies, and contact lens maintenance supplies;
- (6) Reading and educational materials/supplies;
- (7) Recreational and community activities for the child such as parties, picnics, movies, and excursions;
- (8) Transportation expense for the resource family or caregiver to shop for the foster child, or deliver the child to school events, or other community and recreational activities;

- (9) Medicine chest supplies or first aid materials such as band-aids, aspirin, cough syrup, bandages, and antiseptics;
- (10) Allowance according to the age of the child;
- (11) Other requirements for infant and toddler care including two basic sub-items:
 - (A) Baby supplies, including diapers, and nutritional supplements recommended by the physician for the care of infants and toddlers;
 - (B) Increased costs for utilities, household furnishing, and maintenance operations related to increased activities, such as, laundering and formula preparation.

(d) The cost of local travel associated with providing food, shelter, daily supervision, school supplies, and a child's personal incidentals is federally reimbursable to the state for payments made by the state for a child who meets the eligibility requirements for federally funded foster care maintenance payments as described in this chapter.

(e) For children under the department's placement responsibility, or under the department's placement responsibility when legal guardianship or permanent custody was awarded to another child-placing organization or caregiver, the department shall provide foster care maintenance payments in accordance with departmental procedures. Payments shall be based on an assessment of the care and supervision required to provide appropriate care to meet the child's needs and the ability of the resource family or caregiver to provide the appropriate level of care.

- (1) "Basic board" means the amount of care and supervision provided for a child whose medical needs, emotional and psychological development, and behavior are within expected norms.
- (2) "Difficulty of care" is a payment provided in accordance with departmental procedures, in addition to the basic board rate, for a child who requires more care and supervision

as documented by a treating professional because of the child's physical, emotional, psychological, and/or behavioral needs, or as documented by appropriate school personnel when the child requires academic or educational assistance that is over and above the average assistance needed for a child.

(f) For other eligible children not under the placement responsibility of the department, the foster care maintenance payment shall be made at the basic board rate.

(g) When a child placed in a resource family home that receives federally funded foster care maintenance payments and is the minor parent of a child who is in the same home or institution as the minor parent, payments made on behalf of the minor parent shall include amounts necessary to cover the maintenance costs of the minor parent's child. Costs shall be limited to cover items described in the definition of foster care maintenance payments. [Eff] (Auth: HRS §§346-14, 346-17) (Imp: HRS §346-17; 45 C.F.R. §§1356.21(j), 1356.60; 42 U.S.C. §675)

§17-1617-4 Scope of foster care related payments and respite care payments. (a) The department shall provide for the following foster care related payments for eligible children under the department's placement responsibility when the need has been established by the department and to the extent that funds are available:

- (1) Clothing in accordance with departmental procedures when it is deemed:
 - (A) Necessary for initial placement;
 - (B) Necessary for maintenance; or
 - (C) Necessary for special circumstances or special events;
- (2) The actual cost of necessary school bus fare or private automobile mileage at the established state mileage allowance for the months school is in session for a child who

- is attending school where free school transportation is not available;
- (3) The actual cost of bus fare, private automobile mileage at the established state mileage allowance, or taxi fare when other resources are not available, to obtain medical care, including physical examinations, psychiatric and psychological therapy;
 - (4) Necessary and appropriate rates for transportation and other costs to effect placement of a child or the child's return to the family. Approval for out-of-state transportation costs for a child under the department's placement responsibility shall be obtained from the social services division administrator, or designee, after the placement has been approved by the receiving state's office for the Interstate Compact on the Placement of Children (ICPC) and prior to the child's being sent out-of-state;
 - (5) The minimum cost of transportation to the child's home for visitation when this is part of a child's case plan;
 - (6) Group activity fees including, but not limited to, school and community sports, scouts, or organized group activities sponsored by community organizations;
 - (7) Individual activity fees, including but not limited to, the cost of lessons for activities such as dance, music, or gymnastics if the social worker determines the activity to be beneficial to the development of the child's self-esteem and social skills;
 - (8) The minimum cost of transportation to allow resource family or caregiver to attend department authorized trainings and meetings upon approval by the department; and
 - (9) Medical treatments, immunizations, and other medication for the resource family home or

other members of the resource family up to \$500 per incident or \$500 per person when the course of treatment is determined by a physician to be necessary because of a physical condition of a foster child. The need for treatments, medications, or supplies must be related to the physical condition of the child in foster care and shall be established by the department.

(b) Respite care payments shall be provided to licensed resource family or caregiver for children under the department's placement responsibility in accordance with departmental procedures. Respite care payments shall be subject to the availability of funds which are limited each fiscal year. Respite care payments may not be available once the total amount allotted for a fiscal year has been expended. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: HRS §§346-14, 346-17)

§17-1617-5 Geographic areas of service. (a) Foster care maintenance payments, foster care related payments, and respite care payments shall be available for eligible children throughout the state subject to the availability of funds.

(b) Foster care maintenance payments and foster care related payments may be provided outside the state when the child and resource family meet the eligibility requirements specified in this chapter and placement is approved through the Interstate Compact on the Placement of Children. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1617-6 Confidentiality. The provisions of chapter 17-1601 shall apply to families and children served under this chapter. [Eff **DEC.09 2010**] (Auth: HRS §346-14) (Imp: HRS §§346-10, 346-14; 45 C.F.R. §§205.50, 1356.20)

§17-1617-7 Application for foster care maintenance payments, foster care related payments, and respite care payments. (a) An application shall not be required for foster care maintenance payments, foster care related payments, and respite care payments for children who are placed by the department and for whom the department has placement responsibility.

(b) Applications for foster care maintenance payments shall be required for independent placements in a licensed resource family home until other suitable plans for the child's care can be made.

(c) Applications shall be made in writing on a form prescribed by the department. [Eff **DEC 09 2010**]
(Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1617-8 Disposition of application. Disposition of required applications shall be in accordance with the provisions of section 17-804-5. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1617-9 Time limits for application disposition. The provisions of section 17-804-6 shall apply to required applications. [Eff **DEC 09 2010**]
(Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1617-10 Notice to the applicant of application disposition. The provisions of section 17-804-8 apply to families and children served under this chapter. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1617-11 Eligibility requirements for foster care maintenance payments. (a). To be eligible for

foster care maintenance payments, the department shall have determined that the child is in need of out-of-home care as the family home is unsafe, even with the assistance of a service plan. In addition:

(b) To establish eligibility for federally funded foster care maintenance payments, the following eligibility requirements shall also be met:

- (1) Age. The child is under eighteen years of age.
- (2) Removal from the home. The child shall have been removed from the home of a parent or specified relative as a result of:

(A) A judicial order for a physical or constructive removal of the child based on a judicial determination that:

- (i) Continuation in the home would be contrary to the welfare of the child. This determination must be made at the first court hearing that sanctions, even temporarily, the removal of a child from the home; and
- (ii) Reasonable efforts were made to prevent removal of the child from his or her home or a judicial determination that reasonable efforts were not required to prevent removal. This determination must be made within sixty days of the child's involuntary removal. If the determination concerning reasonable efforts to prevent the removal is not made as specified above, the child shall not be eligible for federally funded foster care maintenance payments for the duration of that stay in foster care; or

(B) A valid voluntary foster custody agreement signed by the child's legal custodian and the department which

leads to a physical or constructive removal of the child.

- (i) If a child is expected to remain in out-of-home placement longer than one hundred and eighty (180) days, a petition must be filed and judicial determination specified in subparagraph (A) (i) obtained prior to the one hundred and eightieth (180th) day.
 - (ii) If parents or guardians request that the child be returned to their home or to the home of a relative, the voluntary custody agreement shall be deemed to be revoked unless the department opposes such request and obtains a judicial determination that the return of the child to such home would be contrary to the child's best interests.
- (C) If the reasonable efforts and contrary to the welfare judicial determinations specified in subparagraphs (A) and (B) are not included as required in the court orders, a transcript of the court proceedings shall be the only other documentation accepted to verify that these required determinations have been made. Neither affidavits nor nunc pro tunc orders shall be accepted to verify that the required determinations have been made.
- (D) A removal has not occurred in situations where legal custody is removed from the parents or relative and the child remains with the same relative in that home under supervision by the department.

(3) Responsibility for placement and care. The child's placement and care shall be the responsibility of the department pursuant to chapter 587A, HRS.

(4) Eligibility for AFDC as defined in 45 C.F.R., Part 233 and in effect on July 16, 1996. (Effective December 14, 1999, the value of resources allowable for IV-E eligibility increased to \$10,000.)

The child would have received AFDC as in effect on July 16, 1996 except for the child's removal from the home of a parent or specified relative (specified in section 406(a)), if application had been made for such benefits in or for the month in which the voluntary foster custody agreement was entered into or court proceedings leading to removal from the home were initiated;

(i) For removals between October 1, 2003-June 8, 2006, the child would have received AFDC in the home from which the child was removed or the home of any specified relative with whom the child was living within six months prior to removal (Eligibility based on this criteria was no longer used beginning with the child's IV-E eligibility re-determination that occurred subsequent to June 8, 2006.);

(ii) For children removed from the home on or after June 9, 2006, the child is AFDC eligible at the time of removal from the home of a parent or specified relative, as defined in chapter 17-656.1-7(b);
or

(B) The child was living with or had been living with a parent or specified relative within six months prior to the

month in which either a voluntary foster custody agreement was entered into or court proceedings were initiated and the child would have been AFDC eligible in that month if he or she had been living in that home;

- (5) The child is a U.S. citizen or is a qualified alien under section 431 of the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA). If a qualified alien,
 - (A) The child must have lived in the United States (U.S.) for five years if the child entered the U.S. on or after August 22, 1996 if placed with an unqualified alien; or
 - (B) The child is exempt from the five-year residency requirement because the child is placed with a U.S. citizen or qualified alien or the child is a member of one of the exception groups pursuant to USC title 8, Chapter 14, Section 1612(b): refugees, asylees, aliens whose deportation is withheld, veterans and those on active duty (as well as the spouse and unmarried dependent children of that person), Cuban or Haitian entrants, and Amerasians from Vietnam;
- (6) Licensed foster home. The child shall reside in a fully licensed foster home or child-caring institution.
 - (c) To establish eligibility for state funded foster care maintenance payments, the following eligibility requirements shall be met:
 - (1) In addition to the requirements of subsection (a), the child shall be:
 - (A) Under the placement responsibility of the department, or under the department's placement responsibility

- when legal guardianship or permanent custody was awarded to another child-placing organization;
- (B) Ineligible for federally funded foster care maintenance payments as specified in subsection (b); and
 - (C) Residing in a licensed foster family boarding home, child-caring institution, or facility that provides contracted emergency shelter or group home services for the department, office of youth services, or family court; or
- (2) For independent placements, the criteria of subsection (a) shall not apply and the department shall have determined that the following conditions are met:
- (A) The child has needs or a condition that have been professionally diagnosed, including but not limited to a physical, mental, or developmental disability, which are beyond the legal custodian's capacity to cope;
 - (B) The child does not fall under the provisions of chapter 587A, HRS, and the legal custodian retains custody and case management responsibility for the child;
 - (C) Services to maintain the child in the home have been exhausted and there is no other public or private placement resource for the family;
 - (D) A licensed foster family boarding home is available and appropriate for the child, or the family can identify a home that can be licensed for the child; and
 - (E) Supportive services and treatment shall be provided by a public or private agency other than the department to the child and family while the child is in out-of-home care; or

- (3) For a child under the supervision of the family court or other state agencies the criteria of subsection (a) shall not apply, and the department shall have determined that the following conditions are met:
- (A) There are no resources within that agency or the community to meet the placement needs of the child; and
 - (B) The child is in need of out-of-home care as the child is beyond the control of the legal custodian and cannot remain in the family home; or
 - (C) The child is receiving appropriate services and treatment from the agency who placed the child while the child is in out-of-home care; and
 - (D) The child is in a licensed child-caring institution or in a licensed facility that provides contracted emergency shelter or group home services.

(d) For subsection (c) (2) and (3), the legal custodian, family court, or other state agency shall provide documentation to the department of the initial need, and at least every six months thereafter, of the continuing need for foster care services for the child in accordance with departmental procedures. [Eff

DEC 09 2010] (Auth: HRS §§346-14, 346-17) (Imp: HRS §346-17; 45 C.F.R. §§233.10, 233.20, 233.40, 233.50, 233.90, 1355.20, 1356.21, 1356.22; Pub. L. No. 109-71); 42 U.S.C. 673, 45 C.F.R. §§1356.21(c), 1356.22, 1356.40, 1356.41; Pub. L. No. 104-193; Pub. L. No. 105-33; ACYF-CB-PA-01-01, Pub. L. No. 109-171.

§17-1617-12 Eligibility requirements for foster care related payments and respite care payments. (a)

To be eligible for all foster care related payments:

- (1) The child shall be:
 - (A) Under the placement responsibility of the department, or under the department's placement responsibility when legal guardianship or permanent

- custody was awarded to another child-placing organization; and
- (B) Placed with a licensed resource family home;
- (2) The need for foster care related payments shall be established by the department social worker; and
- (3) The department social worker shall have determined that there are no other resources available to meet the costs.
- (b) To be eligible for respite care payments the following conditions shall be met:
- (1) The child shall be under the placement responsibility of the department;
- (2) The resource family or caregiver shall be licensed as a resource family home for the department;
- (3) The resource family or caregivers shall have determined that the alternative caregiver is an appropriate temporary placement and able to provide for the needs of the foster child; and
- (4) The resource family or caregiver shall notify the department of the planned respite period and request respite care payment for this period. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1617-13 Authorization for foster care maintenance payments, foster care related payments, and respite care payments. (a) The department shall authorize foster care maintenance payments when the eligibility criteria set forth in this chapter are met and in accordance with departmental procedures when the eligible child is placed in a licensed resource family home.

(b) The department shall make foster care maintenance payments for the care of the eligible child when the eligibility criteria are met, and it is determined that the eligible child needs out-of-home care and is without sufficient income and resources to meet payment for care.

(c) The department shall make monthly foster care maintenance payments directly to the resource family home after the end of each month of service.

(d) For licensed resource family homes the amount of the monthly payment shall be based on the needs of the eligible child for supervision and care.

(e) The department shall review and may adjust the monthly foster care maintenance rate and the difficulty of care payment rate as needed, but not less frequently than every five years provided that:

(1) Effective July 1, 2008, the monthly foster care maintenance basic board rate shall be no less than \$529.

(2) Effective July 1, 2008, the maximum difficulty of care rate is \$570 per month.

(f) Resource family homes may be provided with compensation in addition to the basic board rate and difficulty of care payments when the department determines that increased compensation is necessary to ensure timely, appropriate, and stable out-of-home placement for the eligible child. In accordance with departmental procedures these circumstances include but are not limited to siblings placed together; minor mothers and their children, placed in the same resource family home; pregnant youth; and teenagers.

(g) Payment shall be for the actual number of days the child is in care. If the child is moved from one placement to another placement, each resource family home shall receive a prorated amount according to departmental procedures.

(h) Foster care maintenance payments shall be authorized at the basic board rate unless the child has been determined to be in need of a higher level of care in accordance with section 17-1617-3(f).

(1) Within forty-five days of the child's initial entry into out-of-home care, each child shall have a comprehensive health and developmental assessment in accordance with departmental procedures and section 346-HRS.

(2) If the initial comprehensive assessment determines that the child requires a higher

level of care, difficulty of care payments shall be made retroactive to the date of placement.

(i) After the comprehensive assessment has been reviewed and the child is found eligible for difficulty of care payments in addition to the basic board rate, the difficulty of care payments shall continue until the next re-determination of the difficulty of care level, regardless of a change in resource family home placement, as long as the resource family or caregiver are able to provide the higher level of care.

(j) Foster care maintenance payments may be made during a child's temporary absence from a resource family home if the department's plan with the substitute caregiver is for the child's return to the home.

- (1) Foster care maintenance payments shall be made as follows:
 - (A) Full payments for no more than fourteen days of absence; and
 - (B) Payments at fifty percent of the foster care maintenance rate for the second fourteen days of absence.
- (2) Payments shall be discontinued no later than at the end of the twenty-eighth day of absence, or earlier, when a decision is made to discharge the child from the resource family home.

(k) Foster care maintenance payments for emergency shelter care may be allowed up to a maximum of thirty days as a protective service to the child when provided in licensed resource family homes. An extension for an additional thirty days may be granted by the department.

(l) Foster care maintenance payments shall be provided for an eligible child placed out-of-state, in a home that is licensed by that state, at Hawaii's rate of payment.

(m) Foster care related payments shall be authorized in accordance with departmental procedures for eligible children under the department's placement

responsibility when the need has been established by the department.

(n) Foster care respite care payments shall be authorized in accordance with departmental procedures for eligible children under the department's placement responsibility who are placed in licensed resource homes within the state. Respite care payments are subject to the availability of funds which are limited each fiscal year. Respite care payments may not be available once the total amount allotted for a fiscal year has been expended. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: HRS §§346-14, 350E, 346- ; 45 C.F.R. §§233.20, 1356.60)

§17-1617-14 Continued eligibility requirements for federally funded foster care maintenance payments.

(a) Eligibility re-determination. A child's eligibility for federally funded foster care maintenance payments shall be redetermined within six months of the initial determination of eligibility and at intervals not greater than every six months thereafter.

(b) Income and deprivation.

- (1) After the initial month of placement, only the child's income and assets shall be considered in determining the amount to be applied toward the federally funded foster care maintenance payment and in determining continuing eligibility for the payment. For a child to meet the continued eligibility requirements, the child's income and assets shall not exceed 185% of the AFDC standard of need as of July 16, 1996.
- (2) The provisions relating to income, assets, child support, and the budgeting process applicable to the AFDC program and specified in 45 C.F.R, Parts 233 and 302, shall apply to the federally funded foster care maintenance program.
- (3) Parental deprivation shall continue to exist in the household from which the child was

legally removed via judicial determination or via voluntary foster custody agreement.

- (c) Periodic reviews.
- (1) Periodic reviews to determine that placement is in the best interest of the child shall be held.
 - (A) For children removed from the home prior to March 27, 2001 as a result of a judicial order for a physical or constructive removal, there shall be a judicial determination that the department has made reasonable efforts to finalize the permanency plan that is in effect. This determination must have been made by March 27, 2001 and at least once every twelve months thereafter while the child is in foster care.
 - (B) For children removed from the home on or after March 27, 2001 as a result of a judicial order for a physical or constructive removal, within twelve months of the date the child is considered to have entered foster care and at least once every twelve months thereafter while the child is in foster care, there shall be a judicial determination that the department has made reasonable efforts to finalize the permanency plan that is in effect.
- (2) If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made, the child shall become ineligible under Title IV-E from the end of the twelfth month following the initial date of entry into out-of-home care or the end of the twelfth month following the month in which the most recent judicial determination of reasonable efforts to finalize a permanency plan was made, and shall remain ineligible until such a judicial determination is made.

- (d) Voluntary placements. Federal reimbursement for a child removed from the home pursuant to a voluntary foster custody agreement may not be paid for more than one hundred eighty days unless there has been a judicial determination by the court made at the first court hearing and within the first one hundred eighty days of such placement that such placement is in the best interests of the child. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: HRS §587A-11; 45 C.F.R. §§233.10, 233.20, 233.40, 233.50, 1356.21; 65 Fed. Reg. 4020-01)

§17-1617-15 Re-determination of difficulty of care level. (a) The department shall re-determine a child's difficulty of care level in accordance with departmental procedures:

- (1) At least once every twelve months from the month eligibility for payment was initially determined; and
 - (2) When information is obtained regarding changes in the child's situation.
- (b) The re-determination shall include:
- (1) A review of the amount of care and supervision a child requires based on an assessment of the child's level of overall functioning;
 - (2) A review of a current written recommendation by an appropriately qualified professional;
 - (3) A review of the resource family's or caregiver's ability to provide the level of care and supervision required by the child; and
 - (4) A review and determination of the amount of the difficulty of care payment based on paragraphs (1), (2) and (3). [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1617-16 Family responsibility for payment.

(a) The legally responsible parents shall be required to contribute towards the cost of the child's foster care maintenance payments in accordance with the financial ability of the parents.

(b) The department shall complete a referral to the child support enforcement agency for every child in out-of-home care for whom payments are being made by the department.

(c) The legally responsible parents shall report to the department and to the child support enforcement agency any changes in the financial situation which effect child support contributions within thirty days.

(d) Contributions from the legally responsible parents shall be made to the department as reimbursement towards the child's foster care maintenance payments. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: HRS §346-37.1)

§17-1617-17 Income to be considered. (a)

Unearned income resources of the child in foster care, such as social security benefits, trust fund accounts, and military personnel's or veterans' dependency benefits, shall be considered and shall apply as reimbursement towards the child's foster care maintenance payments, in accordance with departmental procedures.

(b) Earned income of the child shall not apply as reimbursement towards the child's foster care maintenance payments.

(c) A private fund account shall be set up by the department for a foster child if there are resources available in excess of the amount expended by the department for the cost of foster care maintenance payments.

(d) Payments for other needs of the foster child not provided for by the department may be made by withdrawal against the child's private fund account as authorized by the department. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: HRS §§346-14, 346-37.1)

§17-1617-18 Advance notice of action to terminate, suspend, or reduce foster care maintenance payments. The provisions of chapter 17-912-49 shall apply to services and payments provided under this chapter. [Eff **DEC 09 2010**] (Auth: HRS §346-14)
(Imp: HRS §346-12)

§17-1617-19 Right to a hearing. The provisions of chapter 17-602.1 shall apply to families and children served under this chapter. [Eff **DEC 09 2010**] (Auth: HRS §§346-12, 346-14)
(Imp: HRS §346-12)

§17-1617-20 Overpayments and recoupment. The provisions of section 17-912-43 shall apply to this chapter. [Eff **DEC 09 2010**] (Auth: HRS §§346-14, 346-44) (Imp: HRS §346-44)

§17-1617-21 Termination of foster care maintenance payments, foster care related payments, and respite care payments. (a) Foster care maintenance payments, foster care related payments, and respite care payments shall be terminated when:

- (1) The child returns to the family home;
- (2) The child no longer resides in a licensed resource family home;
- (3) The child goes into an adoptive home and the agreement between the department and prospective adoptive parents is signed by the family and the department, unless due to extenuating circumstances the benefits are authorized to continue until the child is adopted;
- (4) The child goes into a permanent home and legal guardianship or permanent custody is awarded to the individual caregivers;
- (5) The child is emancipated, achieves independent living, or is self-supporting;

- (7) The child is admitted to a residential treatment facility or a medical facility for extended treatment;
- (8) The child moves to another state which agrees to assume full responsibility for the child's supervision and support;
- (9) The child has sufficient income or resources to meet the maintenance payment independently;
- (10) The child no longer meets eligibility requirements of this chapter; or
- (11) The child dies.

(b) In addition, eligibility for federally funded foster care maintenance payments shall be terminated when:

- (1) The child no longer resides in a fully licensed resource family home; or
- (2) The child is in a placement pursuant to a voluntary foster custody agreement signed by the legal custodian for more than one hundred eighty days (180) without a judicial determination that the placement is in the best interests of the child made at the first court hearing and within the first one hundred eighty (180) days from the date the voluntary foster custody agreement was signed. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: 45 C.F.R. §1356.22)

§17-1617-22 Departmental review of foster care maintenance payment rate. The department shall review at five-year periods the established rate of foster care maintenance payments to assure its continued appropriateness. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: 45 C.F.R. §1356.21)

§17-1617-23 Administrative Costs Associated With Otherwise Title IV-E Eligible Children Not In Licensed Foster Care Settings and Candidates for Foster Care. Expenditures by the department that would be considered administrative expenditures for purposes of

section 474(a)(3) of the Social Security Act if made with respect to a child who was residing in a resource family home or childcare institution shall be so considered with respect to a child not residing in such a home or institution.

(1) In the case of a child who has been removed in accordance with section 472(a) of the Social Security Act from the home of a relative specified in section 406(a) (as in effect on July 16, 1996), only for expenditures:

(A) With respect to a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a resource home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a resource family home; or

(B) With respect to a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a resource family home licensed or approved by the State; and

(2) In the case of any other child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if:

(A) Reasonable efforts are being made in accordance with section 471(a)(15) of the Social Security Act to prevent the need for, or if necessary to pursue, removal of the child from the home; and

(B) The department has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.

[Eff **DEC 09 2010**] (Auth: HRS §346-14)
(Imp: 45 C.F.R. §1356.21)

§17-1617-24 Independent audit. The department shall arrange for a periodic and independently conducted audit, no less frequently than once every three years, of the Title IV-E program. [Eff **DEC 09 2010**] (Auth: HRS §346-14) (Imp: 42 U.S.C. Sec. 671)

§17-1617-25 Exceptions. Exceptions to the provisions of this chapter shall be made at the discretion of the department.

7. The repeal of chapters 17-807, 17-828, 17-833, 17-834, and 17-943.1 and the adoption of chapter 17-1617 shall take effect ten days after filing with the Office of the Lieutenant Governor.