

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6 FAMILY AND ADULT SERVICES DIVISION

CHAPTER 944.1

ADOPTION ASSISTANCE FOR CHILDREN
WITH SPECIAL NEEDS

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Historical Note: Chapter 944.1, Hawaii Administrative Rules is based substantially upon chapter 17-944, Hawaii Administrative Rules [Eff 10/28/82; R 11/04/85]

§17-944.1-1 Purpose. The purpose of this program is to provide qualified financial assistance under both the federally funded and state funded adoption assistance programs, the latter within the limits of funds appropriated to the department, in order to:

- (1) Enable the adoption of children with special needs who might otherwise require long-term foster care; and
- (2) Facilitate the eventual assumption of full and total responsibility of the adoptive family towards the child.

[Eff 11/04/85; comp JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346- 14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40)

§17-944.1-2 Goals. Adoption assistance shall be directed at meeting the following departmental goals:

- (1) Achieving and maintaining self-sufficiency of children, including the reduction or prevention of dependency;
- (2) Preventing or reducing inappropriate institutional care of children by providing home-based care;
- (3) Preventing or remedying abuse, neglect, or exploitation of children.

[Eff 11/04/85; comp JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346- 14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40)

§17-944.1-3 Definitions. As used in this chapter:

"Adoption assistance" means the provision of monetary assistance, including reimbursement of nonrecurring adoption expenses, medical benefits and/or social services to enable the adoption of children with special needs.

"Adoption assistance agreement" means a written agreement between the adoptive or prospective adoptive parent or parents, other relevant agency, and the department specifying conditions for the provision of adoption assistance.

"Adoption exchange" refers to a mechanism through which children who are available for adoption are brought to the attention of families who are interested in adopting them.

"Adoption registry" means an information and resource listing service of available children and families wanting to adopt.

"Adoption service" means a social service provided by the department of human services and other licensed social agencies for children who are available for adoptive placement, either through voluntary consent of the parent or parents or judicial termination of parental rights, and who need and can benefit by new and permanent family ties established through legal adoption.

"Adoption subsidy" means the provision of a grant or monetary assistance for the maintenance needs of children with special needs in order to facilitate their adoption.

"Child with special needs" means any child under age eighteen years, or over age eighteen and under age twenty-one determined by the department to have a mental or physical handicap that warrants continued assistance, who is legally free for adoption and who otherwise may not be adopted without a subsidy because of one or more of the following specific factors or special circumstances:

- (1) Physical or mental disability;
- (2) Emotional disturbance;
- (3) High risk of physical or mental disease;
- (4) Race or ethnic background;
- (5) Age;
- (6) Sibling groups.

In addition, the department shall have determined that the child cannot or should not be returned to the home of his or her parents as indicated by a judicial termination of parental rights, signed parental relinquishments, or in the case of an orphan, verification of the death of parents. The department shall also have determined that, except where it would not be in the child's best interests, that a reasonable, but unsuccessful effort has been made to place the child without providing adoption assistance.

"Department" means the department of human services.

"Federally funded adoption assistance" means the provision of monetary assistance and reimbursement for nonrecurring adoption expenses under title IV-E, medical benefits under title XIX, and/or social services under title XX of the Social Security Act to secure permanent legal homes for children who otherwise may not be adopted.

"Nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of state or federal law, and which have not been or are not eligible to be reimbursed from other sources or other funds. The total amount of reimbursement for the nonrecurring adoption expenses and other expenses shall not exceed \$2,000 per child or actual cost, whichever is less.

"Other expenses" means the costs of the adoption incurred by or on behalf of the prospective adoptive/adoptive parents and for which the prospective adoptive/adoptive parents carry the ultimate liability for payment. Such costs include the adoption home study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or prospective adoptive/adoptive parents when necessary to complete the adoption process. The total amount of reimbursement for the nonrecurring adoption expenses and other expenses shall not exceed \$2,000 per child or actual cost, whichever is less.

"State funded adoption assistance" means the provision of monetary assistance and reimbursement for nonrecurring adoption expenses, medical care benefits and/or social services from appropriated state funds to secure permanent legal homes for children who otherwise may not be adopted.

"Voluntary placement" means an out-of-home placement of a child by the parent or parents or licensed child-placing agency with the consent and participation of the parent or parents. [Eff 11/04/85; am and comp
JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346-14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40; 45 C.F.R. §1356.41)

§17-944.1-4 Scope of program. (a) Federally funded adoption assistance shall include:

- (1) A qualified subsidy or monetary grant to meet the basic maintenance needs of the child;
- (2) Qualified medical care benefits under the State's title XIX medicaid program for children certified for adoption subsidy; and

- (3) Qualified social services under title XX of the Federal Social Security Act, (42 U.S.C. §1397) for children certified for adoption subsidy.
- (b) State funded adoption assistance shall include:
- (1) A qualified subsidy or monetary grant to meet the basic maintenance needs of the child;
 - (2) Qualified medical care benefits under the State's medicaid program for children certified for adoption subsidy when other medical care resources are not available; and
 - (3) Qualified social services under title XX for children certified for adoption subsidy.
- (c) Nonrecurring adoption expenses shall also be provided when the eligibility requirements of sections 17-944.1-7 or 17-944.1-8 are met. [Eff 11/04/85; am and comp **JAN 18 1990**] (Auth: HRS §346-14) (Imp: HRS §346-14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40; 45 C.F.R. §1356.41)

§17-944.1-5 Geographic area of service. Adoption assistance shall be available for eligible children with special needs. [Eff 11/04/85; am and comp **JAN 18 1990**] (Auth: HRS §346-14) (Imp: HRS 346-14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40)

- §17-944.1-6 Application for adoption assistance.
- (a) An application for adoption assistance may be filed by adoptive or prospective adoptive parent or parents, or a licensed child-placing agency on behalf of any child with special needs as defined under section 17-944.1-3.
- (b) An initial request (application) for adoption assistance, including reimbursement for nonrecurring adoption expenses, cannot be made after the adoption has been finalized.
- (c) The initial request for the reimbursement of nonrecurring adoption expenses shall be made no later than December 14, 1990 for cases specified in section 17-944.1-21. [Eff 11/04/85; am and comp **JAN 18 1990**] (Auth: HRS §346-14) (Imp: HRS §346-14; 48 Fed. Reg. 23116 §1356.40; 45 C.F.R. §1356.41)

§17-944.1-7 Eligibility requirements for federally funded adoption assistance. (a) To be eligible for federally funded adoption assistance under title IV-E of the Federal Social Security Act, (42 U.S.C. §§670-674) the following conditions shall be met:

- (1) The child shall have been determined by the State:
 - (A) To be a child with special needs as defined in section 17-944.1-3; and
 - (B) To be in need of adoption to best meet the child's interest and welfare; and
 - (C) To be in the custody or care of the department or a licensed child placing agency.
- (2) Reasonable efforts to locate an appropriate adoptive home without subsidy have not been successful. These efforts shall include, but are not limited to:
 - (A) Registration with the department or child-placement agency homefinding services; and
 - (B) Exploration or registration with the local adoption registry or exchange; or
 - (C) Exploration or registration with an out-of-state adoption registry or exchange.
- (3) The child shall have been in active registration status with the local or out-of-state adoption registry or exchange for three months and no non-subsidized placement has been found.
- (4) Paragraphs (2) and (3) shall not apply when the current foster family or other qualified person or persons with whom the child has been living and has established significant emotional ties have expressed interest in adopting the child, and it has been determined by the department to be an appropriate adoptive home for the child.

(b) In addition, the following requirements related to the title IV-A, aid to families with dependent children, title IV-E or title XVI, supplemental security income, of the Federal Social Security Act, (42 U.S.C. §§606, 607, 670-674 and 42 U.S.C. §1381) shall have been met:

- (1) Title XVI supplementary security income requirements of the Social Security Act, (42 U.S.C. §1381) shall have been met at the time adoption proceedings were initiated; or
- (2) The child shall have been removed from the home of the parent or parents or other relative as a result of judicial determination that continuation in the home would be contrary to the welfare of the child; and
 - (A) The child shall have met or would have met, at the time adoption proceedings were initiated, the requirements for AFDC benefits but for the child's removal from the home of the parent or parents or other specified relative as defined in chapter 17-640, Administrative Rules, as a result of judicial action; or
 - (B) The child shall have received AFDC benefits or would have received AFDC benefits if application had been made in or for the month in which court proceedings were initiated leading to the child's removal from the home of the parent or parents or specified relative as defined in chapter 17-640, Administrative Rules; or
 - (C) The child shall have been living with a specified relative within six months prior to the month in which court proceedings were initiated leading to removal of the child from the home and if application had been made, would have received AFDC benefits for that month; or
 - (D) The child meets the requirements of paragraphs (2) (B) or (2) (C) but is an alien who is disqualified from the AFDC program under sections 245(h), 210(f), or 210(A) (d) (7) of the Immigration and Nationality Act; or
- (3) At the time the adoption petition is filed, the child is eligible for AFDC and living with and being adopted by a specified relative;
 - (c) The prospective adoptive parent or parents shall:

- (1) Meet state adoption requirements except for the financial ability to support the child; and
- (2) Enter into an adoption assistance agreement with the department at the time of or prior to finalization of the adoption except when the adoption assistance agreement for the reimbursement of nonrecurring adoption expenses was entered into on or prior to December 14, 1990 for cases specified in section 17-944.1-21.
- (d) In addition, to be eligible for nonrecurring adoption expenses, the following conditions shall be met:
 - (1) The adoption must have been finalized on or after January 1, 1987 through June 14, 1989 or after July 14, 1989; or
 - (2) The adoption must have been finalized before January 1, 1987 but the nonrecurring adoption expenses were paid by the adoptive parents after January 1, 1987; and
 - (3) The final decree of adoption shall have been issued by a court of competent jurisdiction in Hawaii; or
 - (4) The child shall be the subject of a Hawaii adoption assistance agreement;
 - (5) The child shall not be the subject of another state's adoption assistance agreement which shall be responsible for reimbursement of the child's nonrecurring adoption expenses;
 - (6) The nonrecurring adoption expenses shall not have been or are not eligible to be reimbursed from other sources or other funds; and
 - (7) The adoptive placement shall not have occurred in violation of law.

The requirements of subsections (a) (1) (C) and (b) shall not apply when the only adoption assistance requested is the reimbursement of nonrecurring adoption expenses. [Eff 11/04/85; am and comp JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346-14; 48 Fed. Reg. 23116 §1356.40; 45 C.R.F. §1356.41)

§17-944.1-8 Eligibility requirements for State funded adoption assistance. (a) To be eligible for state funded adoption assistance, the following conditions shall be met:

- (1) The child shall have been determined ineligible for federally funded adoption assistance and, in addition, shall have met the following conditions:
 - (A) Be determined by the state as a special needs child as defined under section 17-944.1-3; and
 - (B) Be determined to be in need of adoption to best meet the child's interest and welfare; and
 - (C) Be in the custody or care of the department or a licensed child-placing agency; and
- (2) Reasonable efforts to locate an appropriate adoptive home without subsidy have not been successful. These include, but are not limited to:
 - (A) Registration with the department or child-placement agency homefinding services; and
 - (B) Exploration or registration with the local adoption registry or exchange; or
 - (C) Exploration or registration with an out-of-state adoption registry or exchange.
- (3) The child shall have been in active registration status with the local or out-of-state adoption registry or exchange for three months and no non-subsidized placement has been found.
- (4) Paragraphs (2) and (3) shall not apply when the current foster family or other qualified person or persons with whom the child has been living and has established significant emotional ties have expressed interest in adopting the child, and it has been determined by the department to be an appropriate adoptive home for the child.
- (5) To qualify for the state's medical care program, the child certified for adoption subsidy shall be without medical care resources of the child's own or as a dependent of the adoptive parent or parents.
 - (b) In addition, the adoptive parent or parents shall:
 - (1) Meet the state adoption requirements except for the financial ability to support the child;

- (2) Meet the income eligibility requirements based on the family size as determined by the number of persons claimed as dependents for income tax purposes, and including the child or children to be adopted, in accordance with the income guidelines as follows:

<u>Family Size</u>	<u>Annual Gross Income-*</u>
2	\$29,000
3	\$36,400
4	\$44,000
5	\$51,300
6	\$58,700
7 and over	\$66,100

*Based on Bureau of Labor Statistics, Autumn 1981, Annual Intermediate Budget for four person family on Oahu, adjusted for 1982 - (mid-point between Intermediate and High Income Standard).

(c) The prospective adoptive parent shall also enter into an adoption assistance agreement with the department at the time of or prior to finalization of the adoption except when the adoption assistance agreement for the reimbursement of nonrecurring adoption expenses was entered into on or prior to December 14, 1990 for cases specified in section 17-944.1-21.

(d) In addition to be eligible for nonrecurring adoption expenses, the following conditions shall be met:

- (1) The adoption must have been finalized on or after June 15, 1989 through July 14, 1989;
- (2) The final decree of adoption shall have been issued by a court of competent jurisdiction in Hawaii; or
- (3) The child shall be the subject of a Hawaii adoption assistance agreement;
- (4) The child shall not be the subject of another state's adoption assistance agreement which shall be responsible for reimbursement of the child's nonrecurring adoption expenses;
- (5) The nonrecurring adoption expenses shall not have been or are not eligible to be reimbursed from other sources or other funds; and
- (6) The adoptive placement shall not have occurred in violation of law.

The requirements of subsection (a)(1)(C) and (b)(2) shall not apply when the only adoption assistance requested is the reimbursement of nonrecurring adoption expenses. [Eff 11/04/85; am and comp JAN 18 1990] (Auth: HRS 346-14) (Imp: HRS §346-14; Act 300, SLH 1985)

§17-944.1-9 Determination of federally funded adoption assistance. (a) There shall be no income eligibility requirement or means test for the prospective adoptive parent or parents in determining eligibility for federally funded adoption subsidy.

(b) The amount of the adoption subsidy shall:

- (1) Not exceed the department foster care maintenance payment levels for that child if the child were in a foster family home;
- (2) Be based upon the needs of the child and the circumstances of the adoptive family to meet these needs; and
- (3) Be determined by agreement between the prospective adoptive parent or parents and the department.

(c) Adjustments in the subsidy grant shall be made with the participation of the prospective adoptive/adoptive parent or parents and shall be based upon the following changes:

- (1) The needs of the child; or
- (2) The circumstances of the adoptive family.
- (d) The amount of the reimbursements for

nonrecurring adoption expenses shall:

- (1) Not exceed \$2,000 per child or actual cost, whichever is less;
- (2) Be determined by agreement between the adoptive parent or parents and the department; and
- (3) Be based upon a bill or receipt for the allowable nonrecurring adoption expense. Claims for reimbursement shall be submitted to the department no later than two years of the date of the final decree of adoption. Exception: Claims for reimbursement for nonrecurring adoption expenses must be filed no later than December 14, 1990 for cases specified in section 17-944.1-21. [Eff 11/04/85; am and comp JAN 18 1990] (Auth: HRS §346-14; 48 Fed. Reg. 23116 §1356.40; 45 C.F.R. §1356.41)

§17-944.1-10 Determination of State funded adoption assistance. (a) The amount of the adoption subsidy grant shall:

- (1) Be based on the department foster family board rate in accordance with chapter 17-828;
- (2) The unearned income of the adoptive child or children shall be subtracted from what would be the adoption subsidy grant.
- (3) Exceptions to the computed adoption subsidy:
 - (A) An adoption subsidy grant shall be not less than \$5 a month.
 - (B) A lesser amount than the computed maintenance payment can be agreed upon by the department and the adoptive family if the adoptive family indicates a lesser amount is adequate.

(b) The amount of the reimbursements for nonrecurring adoption expenses shall:

- (1) Not exceed \$2,000 per child or actual cost, whichever is less;
- (2) Be determined by agreement between the adoptive parent or parents and the department; and
- (3) Be based upon a bill or receipt for the allowable nonrecurring adoption expense. Claims for reimbursement shall be submitted to the department no later than two years of the date of the final decree of adoption. [Eff 11/04/85; am and comp JAN 18 1990]
(Auth: HRS §346-14) (Imp: Act 300, SLH 1985)

§17-944.1-11 Method of payment. (a) Payment for adoption subsidy shall be made on a monthly basis following the month of care and issued only to the adoptive parent or parents.

(b) Payment for nonrecurring adoption expenses shall be made upon meeting the eligibility requirements of sections 17-944.1-7 or 17-944.1-8 and submitting an itemized bill or receipt reflecting reasonable and necessary charges for the nonrecurring adoption expenses. [Eff 11/04/85; am and comp JAN 18 1990]
(Auth: HRS §346-14; 48 Fed. Reg. 23116 \$1356.40) (Imp: Act 300, SLH 1985; 48 Fed. Reg. 23116 \$1356.40; 45 C.F.R. §1356.41)

§17-944.1-12 Initiation of adoption assistance.

Upon compliance with section 17-944.1-14, adoption assistance shall be initiated not earlier than:

- (1) The date of the signing of the adoption assistance agreement; and
- (2) The child's placement into an approved adoptive home. [Eff 11/04/85; am 7/11/87; am and comp JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346-14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40; Pub. L. No. 99-272, §§9529, 12305)

§17-944.1-13 Duration of adoption assistance.

Adoption assistance may continue only until the child reaches either:

- (1) Age eighteen years; or
- (2) Age twenty-one years if the child had been determined by the department to have a mental or physical handicap that warrants continued assistance. [Eff 11/04/85; comp JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346-14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40)

§17-944.1-14 Adoption assistance agreement. (a)

A written adoption assistance agreement binding on the parties to the agreement between the State agency, other relevant agencies, and the prospective adoptive parent or parents shall be in effect for any child for whom adoption assistance payments are made.

(b) The agreement shall be signed and in effect prior to or at the time of the final decree of adoption except when the adoption assistance agreement for the reimbursement of nonrecurring adoption expenses was entered into on or prior to December 14, 1990 for cases meeting the requirements of section 17-944.1-21.

(c) A copy of the signed agreement shall be given to each party.

(d) The terms of the agreement shall remain in effect regardless of the state in which the adoptive parent or parents live at any given time. [Eff 11/04/85; am and comp JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346-14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40; 45 C.F.R. §1356.41))

§17-944.1-15 Recertification of adoption assistance agreement. There shall be annual recertification of the adoption assistance agreement in order to:

- (1) Determine the child's and family's continued eligibility for adoption assistance;
- (2) Determine the appropriateness of the amount of the adoption assistance grant. [Eff 11/04/85; comp JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346-14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40)

§17-944.1-16 Notice for recertification. (a) The department shall mail a written notice of the need for recertification to the adoptive parent or parents no less than sixty days from the date of mailing to the anniversary date of the adoption assistance agreement.

(b) A written second notice to the adoptive parent or parents shall be mailed within thirty days from the date of mailing to the anniversary date of the adoption assistance agreement specifying that failure to recertify the child's and family's continued eligibility for adoption assistance shall result in termination of adoption assistance.

[Eff 11/04/85; comp JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346-14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40)

§17-944.1-17 Eligibility for adoption assistance outside the State. (a) Adoption subsidy payments shall continue if the adoptive family and child move out of the State while the adoption assistance agreement is in effect.

(b) The State shall continue to retain financial responsibility for medical care under title XIX or the State medical program for children receiving Hawaii State funded adoption assistance.

(c) Children with title IV-E adoption assistance agreement in effect are eligible for medical care benefits under title XIX medicaid in the state where they reside, even though the adoption agreements originate in other states.

(d) The adoptive family may apply for services under title XX of the Social Security Act, (42 U.S.C. §1397) in the new state of residence.

(e) The terms of the agreement shall remain in effect regardless of the state in which the adoptive parent or parents live at any given time.
 [Eff 11/04/85; am 7/11/87; comp JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346-14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40; Pub. L. No. 99-272, §9529)

§17-944.1-18 Termination of adoption assistance.
 The department shall automatically terminate payment to the adoptive parent or parents upon sufficient evidence under any one of the following circumstances:

- (1) The child has reached the age of eighteen years and adoption assistance payment to age twenty-one has not been extended;
- (2) The child has reached the age of twenty-one years if adoption assistance had been extended;
- (3) The child is no longer receiving any support from the adoptive family;
- (4) The adoptive parent or parents are no longer legally responsible for the support of the child;
- (5) The child's need for adoption assistance no longer exists;
- (6) The adoptive family is able to assume full financial responsibility and no longer wishes to continue the adoption assistance;
- (7) The adoption assistance agreement is not current and valid; or
- (8) Reimbursement of nonrecurring adoption expenses has been completed. [Eff 11/04/85; am and comp JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346-14; Act 300, SLH 1985; 48 Fed. Reg. 23116 §1356.40; 45 C.F.R. §1356.41)

§17-944.1-19 Confidentiality. Requirements for confidentiality shall be as provided in chapter 17-601.
 [Eff 11/04/85; comp JAN 18 1990] (Auth: HRS §346-14; 48 Fed. Reg. 23116 §1356.40) (Imp: HRS §346-10; 45 C.F.R. §1391.3; 48 Fed. Reg. 23116 §1356.40)

§17-944.1-20 Appeals and fair hearing.

Requirements for appeals and fair hearing shall be as provided in chapter 17-602. [Eff 11/04/85; comp
JAN 18 1990] (Auth: HRS §346-14(9); 45 C.F.R. §205.10, 48 Fed. Reg. 23116 §1356.40) (Imp: HRS §§346-12, 346-14(9); 45 C.F.R. §205.10; 48 Fed. Reg. 23116 §1356.40)

§17-944.1-21 Special conditions for the reimbursement of nonrecurring adoption expenses for adoptions finalized through July 14, 1989. (a) The application and the adoption assistance agreement for nonrecurring adoption expenses shall be made and entered into no later than December 14, 1990 for:

- (1) Cases in which a final decree of adoption was entered into on or after January 1, 1987 and through June 14, 1989; or
- (2) Cases in which a final decree was entered into before January 1, 1987 but nonrecurring adoption expenses were paid by the adoptive parents after January 1, 1987; or
- (3) Cases in which a final decree of adoption was entered into on or after June 15, 1989 through July 14, 1989.

(b) Claims for the reimbursement of nonrecurring adoption expenses must be filed no later than December 14, 1990 for:

- (1) Cases in which the final decree of adoption was entered into on or after January 1, 1987 and through June 14, 1989;
- (2) Cases in which a final decree of adoption was entered into before January 1, 1987 but nonrecurring adoption expenses were paid after January 1, 1987.

(c) Claims for adoptions finalized on or after June 15, 1989 through July 14, 1989 must be filed within two years of the date of adoption finalization.

[Eff JAN 18 1990] (Auth: HRS §346-14) (Imp: HRS §346-14) 45 C.F.R. §1356.41)