

Guidelines for Eligibility and Determination of Title IV-E Maintenance Adoption Assistance

1. Eligibility Requirements –

Eligibility criteria are based **on elements associated with the child, not the adoptive family**. A child is eligible for a subsidy if they meet **all** of the following criteria:

1. Permanent custody has been awarded to the department or to a licensed child-placing agency and
2. The child is not likely to be adopted for one or more of the following reasons:
 - Eight years of age or older;
 - Mentally retarded;
 - Physically or emotionally handicapped;
 - Of black or racially mixed parentage; or
 - A member of a sibling group of any age provided two or more members of a sibling group remain together for purposes of adoption.
3. Reasonable, yet unsuccessful, efforts are documented to place the child without subsidy. The two exceptions of this requirement are foster parent and relative caregiver adoptions when it is determined that it is in the best interest of the child to remain with the current caregiver.

The additional eligibility criterion of requesting adoptive parent(s) to sign an adoption assistance agreement each year in order to maintain Title IV-E adoption assistance is no longer required. (F.S. Chapter 409.166(4)(b) and FL Administrative Code, Chapter 65C-16.013(12) will be deleted to reflect this change and conform to Federal law. In addition, Chapter 5 of Operating Procedure 175-71 will be revised as well as the adoption assistance agreement and the Title IV-E Adoption Subsidy Checklist. The revised adoption assistance agreement and checklist will be available on e-forms soon.)

Federal law allows adoption assistance to be terminated (or suspended) for the reasons noted in section 473(a)(4)- the child turns 18, the adoptive parent is no longer legally responsible or the child is no longer receiving support from the parent(s). (F.S. Chapter 409.166(4)(b) and FL Administrative Code, Chapter 65C-16.013(12) will be deleted to reflect this change and conform to Federal law. In addition Chapter 5 of Operating Procedure 175-71 will be revised as well as the adoption assistance agreement and Title IV-E Adoption Subsidy Checklist.)

All other eligibility criteria for Title IV-E remain the same.

2. Establishing an Amount for Subsidy -

Adoption is a legal and emotional commitment to a child. Each adoption begins with a preparation of the child and a placement matching process that requires the needs of the child are matched to the strengths of a family. In a system of care environment, after a match is determined and as a part of the pre-placement process, adoptive parents must be informed of the available supports and services in their community that

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will strengthen their capacity to care for their adoptive child(ren) without continued intervention by the state.

The adoption assistance program was established with the specific intent of making financial aid available to prospective adoptive parents for a child in foster care who, because of his or her special needs, has proven difficult to place in an adoptive home. Establishing the amount of the subsidy should begin with and be based on a discussion and negotiation process between the adoptive parents and the child's counselor/CBC representative. The discussion and negotiation process with adoptive families must occur *before* establishing and signing the initial adoption subsidy agreement and is part of the required disclosure process. The focus of the discussion and negotiation must include the following considerations:

Identification of known and potential future needs of the child based on the child's abuse, neglect, medical, mental health, educational, social and family histories. The overall ability of the family to incorporate the individual child into their household in relation to their past and present lifestyle and standard of living, future plans such as additional children, and their capacity to meet the immediate and future needs of the child.

Some children may have such extraordinary care needs from the moment the adoptive parent(s) is designated that a subsidy is needed in order for the adoptive family to have the necessary resources for ensuring the child's safety, well-being and permanency. The amount of subsidy may be approved locally up to 80% or up to 100% of the standard foster care board rate. For children who require extraordinary care, an enhanced subsidy may be approved by the Secretary up to the actual foster care board payment that was paid for the child while in foster care. Under no circumstances may the adoption subsidy exceed the **actual** foster care board payment that would be paid for the child if the child remained in foster care.

In the field of special needs adoptions, best practice dictates that counselors require all adoptive parents of special needs children to sign an initial adoption assistance agreement, even when the negotiated amount of the subsidy is zero dollars. It is entirely appropriate to negotiate an initial subsidy agreement that **does not** provide for a payment when the child does not have current needs, however, the child will still be eligible for Medicaid and the agreement will be a placeholder if there are latency issues at a future time before the child turns 18 that the family cannot address with their own resources. The signed agreement allows the family to request and negotiate a maintenance subsidy payment at a later time when the child's needs or the family's circumstances change. Examples: Child's needs change—An infant was cocaine exposed in-utero and adopted at age 18 months with no significant concerns. Significant learning disabilities, ADHD, and respiratory health problems emerge and the resources needed exceed the adoptive family's resources. Family's circumstances change: An adoptive parent loses her job after constantly needing to leave work to handle school and court issues for an adopted child who is diagnosed with reactive attachment disorder. In both of these examples, an adoption assistance agreement

with a zero dollar payment was negotiated and signed and later negotiated to a monthly subsidy payment when the needs of the child or the circumstances of the family changed.

An adoption assistance agreement must meet requirements under Section 475 of the Social Security Act and 45CFR 1356.40 and must be signed and dated by the prospective adoptive parents and department staff at the time of placement or prior to the final decree of adoption. No adoption subsidy payments may be made prior to the agreement being completed.

Federal regulations give families the latitude to use their negotiated subsidy as they deem necessary in order to incorporate the child into their lives. Federal requirements for management of adoption assistance programs is intended to support the autonomy of adoptive families, post-finalization.

- a. No documentation of ongoing need or actual expenditures is required from the adoptive parents and subsidies cannot be assigned for specific purposes (medical, non-medical) by the state or provider.
- b. The amount of subsidy cannot exceed the actual amount the child would have received if the child continued in foster care.
- c. The needs of the child may change over time and the subsidy may be decreased or increased, however, **all changes require concurrence of the adoptive parents.**
- d. The rejection of a request by the family for an increase requires notification of their right to appeal and a fair hearing, including reasons for the rejection.
- e. The initial subsidy agreement is a binding contract to the parties of the agreement.

3. Considerations for implementing the changes:

The renewal process that required the signing of a new adoption subsidy agreement each year is no longer required. However, the following renewal processes related to maintenance adoption subsidy shall continue:

1. Eligibility for TANF maintenance adoption subsidies must continue to be re-determined annually, i.e. determination that the child's income is below 200% of the federal poverty level.
2. Medicaid eligibility based on a current maintenance adoption subsidy must continue to be re-determined annually, including children in adoptive placements or finalized adoptions that moved out of state or moved to Florida from another state.

Consideration of addressing staff's concerns about data integrity and in preparation for the new statewide HS_n, a comparison of the child's eligibility codes and identification number(s) in HS_n and ICWSIS is recommended to be a part of the Medicaid re-determination process. This process improvement will provide an opportunity to assess and clean-up data errors in HS_n.

Questions and Answers Excerpted from the Title IV-E Child Welfare Policy Manual

8.2A.2 TITLE IV-E, Adoption Assistance Program, Agreements, Means test

1. Question: May a State employ a means test when negotiating adoption assistance agreements?

Answer: The use of a means test is prohibited in the process of selecting a suitable adoptive family, or in negotiating an adoption assistance agreement, including the amount of the adoption assistance payment. Once a child has been determined eligible under section 473 of the Act, adoptive parents cannot be rejected for adoption assistance or have payments reduced without their agreement because of their income or other resources. In addition, the State cannot arbitrarily reject a request for an increase in the amount of subsidy (up to the amount the child would have received in foster care) in cases where the adoptive parents make life choices such as resigning one's job to stay at home with the adopted child or to return to school. Adoptive parents can request a fair hearing if the State rejects such requests.

The circumstances of the adopting parents must be considered together with the needs of the child when negotiating the adoption assistance agreement. Consideration of the circumstances of the adopting parents has been interpreted by the Department to pertain to the adopting family's capacity to incorporate the child into their household in relation to their lifestyle, standard of living and future plans, as well as their overall capacity to meet the immediate and future needs (including educational) of the child. This means considering the overall ability of the family to incorporate an individual child into their household. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance. The uniqueness of each child/family situation may result in different amounts of payment.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** 45 CFR 1356.40 (c)

.2B TITLE IV-E, Adoption Assistance Program, Eligibility

1. Question: Please explain who is eligible for title IV-E adoption assistance.

Answer: A State is required to enter into an adoption assistance agreement with the adoptive parents of a child with special needs (as defined in section 473(c) of the Social Security Act (the Act)) and provide adoption assistance if the child meets specific requirements. There are four ways that a child can be eligible for title IV-E adoption assistance:

1. Child is eligible for Aid to Families with Dependent Children (AFDC) and meets the definition of a child with special needs - Adoption assistance eligibility that is based on a child's AFDC eligibility (in accordance with the program rules in effect on July 16, 1996) is predicated on a child meeting the criteria for such both at the time of removal and in the month the adoption petition is initiated. In addition, the State must determine that the child meets the definition of a child with special needs prior to finalization of the adoption.

The method of removal has the following implications for the AFDC-eligible child's eligibility for title IV-E adoption assistance: If the child is removed from the home pursuant to a judicial determination, such determination must indicate that it was contrary to the child's welfare to remain in the home; or if the child is removed from the home pursuant to a voluntary placement agreement, that child must actually receive title IV-E foster care payments to be eligible for title IV-E adoption assistance.

Children placed pursuant to a voluntary placement agreement under which a title IV-E foster care maintenance payment is not made are not eligible to receive title IV-E adoption assistance.

2. Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs - A child is eligible for adoption assistance if, at the time the adoption petition is filed, the

child meets the requirements for title XVI SSI benefits, and prior to the finalization of the adoption is determined by the State to be a child with special needs.

There are no additional criteria that a child must meet to be eligible for title IV-E adoption assistance when eligibility is based on a special needs child meeting SSI requirements. Specifically, how a child is removed from his or her home or whether the State has responsibility for the child's placement and care is irrelevant in this situation.

Unlike AFDC eligibility that is determined by the State child welfare agency, only a designated Social Security Administration claims representative can determine SSI eligibility and provide the appropriate eligibility documentation to the State. The child's eligibility for SSI benefits must be established no later than at the time the adoption petition is filed.

3. Child is eligible as a child of a minor parent and meets the definition of a child with special needs - A child is eligible for title IV-E adoption assistance in this circumstance if: the child's parent is in foster care and receiving title IV-E foster care maintenance payments that cover both the minor parent and the child at the time the adoption petition is initiated; and prior to the finalization of the adoption, the child of the minor parent is determined by the State to meet the definition of a child with special needs.

There are no additional criteria that must be met in order for a child to be eligible for title IV-E adoption assistance if the child's eligibility is based on his or her minor parent's receipt of foster care while placed with the minor parent in foster care. As with SSI, there is no requirement that a child must have been removed from home pursuant to a voluntary placement agreement or as a result of a judicial determination. However, if the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for title IV-E adoption assistance must be determined based on the child's current and individual circumstances, consistent with section 473 of the Act.

4. Child is eligible due to prior title IV-E adoption assistance eligibility and meets the definition of a child with special needs - In the situation where a child is adopted and receives title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die, a child may continue to be eligible for title IV-E adoption assistance in a subsequent adoption. The only determination that must be made by the State prior to the finalization of the subsequent adoption is whether the child is a child with special needs, consistent with the requirements in section 473(c) of the Act. Need and eligibility factors in sections 473(a)(2)(A) and (B) of the Act must not be redetermined when such a child is subsequently adopted because the child is to be treated as though his or her circumstances are the same as those prior to his or her previous adoption. Since title IV-E adoption assistance eligibility need not be re-established in such subsequent adoptions, the manner of a child's removal from the adoptive home, including whether the child is voluntarily relinquished to an individual or private agency, is irrelevant.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - sections 473(a)(2) and 473(c)

8.2B.2 TITLE IV-E, Adoption Assistance Program, Eligibility, Children in foster care

1. Question: Would adoptive parents continue to be eligible to receive title IV-E adoption assistance payments on behalf of a child who has been placed in a psychiatric facility under the care and responsibility of the State agency through a voluntary placement agreement?

Answer: Yes. Title IV-E, section 473 (a)(3)(B) of the Social Security Act states that "no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents". Other than the age of the child, these two conditions are the only basis in the Act for terminating adoption assistance payments on behalf of a child unless requested by or agreed to by the adoptive parents. On the other hand, there is nothing to prevent the State agency or the court from requesting or ordering the parents to contribute toward the cost of the child's care in the psychiatric facility, in the same manner as any other parents would be asked in similar situations.

- **Source/Date:** ACYF-CB-PIQ-85-12 (11/25/85)
- **Legal and Related References:** Social Security Act - section 473 (a)(3)

8.2B.8 TITLE IV-E, Adoption Assistance Program, Eligibility, Medicaid

1. Question: Is Title XIX coverage required under title IV-E Adoption Assistance?

Answer: Yes. Section 473 (b) of the Social Security Act clearly establishes that a child receiving foster care maintenance payments or adoption assistance payments is treated as a child who is a recipient of Aid to Families with Dependent Children (AFDC).

In addition, section 2171 of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) subsequently amended section 1902 (a)(10)(A) to specifically require eligibility for title XIX (Medicaid) services for "all individuals receiving aid or assistance under any plan of the State approved under...part A or part E of title IV". Consequently, to the extent that the State has a title XIX program, children covered by title IV-E are statutorily eligible.

- **Source/Date:** ACYF-CB-PIQ-82-16 (6/21/82)
- **Legal and Related References:** Social Security Act - sections 471, 473 and 1902; Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35)

8.2B.9 TITLE IV-E, Adoption Assistance Program, Eligibility, Redeterminations

1. Question: What are the requirements for redeterminations of title IV-E adoption assistance eligibility?

Answer: The title IV-E adoption assistance program does not require redeterminations of a child's eligibility. Although the title XIX Medicaid program and the programs that, in part, may qualify a child initially for adoption assistance, such as Aid to Families with Dependent Children and Supplemental Security Income, require redeterminations, they are unnecessary for the purpose of maintaining a child's eligibility for title IV-E adoption assistance. Once a child has been determined eligible and is receiving adoption assistance, a State may terminate the assistance only under the circumstances specified at section 473(a)(4) of the Social Security Act.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473

2. Question: Some States are requiring adoptive parents to complete annual renewals of their adoption assistance agreements. Does title IV-E require the State or local agency to perform annual renewals or eligibility determinations for adoption assistance?

Answer: No. There is no Federal statute or provision requiring annual renewals, recertifications or eligibility re-determinations for title IV-E adoption assistance. Parents who receive adoption assistance payments, however, have a responsibility to keep the State or local agency informed of circumstances which would make them ineligible for title IV-E adoption assistance payments, or eligible for assistance payments in a different amount (Section 473 (a)(4)(B) of the Social Security Act). Once a child is determined eligible to receive title IV-E adoption assistance, he or she remains eligible and the subsidy continues until: (1) the age of 18 (or 21 if the State determines that the child has a mental or physical disability which warrants the continuation of assistance); (2) the State determines that the parent is no longer legally responsible for the support of the child, or; (3) the State determines the child is no longer receiving any support from the parents.

- **Source/Date:** ACYF-CB-PIQ-98-02 (9/03/98)
- **Legal and Related References:** Social Security Act - section 473(a)(4)(B)

8.2D.1 TITLE IV-E, Adoption Assistance Program, Payments, Allowable costs

1. Question: Are there restrictions for how title IV-E adoption assistance funds may be spent?

Answer: Once the adoption assistance agreement is signed and the child is adopted, the adoptive parents are free to make decisions about expenditures on behalf of the child without further agency approval or oversight. Hence, once an adoption assistance agreement is in effect, the parents can spend the subsidy in any way they see fit to incorporate the child into their lives. Since there is no itemized list of approved expenditures for adoption assistance, the State cannot require an accounting for the expenditures. The amount of the assistance may be adjusted periodically if the family's or child's circumstances change, but only with the concurrence of the adoptive family.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - sections 473

8.2D.2 TITLE IV-E, Adoption Assistance Program, Payments, Duration

1. Question: May a State limit the duration of payments pursuant to an adoption assistance agreement?

Answer: States may limit the duration of payments under an adoption assistance agreement for individual eligible children to a period which may end prior to the child's eighteenth birthday, if the decision is made on a case-by-case basis, taking into consideration the provisions of section 473 (a)(2) of the Social Security Act. States may not have a blanket policy which limits the duration of all adoption assistance payments to a date earlier than the eighteenth birthday of eligible children, although a time limit may be set in individual cases with the concurrence of the adopting parents, depending on the needs of the child and the circumstances of the parents.

- **Source/Date:** ACYF-CB-PIQ-81-02 (12/8/81)
- **Legal and Related References:** Social Security Act - section 473

8.2D.3 TITLE IV-E, Adoption Assistance Program, Payments, Non-recurring expenses

1. Question: Please summarize the requirements for the nonrecurring expenses of adoption.

Answer: The State must enter into an adoption assistance agreement prior to the finalization of the adoption and reimburse (up to \$2000, or at State option a lower limit) the nonrecurring adoption expenses incurred by any parent who adopts a child with special needs. The only eligibility criterion to be applied for reimbursement of the nonrecurring expenses of adoption is that the State determine that the child meets the definition of special needs, in accordance with section 473 (c) of the Act. A child does not have to be eligible for Aid to Families with Dependent Children, title IV-E foster care, or Supplemental Security Income in order for the adoptive parents to receive reimbursement for their nonrecurring adoption expenses. Nor does the child have to be under the responsibility for placement and care of the State agency in order for the adoptive parents to be reimbursed for the nonrecurring expenses of adoption.

The term "nonrecurring adoption expenses" is defined as the 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 reimbursed from other sources or funds.

Federal financial participation is available at the matching rate of 50 percent for State expenditures up to \$2000 for each adoptive placement.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473(a)(6); 45 CFR 1356.40 (i)

2. Question: Is it possible for States to set maximum amounts on specific items within the category of nonrecurring expenses for which they will reimburse adoptive parents?

Answer: No. The Tax Reform Act of 1986 (Public Law 99-514) amended title IV-E of the Act to require States to make payments for the nonrecurring adoption expenses incurred by adopting parents in connection with the adoption of children with special needs. The only discretion given States is the flexibility to set a reasonable lower maximum than the \$2000 for which Federal reimbursement is available at a 50% matching rate.

- **Source/Date:** ACYF-CB-PIQ-89-02 (5/23/89)
- **Legal and Related References:** Social Security Act - section 473; The Tax Reform Act of 1986 (P.L. 99-514)

8.2D.4 TITLE IV-E, Adoption Assistance Program, Payments, Rates

1. Question: Please explain how the State agency should set rates for title IV-E adoption assistance payments.

Answer: The amount of the adoption assistance payment cannot exceed the amount the child would have received if s/he had been in a foster family home, but otherwise must be determined through agreement between the adoptive parents and the State or local title IV-E agency. Unlike other public assistance programs in the Social Security Act, the title IV-E adoption assistance program is intended to encourage an action that will be a lifelong social benefit to certain children and not to meet short-term monetary needs during a crisis. Further, the adoptive parents' income is not relevant to the child's eligibility for the program.

Title IV-E adoption assistance is not based upon a standard schedule of itemized needs and countable income. Instead, the amount of the adoption assistance payment is determined through the discussion and negotiation process between the adoptive parents and a representative of the State agency based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parents' resources to cover the ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g., child care. Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473 (a)(3)

2. Question: A State agency wants to include a list of specific circumstances in the adoption assistance agreement that would lead to an automatic reduction in the adoption subsidy amount if the State determines the circumstances occur. These circumstances could include an improvement in the condition of the child or the financial circumstances of the parent, the child's eligibility for other forms of assistance, or the child's re-entry into foster care. Is this practice allowable?

Answer: No. Once a child is adopted and determined to be eligible for title IV-E adoption assistance, the adoption assistance payments may not be automatically adjusted without the agreement of the adoptive parents for any reason other than an across-the-board reduction or increase in foster care maintenance rates. The statute requires that the adoption assistance payment "take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents depending upon changes in such circumstances (section 473(a)(3) of the Social Security Act)." A State would not be considering the unique circumstances of the child and parents by automatically adjusting the subsidy.

The State agency may describe in the agreement specific circumstances such as those articulated in the question, that may warrant a future re-negotiation and adjustment of the payment. Agreements that are not negotiated to the specific needs of the adoptive child and the circumstances of the family, however, are not permissible.

- **Source/Date:** ACYF-CB-PIQ-98-02 (9/03/98)
- **Legal and Related References:** Social Security Act - section 473 (a)(3)

3. Question: Can the State median income adjusted to family size be used as a guide to establish consistency in determining amounts of payment?

Answer: No. The use of such guidelines is not appropriate to the process. During the negotiation of an adoption assistance agreement, it is important to keep in mind that the circumstances of the adopting parents and the needs of the child must be considered together. The overall ability of a singular family to incorporate an individual child into the household is the objective. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance. The uniqueness of each child/family situation may result in different amounts of payment. Consistency is not the goal.

- **Source/Date:** ACYF-CB-PIQ-90-02 (10/2/90)
- **Legal and Related References:** Social Security Act - sections 473

4. Question: Is it permissible to adjust the amount of the adoption assistance payment after the adoption assistance agreement is signed?

Answer: Adoption assistance payments made on behalf of a child cannot exceed the amount the child would have received if s/he had been in a foster family home. Accordingly, a State may negotiate an adoption assistance agreement that automatically allows for adjustments to the adoption assistance payment when there is an increase in the foster care board rate. Alternatively, a State may renegotiate an adoption assistance agreement if the adoptive parents request an increase in payment due to a change in their circumstance and a higher foster care rate would have been paid on behalf of the child if the child had still been in foster care. As an example, a child is adopted and the adoption assistance agreement is negotiated for \$250 a month, the same amount the child had been receiving in foster care. If, two years later, the State's monthly foster care board rate is increased to \$400, the family can request that the adoption assistance agreement be renegotiated and receive up to \$400 for the child, since this is the amount the child would have received each month if s/he had continued to be in foster care.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473 (a)(3)

5. Question: Some State's foster care rate structures are based on levels of care. How would such a structure impact the adoption assistance rates?

Answer: If a State's foster care payment schedule includes higher level-of-care rates that are paid across-the-board for certain children, the State may pay up to that amount in adoption assistance if that specific child would have received the higher level-of-care rate in foster care. In addition, if a State's foster care payment standard includes across-the-board higher foster care rates for working foster parents to pay for child care, or includes provisions for periodic across-the-board increases for such items as seasonal clothing, the adoption assistance agreement may include the higher rate. However, special allowances that may be made on behalf of an individual child in certain situations in foster care, such as child care or clothing allowances, are not permitted as an allowable additional reimbursement in the adoption assistance program. Special allowances for individual children that are over and above the State's foster care payment standard cannot be included in the amount negotiated in the adoption assistance agreement since the adoption assistance payment cannot exceed the foster care maintenance payment rate for the child.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473 (a)(3)

8.2D.5 TITLE IV-E, Adoption Assistance Program, Payments, Termination

1. Question: Under what circumstances may the State agency terminate an adoption assistance agreement?

Answer: Title IV-E adoption assistance is available on behalf of a child if s/he meets all of the eligibility criteria and the State agency enters into an adoption assistance agreement with the prospective adoptive parent(s) prior to the finalization of the adoption. The agreement must be signed by all parties to the agreement (namely, the adoptive parents and a State agency representative) in order to meet the requirements for an adoption assistance agreement.

Once an adoption assistance agreement is signed and in effect, it can be terminated under three circumstances only. Namely, (1) the child has attained the age of 18 (or the age of 21 if the State has determined that the child has a mental or physical disability which would warrant continuation of assistance); (2) the State determines that the adoptive parents are no longer legally responsible for support of the child; or (3) the State determines that the adoptive parents are no longer providing any support to the child.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473(a)(4); 45 CFR 1356.40(b)

2. Question: Section 473(a)(4)(B) of the Social Security Act states that no adoption assistance payment can be made, "to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents." When is a parent considered to be "no longer legally responsible for support" or not providing "any support" for the child?

Answer: A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.

"Any support" includes various forms of financial support. The State may determine that payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs, are acceptable forms of financial support. Consequently, the State may continue the adoption assistance subsidy, if it determines that the parent is, in fact, providing some form of financial support to the child.

- **Source/Date:** ACYF-CB-PIQ-98-02 (9/03/98)
- **Legal and Related References:** Social Security Act - section 473(a)(4)(B)

8.2E TITLE IV-E, Adoption Assistance Program, Promoting Adoption Assistance

1. Question: What is the State's responsibility for notifying prospective adoptive parents about the availability of adoption assistance?

Answer: The State title IV-B/IV-E agency is required to actively seek ways to promote the adoption assistance program. This means that it is incumbent upon the State agency to notify prospective adoptive parents about the availability of adoption assistance for the adoption of a child with special needs. There is no prescribed way in which promotion of the program must be accomplished. One example would be to alert potential adoptive parents during a recruitment campaign for adoptive homes (websites, newspapers, flyers, etc.). Another example would be to alert every prospective adoptive parent who inquires to the State agency about adoption.

The primary goal of the title IV-E adoption assistance program is to provide financial support to families who adopt difficult-to-place children from the public child welfare system. These are children who otherwise would grow up in State foster care systems if a suitable adoptive parent could not be found. Thus, the State or local title IV-E agency is responsible for assuring that prospective adoptive families with whom they place eligible children who are under their responsibility are apprised of the availability of title IV-E adoption assistance.

However, in circumstances where the State agency does not have responsibility for placement and care, or is otherwise unaware of the adoption of a potentially special needs child, it is incumbent upon the

adoptive family to request adoption assistance on behalf of the child. It is not the responsibility of the State or local agency to seek out and inform individuals who are unknown to the agency about the possibility of title IV-E adoption assistance for special needs children who also are unknown to the agency. This policy is consistent with the intent and purpose of the statute, and that is to promote the adoption of special needs children who are in the public foster care system.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** 45 CFR 1356.40 (f)

8.4G TITLE IV-E, General Title IV-E Requirements, Fair Hearings

1. Question: Do the regulations at 45 CFR 205.10 require fair hearings for appeals related to services as well as financial claims?

Answer: Yes. The regulations at 1355.30 (p)(2) provide that the procedures for hearings found in 45 CFR 205.10 shall apply to all programs funded under titles IV-B and IV-E of the Social Security Act. Fair hearings in relation to services as well as financial claims are therefore covered under this regulation. The process for fair hearings under section 205.10 is essentially the same for services hearings as for financial hearings. However, because the substantive portion of the regulations provides no examples of service issues, the State has the option of modifying the context of the hearing to accommodate services program complaints. The hearing process under either situation requires that recipients be advised of their right to a hearing, that they may be represented by an authorized representative, and that there be a timely notice of the date and place of the hearing.

The following paragraphs, excerpted from the now obsolete section 1392.11, may be used as guidance for the hearings related to services issues. "The State must have a provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program, failure to take account of recipient choice of service or a determination that the individuals must participate in the service program. The results of appeals must be formally recorded and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal. There must be a system through which recipients may present grievances about the operation of the service program."

Examples of service issues in title IV-E that might result in a grievance or request for a hearing include: Agency failure to offer or provide appropriate pre-placement preventive services or reunification services; Agency may not have placed child in the most family-like setting in close proximity to his parents; Parents were not informed of their rights to participate in periodic administrative reviews; Agency failed to provide services agreed to in case plan; A request for a specific service is denied or not acted upon; and Agency failure to carry out terms of adoption assistance agreements.

- **Source/Date:** ACYF-CB-PIQ-83-04 (10/26/83)
- **Legal and Related References:** 45 CFR 1355.30 (k), 205.10 and 1392.11

2. Question: Please explain the circumstances in which an adoptive parents have the right to a fair hearing.

Answer: Federal regulations at 45 CFR 1356.40 (b)(1) require that the adoption assistance agreement be signed and in effect at the time of, or prior to, the final decree of adoption. However, if the adoptive parents feel they wrongly have been denied benefits on behalf of an adoptive child, they have the right to a fair hearing. Some allegations that constitute grounds for a fair hearing include: relevant facts regarding the child were known by the State agency or child-placing agency and not presented to the adoptive parents prior to the finalization of the adoption; denial of assistance based upon a means test of the adoptive family; adoptive family disagrees with the determination by the State that a child is ineligible for adoption assistance; failure by the State agency to advise potential adoptive parents about the availability of adoption assistance for children in the State foster care system; decrease in the amount of adoption assistance without the concurrence of the adoptive parents; and denial of a request for a change in payment level due to a change in the adoptive parents circumstances.

In situations where the final fair hearing decision is favorable to the adoptive parents, the State agency can reverse the earlier decision to deny benefits under title IV-E. If the child meets all the eligibility criteria, Federal Financial Participation (FFP) is available, beginning with the earliest date of the child's eligibility (e.g., the date of the child's placement in the adoptive home or finalization of the adoption) in accordance with Federal and State statutes, regulations and policies.

The right to a fair hearing is a procedural protection that provides due process for individuals who claim that they have been wrongly denied benefits. This procedural protection, however, cannot confer title IV-E benefits without legal support or basis. Accordingly, FFP is available only in those situations in which a fair hearing determines that the child was wrongly denied benefits and the child meets all Federal eligibility requirements. For example, if a fair hearing officer determines that a child would have been eligible for Supplemental Security Income (SSI) at the time the adoption petition is filed, FFP is available only if there had been eligibility documentation for the child from the Social Security Administration, or its designee, at the time of the adoption petition. Accordingly, if a fair hearing officer decides that a child should have received adoption assistance, but, in fact, the child does not meet all the Federal eligibility criteria, the State cannot claim FFP under title IV-E for the child.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act -sections 471(a)(12) and 473