

**Child and Family Services Policy Manual: Adoption**  
**Subsidized Adoption, Non-Recurring Adoption Expenses, and Medical Subsidy**

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**Policy** The subsidized adoption program encourages and promotes the adoption of children with special needs out of the public foster care system. Subsidized adoption provides support services and medical and financial assistance to adoptive families when such assistance is necessary to ensure the health and welfare of children with special needs.

**Definitions** **Adoption Subsidy** means financial assistance and/or Medicaid provided to assist in the adoption of children with special needs.

**Title IV-E Adoption Subsidy** provides assistance with nonrecurring expenses, financial assistance and /or Medicaid to aid children eligible for a Title IV-E subsidy. Effective October 1, 2009, eligible children must meet the definition of Applicable Child or Non-Applicable Child to be eligible for Title IV-E Adoption Subsidy.

**Non-Title IV-E Adoption Subsidy** provides assistance with nonrecurring expenses, financial assistance and/or Medicaid to aid children who are eligible for an adoption subsidy but who are not eligible for a Title IV-E adoption subsidy.

**Applicable Child** (effective October 1, 2009) is:

1. A child with special needs for whom an adoption assistance agreement is entered into during the Federal Fiscal Year (FFY) in which the child attains at least the applicable age before the end of the fiscal year. The applicable age for each fiscal year is as follows:
  - a. October 1, 2017, through December 31, 2017: any age;
  - b. January 1, 2018, through June 30, 2024: 2 years old;
  - c. July 1, 2024, and thereafter: any age.
2. the applicable age definition; or
3. A child with special needs of any age who, on the date on which an adoption assistance agreement is entered into, has been in foster care under the responsibility of the Division or Tribe with which the Division has a Title IV-E agreement for a 60-consecutive-month period prior to the finalization of the adoption; or

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3. A child of any age who, on the date on which an adoption assistance agreement is entered into, is:
  - a. a sibling of an applicable child as defined in #1 or #2 above, and
  - b. to be placed in the same adoptive home as the applicable child.

**Non-Applicable Child** (through July 1, 2024) is a child who does not qualify as an applicable child but qualifies for Title IV-E adoption subsidy using the eligibility criteria in effect prior to October 1, 2009.

**Subsidized Adoption Agreement** means a written document (Form CFS-082) which is binding on the parties, between the Division and the pre-adoptive parent(s) and signed by all parties prior to the final decree of adoption.

**Reasonable Efforts to Place Without a Subsidy:** The Division must determine that in each case a reasonable, but unsuccessful, effort to place the child with appropriate pre-adoptive parents without providing an adoption subsidy has been made. This means that if the pre-adoptive parent(s) have been asked whether they are willing to adopt without a subsidy, and if they say they cannot adopt the child without a subsidy, the placing worker will have met the requirement that reasonable efforts were made to place the child without a subsidy, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with pre-adoptive parent(s) while in the care of such parent(s) as a foster child.

The reasonable efforts to place without a subsidy or the exception **must** be documented in the child's file by completing an Activity Detail (ACTD screen) on CAPS.

**NOTE:** A new "Activity Type" code of ASN (Assistance Negotiations) and a new "Purpose(s)" code of ASE (Adoptions

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Subsidy Eligibility) have been developed for ACTD. When entering a new detail on the child's ACTD screen that is specific to an adoption subsidy (negotiating, renegotiating, or communicating about subsidies), select the new ASN code at the "Activity Type" field. When the ASN code has been selected, the CAPS system requires that the ASE code be entered in at the "Purpose (s)" field. When the ASN & ASE codes are selected, the CAPS system allows all goals to be entered in at the "Goal(s)" field.

**Child With Special Needs** means a child who is under the placement and care responsibility of the Division or a Tribe with which the Division has a Title IV-E agreement and:

1. the child has been defined as a "child with special needs" because s/he meets at least one of the following criteria:
  - a. diagnosed as having a physical, mental, or emotional disability; or
  - b. recognized to be at high risk of developing a physical, mental, or emotional disability; or
  - c. a member of a minority group; or
  - d. six years of age or older; or
  - e. a member of a sibling group to be placed together for adoption; or
  - f. if the child is an applicable child, meets all medical or disability requirements for SSI; and
2. the child is under 18 years of age at the time the subsidized adoption agreement is signed and the time the adoption is finalized; and
3. the child is legally free for adoption and cannot or should not be returned to the home of his or her parent(s); and
4. adoptive placement is in the child's best interest; and

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5. the Division has determined that reasonable, but unsuccessful, efforts have been made to place the child with appropriate pre-adoptive parents without a subsidy, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with pre-adoptive parent(s) while in the care of such parent(s) as a foster child.

**Subsidy Eligibility Determination**

Eligibility for adoption subsidy payments is to be related to the child's needs, not the parent(s). To be eligible for a subsidy, a child must meet the definition of A Child With Special Needs and the criteria listed above. A determination of the child's eligibility for adoption subsidy should be made on form DPHHS-CFS-083 Adoption Subsidy Program: Child's Eligibility Determination.

Eligibility for subsidy does not mean that a financial assistance payment will necessarily be provided; however, the child is entitled to Medicaid coverage and/or nonrecurring expenses. Form CFS-083 must be completed and signed by the child's Child Protection Specialist and approved and signed by his/her Child Protection Specialist Supervisor. The completed and signed CFS-083 is then given to the Adoption Negotiations Program Manager to begin the adoption subsidy negotiation process.

**NOTE:** Form CFS-083 must be completed entirely, including, but not limited to all Tribal information that applies; all ethnic groups to which the child may belong (referring and matching to details on PERD); financial information (i.e. monthly foster care payment, SSI, etc.); the child's specific factor(s) or condition(s) that makes this child a child with special needs (referring and matching to details on SPND \*See Below); and case plan.

**Continuing Eligibility**

When any child with special needs who is adopted after October 1, 1997, and who had previously been eligible for Federal adoption assistance payments becomes available for adoption again because of the dissolution of the original adoption or the death of the adoptive parent(s), the child remains eligible for adoption assistance as if there was no prior adoption. The Division will only need to determine that the child

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is still a child with special needs for the child to be eligible for adoption assistance.

**CAPS  
Documentation**

As soon as the child's worker determines the child's special need factor(s) or condition(s), making this child a child with special needs, the special need factor(s) or condition(s) must be entered on CAPS on the child's SPND screen using the "Subsidy Eligibility" code (SBE) and with one of the five corresponding sub-codes (F12 lookup). The worker must add an SBE code and the corresponding sub-code for each qualifying special need factor or condition the child has met.

**Adoption of a Child  
Receiving a Title  
IV-E Kinship  
Guardianship  
Assistance  
Payment**

If a child placed in a kinship guardianship and receiving a Title IV-E guardianship assistance payment is subsequently adopted by the guardian or another individual if the guardianship has dissolved, any kinship guardianship assistance payments made on behalf of the child do not count when determining eligibility for adoption assistance for the child.

**TITLE IV-E  
ADOPTION  
SUBSIDY**

Prior to negotiating the adoption subsidy, eligibility for a Title IV-E subsidy must be determined. A child is eligible to receive a Title IV-E subsidy payment if the child is a U.S. citizen, or a qualified alien placed with adoptive parents who are U.S. citizens or qualified aliens; and:

If the child is an Applicable Child, the child meets the special needs definition and:

1. at the time of the initiation of adoption proceedings, either is in the care of the Division or a private licensed child placing agency or Tribe with which the Division has a Title IV-E Agreement pursuant to:
  - a. an involuntary removal of the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; or
  - b. a voluntary placement agreement or voluntary relinquishment (no Title IV-E payment is required to have

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been made); or

2. meets all medical or disability requirement for SSI benefits but does not have to meet the needs-based (income) requirement; or
3. resides in a foster family home with his/her minor parent and the minor parent was removed from the birth parent's home by either an involuntary removal with a judicial determination that it was contrary to the welfare to remain in the home or a voluntary placement agreement or voluntary relinquishment.

If the child is not an Applicable Child, the child meets the special needs definition and:

- 1.a. was removed from the home of a specified relative and placed in foster care pursuant to a judicial determination that it was contrary to the child's welfare to remain in the home; or
  - b. was removed from the home pursuant to a voluntary placement agreement and subsequently received a Title IV-E foster care payment; and
2. a. was AFDC eligible at the time of removal based on AFDC standards in effect as of July 16, 1996 (receiving cash benefits from the current cash assistance program does not insure eligibility for Title IV-E adoption assistance); or
  - b. is eligible for Supplemental Security Income (SSI) benefits, prior to the finalization of the adoption regardless of how the child was removed from home or whether the Division had responsibility for the child's placement and care; or
  - c. is a child of a minor parent if the parent is in foster care and receiving Title IV-E foster care payments that cover both the minor parent and the child at the time the adoption petition is initiated. 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

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adoption assistance must be determined based on the child's current and individual circumstances.

**Criminal Records Requirements – Title IV-E Adoption Subsidy Payments**

Federal Financial Participation (FFP) may be claimed for Title IV-E adoption subsidy payments only if the prospective adoptive parents have completed fingerprint-based checks of the National Criminal Information Database (or met the criteria for an exception per Criminal Records and Protective Services Checks policy 802-3) showing no felony convictions for: child abuse or neglect, spousal abuse, crimes against children (including child pornography), or crimes involving violence (including rape, sexual assault, or homicide, but not including physical assault or battery.) In addition, FFP for Title IV-E adoption subsidy payments may only be claimed if the prospective adoptive parents have no felony convictions within the last five years for physical assault, battery, or a drug-related offense.

For new adoptive applicants (see policy 602-1), these criminal records checks (or qualification for an exception per Criminal Records and Protective Services Checks policy 802-3) must be done at time of application. Foster parents seeking to be approved to adopt who have a satisfactory fingerprint-based NCID criminal background check (or have met the criteria for an exception) within the previous twelve months will be considered to have met the criminal records check requirement for new adoptive applicants.

**Non Title IV-E Adoption Subsidy**

A child who is under the placement and care responsibility of Division, has a specific factor or condition which qualifies him as a "child with special needs" but is determined not eligible for Title IV-E adoption subsidy can receive adoption subsidy from the state-funded subsidized adoption program. A non-Title IV-E adoption subsidy for a child under the care of Division can include Medicaid, one time nonrecurring expenses and financial subsidy.

**NOTE: TRIBAL ADOPTIONS WHERE NO TPR EXISTS**

In some Tribes, adoption is legal without a Termination of Parental Rights (TPR) or a relinquishment from the birth parent(s). If a child can be adopted in accordance with Tribal law without a TPR or relinquishment, and is otherwise eligible for adoption subsidy, the Division may enter into an adoption

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subsidy agreement with the adoptive parents if the Tribe has documented the valid reasons why the child cannot or should not be returned home.

**Application  
Process  
DPHHS-CFS-083**

The request for an adoption subsidy shall be made by the child's Child Protection Specialist on behalf of the child. The worker shall submit a completed DPHHS-CFS-083, Adoption Subsidy Program Child's Eligibility Determination and supporting documentation to the Adoption Negotiations Program Manager. Supporting documentation may include physician reports, social history information, and birth parent social/medical information.

**Subsidy  
Negotiation**

The terms of the Adoption Subsidy Agreement, including Medicaid, the amount of the monthly financial assistance, and the amount of non-recurring adoption expenses are negotiated between the Adoption Negotiations Program Manager and the pre-adoptive parent(s), preferably prior to pre-adoptive placement, but always prior to finalization. Once an agreement is reached, the pre-adoptive parents and the Adoption Negotiations Program Manager sign the CFS-082 Subsidized Adoption Agreement and Application/Change Notice for Medicaid. The original and one copy are retained by Central Office, one copy is given to the pre-adoptive parents and one copy goes into the child's file. A copy will also be scanned into the child's file in Doc Gen.

A DPHHS-CFS-082, Subsidized Adoption Agreement and Application/Change Notice for Medicaid must be completed for every adoption of a child with special needs who meets eligibility criteria. The completed form will verify the child's eligibility and enable negotiation of a future subsidy, if necessary. The Title IV-E eligibility must be checked "yes" or "no" on the agreement. A subsidy amount of \$0.00 should be entered if the adoptive parent(s) will not be receiving a financial subsidy. This agreement will affirm the child's eligibility into the future and is easily altered by adding the amount of the financial subsidy should one be requested at a later date.

If the family refuses to enter into an agreement, the Adoption Negotiations Program Manager will request the family sign a statement documenting its refusal which will be included in the



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child's adoption file. This activity will be added to the child's CAPS ACTD screen using the new adoption subsidy codes of ASN at "Activity Type" and ASE at "Purpose(s)" (\*See details of the new activity codes on page 2 of this policy). An example of a document and cover letter that might be used is included at the end of this policy section.

**Means Test Prohibited**

The use of a means test is prohibited in the process of selecting a suitable adoptive family, or in negotiating an adoption subsidy agreement, including the determination of the amount of the adoption subsidy payment. Once a child has been determined eligible, adoptive parent(s) cannot be rejected for adoption subsidy nor have their payments reduced without their agreement because of their income or other resources. In addition, the Division cannot arbitrarily reject a request for an increase in the amount of the subsidy (up to \$10.00 less per month than amount the child would have received in foster care) in cases where the adoptive parent(s) make life choices such as resigning one's job to stay at home with the adopted child or returning to school. Adoptive parent(s) can request a fair hearing if the Division rejects such requests.

The circumstances of the adoptive parent(s) must be considered together with the needs of the child when negotiating the subsidy agreement. *Consideration of the circumstances of the adopting parent(s)* pertains to the adoptive 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 its 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.

**Amount of Subsidy**

The amount of the adoption subsidy payment cannot exceed \$10.00 less per month than the amount the child would have received in a regular or specialized foster family home, but otherwise must be determined through an agreement between

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the adoptive parent(s) and the Division. This program is intended to encourage an action that will be a lifelong social benefit to the child(ren) and not to meet short-term monetary needs. Further, the adoptive parent(s)' income is not relevant to the child's eligibility for the program.

Title IV-E adoption subsidy is not based upon a standard schedule of itemized needs and countable income. Instead, the amount of the subsidy payment is determined through the discussion and negotiation process between the adoptive parent(s) and the Division based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parent(s)' 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., childcare.

**NOTE:** The efforts made by the Adoption Negotiations Program Manager during the negotiation process will be added to the child's CAPS ACTD screen using the new adoption subsidy codes of ASN at "Activity Type" and ASE at "Purpose(s)" (\*See details of the new activity codes on page 2 of this policy).

Once a subsidy agreement is in effect, the parent(s) can spend the subsidy in any way they see fit to incorporate the child into their lives. The Division cannot require an accounting.

**NOTE:** If the child is being placed adoptively with someone other than the family with whom the child is currently residing (i.e. foster home), the subsidy agreement shall be negotiated at the time of placement. If foster care payments are opened, the payments should be equal to the amount of the subsidy.

The Federal Title IV-E-related statute limits the amount of adoption assistance to no more than the child would have received in "a foster family home." Thus, the amount of the adoption assistance payment may not exceed \$10.00 less per month than the amount of the regular or specialized foster family home maintenance payment.

### **Renegotiation**

A State may renegotiate a subsidy agreement if the adoptive parent(s) request an increase in payment due to a change in

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their circumstances or a higher foster care rate would have been paid on behalf of the child if the child had still been in care.

If parents want to renegotiate an existing subsidy they should contact the Adoption Negotiations Program Manager, who will then make a recommendation for a change in the terms of the existing subsidy. Requests for financial subsidy renegotiation will be discussed with the Permanency Planning Specialist or Regional Administrator to determine if there might be resources or services available in lieu of or in conjunction with a change in the child's adoption subsidy rate. The efforts made by the Adoption Negotiations Program Manager during the renegotiation process will be added to the child's CAPS ACTD screen using the new adoption subsidy codes of ASN at "Activity Type" and ASE at "Purpose(s)" (\*See details of the new activity codes on page 2 of this policy).

The effective date of a renegotiated financial subsidy will be decided during the renegotiation process.

**Example:** A child is adopted and the subsidy is negotiated for \$250 a month, \$10.00 less than the child had been receiving in foster care. If, two years later, the Division's monthly foster care rate is increased to \$400, the family can request that the subsidy agreement be renegotiated and receive up to the \$390 for the child, since this is \$10.00 less than the amount the child would have received each month if s/he had remained in foster care.

**Retroactive  
Subsidy Payments**

Subsidy payments will not be approved retroactively for more than 30 days.

**SSI and Adoption  
Assistance**

The adoptive parent may choose to apply for either or both SSI and adoption subsidy. In deciding whether to make application for one or both programs, the adoptive parent(s) should be made aware of the differences between SSI and the adoption subsidy program.

SSI is a needs-based program and requires a test of income and resources of the adoptive parent(s) in determining the

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amount of the SSI benefit to which the child may be entitled. If, or when, the parental resources and income exceed a certain level determined by SSI, the child is no longer eligible for SSI payments or SSI related Medicaid.

**Concurrent Eligibility**

When there is concurrent eligibility for both programs, the amount of Title IV-E adoption subsidy paid to the parent(s) will count dollar for dollar against the SSI, thus decreasing the SSI benefit payment by the amount of the adoption subsidy payment. Under the adoption subsidy program, the amount of the SSI benefit payment would be a consideration in the negotiation of the amount of the adoption subsidy payment; however, unlike the SSI program, this income would not generate an automatic reduction in the payment amount.

Because there are many complexities and financial implications for the Division as well as for the adoptive families, it is important all parties discuss all aspects of a combination of SSI and adoption subsidy at the time the adoption subsidy agreement is negotiated. Adoptive parent(s) should be advised if they decline Title IV-E adoption subsidy and choose to receive only SSI for the child, and if they do not sign a Subsidized Adoption Agreement (Form CFS-082) before the adoption is finalized, they may not later receive Title IV-E adoption subsidies unless approved through the Fair Hearing process. These discussions will be added to the child's CAPS ACTD screen using the new adoption subsidy codes of ASN at "Activity Type" and ASE at "Purpose(s)" (\*See details of the new activity codes on page 2 of this policy). Technical assistance to field staff can be provided by an Adoption Negotiations Program Manager in Central Office.

**Payments Initiated**

After the subsidy agreement has been signed, subsidy payments and Medicaid may begin at the time of the adoptive placement or after the adoption has been finalized and Central Office has received a certified copy of the Decree of Adoption.

**CAPS**

To approve an adoption subsidy on the appropriate CAPS screen(s) following receipt of finalization information from Central Office, the designated CFSD workers entering the adoption subsidy information should:

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- check relationships on RELL to be certain the adoptive family has been added to the relationships;
- check FSPL to make sure the adoption services are there; then
- if foster care is not already closed, do so by going to CPHL and closing foster care. This will also take one to SERL where one also must close foster care;
- go to CRTL, push F11, and add the court finalization information there; then
- go back to CPHL, put ADOD in Path and push F11 to go to adoption detail and complete that screen;
- go to SERL and add the financial code PADAP for a Title IV-E eligible applicable child, or PADFS for a Title IV-E eligible non-applicable child and a non-Title IV-E eligible child; go to CELL to activate.

Following completion of the above procedure, the worker shares the CAPS case with the county of financial responsibility.

**Voluntary Placements**

Federal statute allows a child who has been removed from home pursuant to a voluntary placement agreement (parental agreement) to be eligible for adoption subsidy in limited situations. A child must be placed in foster care via a voluntary placement agreement (parental agreement), and, if the child is not an applicable child, have Title IV-E foster care maintenance payments paid on his/her behalf pursuant to that voluntary agreement to be eligible for a subsidy. A child must have been under the Division's responsibility for placement and care, or that of a Tribe with which the Division has a Title IV-E agreement at the time of the voluntary placement agreement (parental agreement), or, if an applicable child, a licensed child placing agency.

**Voluntary Relinquishments**

An applicable child can be eligible for Title IV-E Adoption Assistance if removed from the home pursuant to a voluntary

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relinquishment if, at the time of initiation of the adoption proceedings, the child is in the care of the Division, a licensed child placing agency, or a Tribe with which the Division has a Title IV-E agreement.

When a non-applicable child is removed from the home by way of a voluntary relinquishment, the removal is *neither* the result of a voluntary placement agreement *nor* the result of a judicial determination that to remain in the home would be contrary to the child's welfare as defined in statute. The Division or **private nonprofit adoption agency** must petition the court within six months of the child living with a specified relative and obtain a judicial determination to the effect that remaining in the home would be contrary to the child's welfare. The child will then be treated as though s/he were judicially removed rather than voluntarily relinquished for the purpose of Title IV-E Adoption Assistance eligibility.

**Private, Nonprofit  
Agency Adoptions**

Title IV-E adoption subsidies are available to children placed for adoption through private adoption agencies if all eligibility requirements are met. An applicable child must be in the care of the private licensed child placing agency at the time of initiation of adoption proceedings pursuant either to a voluntary placement agreement or a voluntary relinquishment.

A non-applicable child who is voluntarily relinquished to either a public or a private, nonprofit agency will be considered judicially removed in the following circumstances:

- (1) the child is voluntarily relinquished either to the Division, a Tribe, or to a private, nonprofit agency; and
- (2) there is a petition to the court to remove the child from the home within six months of the time the child lived with a specified relative; and
- (3) there is a subsequent judicial determination to the effect that remaining in the home would be contrary to the child's welfare.

Under these circumstances, the AFDC-eligible child will be

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treated as though s/he was judicially removed rather than voluntarily relinquished. If the Division subsequently determines that the child also meets the definition of child with special needs criteria (on pages 1 and 2 of this section), the child is eligible for Title IV-E adoption subsidy. If, however, there is no petition to remove the child from the home or no subsequent judicial determination, the child cannot be considered judicially removed for the purpose of the Title IV-E adoption subsidy eligibility. Furthermore, if the court merely sanctions the voluntary relinquishment without making a determination that it is contrary to the child's welfare to remain in the home, the child is not eligible for Title IV-E adoption subsidy.

Non-Title IV-E special needs children placed with private, nonprofit adoption agencies may qualify for a Medicaid subsidy. Criteria that may be considered for approval of non-Title IV-E Medicaid subsidy include:

- (1) medical documentation to support the child is diagnosed or has an imminent medical condition

**AND**

- (2) the adoptive parent(s) do not have private medical insurance that covers the child's diagnosis or imminent medical condition

**Adoption Subsidy Agreements**

Adoption Subsidy Agreements must (a) be written, (b) be negotiated by and binding on all parties privy to them (including the Division and pre-adoptive parent(s)), and (c) specify services to be provided by the Division and any other agency. Title IV-E adoption subsidy agreements must specify that stated provisions remain in effect regardless of the state of residence of the adoptive parent(s).

Non-Title IV-E state adoption subsidy agreements also remain in effect in all states, with the exception that a few states will not provide Medicaid benefits for children with non-Title IV-E adoption subsidy agreements. Contact the ICAMA/ Adoption Negotiations Program Manager in Central Office for information on which states are participants in the Interstate Compact on

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Adoption and Medical Assistance and offer Medicaid benefits to children with non-Title IV-E adoption subsidy agreements. Montana Medicaid will remain open for children with non-Title IV-E adoption subsidies if they live in a state that will not provide Medicaid benefits.

The subsidized adoption agreement between parent(s) and the Division must be signed by the Division and the adoptive parent(s) prior to the finalization of the adoption.

If the parent(s) and the Division are unable to reach an agreement on the terms and/amounts of the subsidy agreement during the negotiation process, the parent(s) may request a fair hearing.

**Termination or  
Modification of the  
Subsidy  
Agreement**

Agreements may include Medicaid, non-recurring expenses, and monthly financial assistance payments.

Once the Adoption Subsidy Agreement (Form CFS-082) is signed and in effect, it can be terminated under the following three circumstances:

1. the child has attained the age of 18 (or 21 if the Division has determined that the child has a mental or physical disability which would warrant continuation of subsidy);
2. the Division determines that the adoptive parent(s) are no longer legally responsible for support of the child; or
3. the Division determines that the adoptive parent(s) are no longer providing any support to the child.

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" means various forms of financial support which may include payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs.

The Division may continue the Title IV-E adoption subsidy if it determines that the parent is providing some form of financial



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support to the child even in situations where the child is placed in some form of out-of-home care.

Adoptive parents are required to inform the Division of circumstances that would make them ineligible to continue to receive adoption subsidy payments or eligible to receive those payments in a different amount.

**Educational Requirement**

As a condition of receiving a Title IV-E adoption subsidy, the adoptive parent(s) must have the child enrolled in school or in an authorized independent study program, or the child must be home schooled consistent with the law of the State or other jurisdiction in which the school, program, or home is located during the entire time the subsidized adoption agreement is in place. If the child does not remain enrolled in school or in an authorized independent living study program, or the child is not home schooled consistent with the law of the State or other jurisdiction, the adoptive parent(s) will not be eligible to continue to receive the Title IV-E adoption subsidy; however, the legal relationship will remain in place.

**Appeal and Fair Hearings**

Adoption subsidy agreements are to be signed and in effect at the time of, or prior to, the final decree of adoption. However, if the adoptive parent(s) feel they have been wrongly 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 Division or Tribe and not presented to the adoptive parent(s) prior to the finalization of the adoption;
- denial of adoption subsidy based upon a means test of the adoptive family;
- adoptive family disagrees with the determination by the Division that a child is ineligible for adoption subsidy;
- failure by the Division to advise potential adoptive

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parent(s) about the availability of adoption subsidy for children in the State foster care system;

- decrease in the amount of adoption subsidy payment without the concurrence of the adoptive parent(s); and
- denial of a request for a change in payment level due to a change in the adoptive parent(s) circumstances.

**Post Decree  
Subsidy Request**

If no subsidy agreement is signed and the adoption is finalized, the Division cannot initiate a subsidy agreement. The Division cannot change its eligibility determination and provide adoption subsidy without requiring the applicant to obtain a favorable ruling in a fair hearing. A subsidy request that is denied because the decree has already been entered must also be reviewed through the fair hearing process.

Extenuating circumstances that may constitute grounds for a fair hearing include but are not limited to:

- relevant facts regarding the child, the biological family or the child's background are not known or are not presented to the adoptive parent(s) prior to the legalization of the adoption;
- denial of adoption subsidy based on a means test of the adoptive family;
- erroneous determination by the Division that a child is ineligible for adoption subsidy; or
- the Division's failure to carry out the terms of the Subsidized Adoption Agreement.

If the Division and the parent(s) are in agreement, however, an evidentiary hearing is not necessary and the matter may be negotiated through an administrative review by the Regional Administrator. The undisputed documentary evidence can then be presented to the Hearings Officer for his/her review and determination on the written record.

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To be eligible for a post-decree adoption subsidy, the following criteria must be met:

1. the child has special needs, as defined by State statute;
2. the child was eligible at the time the adoption petition was filed or met the requirements for SSI eligibility prior to finalization of the adoption; and
3. there is a judicial determination that removal of the child from the home was in the child's best interests.

If the child is determined to be eligible for a post-decree subsidy, the provisions of the agreement must be negotiated with the parent(s).

**Non-Recurring  
Adoption  
Expenses**

Non-Recurring Adoption Expenses are 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. These expenses must not have been incurred in violation of State or Federal law or have been reimbursed from other sources of funds.

Other expenses directly related to the legal adoption of a child with special needs means the costs incurred by or on behalf of the parent(s) for the adoption study, including health and psychological examination or consultation, supervision of the placement prior to adoption, as well as transportation and the reasonable costs of lodging and food for the child and/or the adoptive parent(s) when necessary to complete the placement or adoption process.

The Division must enter into an adoption subsidy agreement prior to the finalization of the adoption and reimburse the non-recurring adoption expenses incurred by any parent who adopts a child with special needs. The Division must determine that the child meets the definition of a child with special needs, that is:

- the Division has determined that the child cannot or should not be returned to the home of his/her parent(s); and

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- the Division has determined that there exists a specific factor (page 3, #1-5) or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parent(s) without providing Title IV-E adoption subsidy; and
- the Division has determined that in each case a reasonable, but unsuccessful, effort to place the child with appropriate parent(s) without providing adoption subsidy has been made. The only exception to this requirement is when it would be in the child's best interest because of a significant emotional attachment with the foster parent(s) or adoption by a relative.

In cases where siblings are placed and adopted, either separately or together, each child is treated as an individual with separate reimbursement for non-recurring expenses up to the maximum amount allowable for each child.

An adoption subsidy payment is not required for the child to be eligible for non-recurring adoption expenses, medical subsidy, or social services.

\$2000 maximum

Adoptive parent(s) of special needs children may be reimbursed for non-recurring adoption expenses for the actual costs incurred by the adoptive parent(s) up to \$2000.

Approval Process

Requests for payment of non-recurring adoption expenses are submitted to the Adoption Negotiations Program Manager and are approved on the CFS-82 form, Subsidized Adoption Agreement and Application Change Notice for Medicaid. The agreement must indicate the nature and amount of the non-recurring expenses to be paid. The request may be submitted in conjunction with requests for financial and medical assistance. **The family should be advised that they will need to submit documentation of the actual cost of approved expenses to the Central Office to receive reimbursement.**

Non-recurring expenses will be paid through CAPS when the Central Office has received a certified copy of the final decree of adoption and an itemized claim for payment.

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**Title IV-E Medicaid Subsidy**      The medical needs of a child approved for an adoption subsidy are met through the Medicaid program or through a medical subsidy. Medicaid for adoption will be opened when the Central Office has received a certified copy of the final decree of adoption. Subsidy-related Medicaid will be effective the month following the closure of foster care related Medicaid or the month the adoption is finalized if the child has not been in foster care.

**Private Health Insurance**      All adoptive parents should be advised to add their adopted child to their private health insurance within 30 days of the adoption finalization. Insurance companies are prohibited from refusing coverage because of pre-existing conditions if the child is enrolled during the period available for enrolling newborns. Private insurance does not affect Medicaid coverage.

**Non-Medicaid State Medical Subsidy**      Effective October 1, 2010, new adoption assistance agreements will not contain non-Medicaid State Medical Subsidy payments. The Division will honor non-Medicaid State Medical Subsidies negotiated in adoption assistance agreements before October 1, 2010, and continue to provide the payment listed in those agreements. If an adoption assistance agreement providing a non-Medicaid State Medical Subsidy is being renegotiated, the Adoption Negotiations Program Manager may negotiate a new financial subsidy rate and approve continuation of the existing non-Medicaid State Medical Subsidy payments if:

1.      the medical need addressed by the non-Medicaid State Medical Subsidy still exists AND
2.      the renegotiated financial subsidy is addressing a need that is different than the medical need being addressed by the non-Medicaid State Medical Subsidy.

If the adoptive parent(s) requests renegotiation of the financial subsidy rate and continuation of existing non-Medicaid State Medical Subsidy payments to address the same need of the child, the Adoption Negotiations Program Manager will work with the parent(s) to determine which option best meets the need.

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All requests for renegotiated non-Medicaid State Medical Subsidy payments will be discussed with the Permanency Planning Specialist or Regional Administrator to determine if there might be resources or services available in lieu of or in conjunction with a change in the child's adoption assistance agreement.

The non-Medicaid State Medical Subsidy payments will not exceed \$2600 per State Fiscal Year. No payments will be made until the Central Office has received an approved adoption assistance agreement and a certified copy of the final decree of adoption.

**Child Care  
Assistance for Pre-  
Adoptive Families**

When a pre-adoptive family expresses an inability to adopt a child(ren) in CFSD custody because the needs of the child(ren) along with child care costs will exceed the amount of monthly financial adoption assistance payment available for the child(ren), the Division may be able to obtain assistance with the child care costs from the Early Childhood Services Bureau (ECSB) within the Human and Community Services Division.

Referrals for child care assistance for pre-adoptive families are requested by CFSD staff and approved by the Child Care Unit staff in ECSB.

The child care providers must be Legally Certified, Licensed, or Registered as required by ECSB requirements. Families will not be required to make a co-payment for the child care costs if approved through this process.

The approval will last one year and begins at the date of adoption. To renew the assistance, the Adoption Negotiations Program Manager in CFSD – Central Office will determine if the child is still eligible, and submit new forms to the Manager, Child Care Unit in ECSB.

**Eligibility**

Eligibility for child care assistance for pre-adoptive families will be determined on a case-by-case basis. A child may be eligible for child care assistance if:

1. The cost of integrating the child into the pre-adoptive family, including the cost of child care, exceeds the

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maximum monthly financial adoption assistance payment available for the child and

2. The child is under age 13 or is a child between the ages of 13-19 who has a documented mental or physical handicap which warrants continuation past age 13.

**Some examples for which a request may be appropriate are as follows:**

**Example 1:** A child is adopted who has many special needs that require doctor visits, therapy, or additional care. The child care provider currently receives a special needs childcare subsidy through ECSB for the child. The cost of caring for the child's special needs and paying for child care with the special needs child care subsidy included exceeds the adoption subsidy available for the child. Also, the family is not eligible for other forms of child care assistance.

**Example 2:** A family is adopting a sibling group and both parents work to support the family. The cost of child care for the sibling group is such that the family would not be able to afford to adopt the children if they needed to pay for child care on their own, the family is not eligible for other forms of child care assistance, and the amount of adoption subsidy that is available for the children will not pay for the cost of integrating the children into the adoptive family plus the child care costs.

**Referral Process**

CFSD staff shall not discuss or make mention of this subsidy to adoptive families prior to RA approval of the subsidy. Internal discussions and determinations involving the CPS, CPSS and RA are to occur prior to any discussions of the subsidy with the adoptive family. Most adoptive families will not meet the criteria described above so routinely discussing this subsidy with adoptive families will create confusion and may give the false impression that the subsidy is readily available to all or most adoptive families. In order to ensure this assistance continues to be available for the families needing it CFSD must be judicious in selecting the families to be referred to ECSB. The Adoption Negotiations Program Officer in Central Office will assist adoptive families referred to ECSB through that process as part of the family's adoption subsidy negotiation.

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The referral process for receiving child care assistance for pre-adoptive families is as follows:

- The CPS will staff the case with their CPSS. Upon determination that the family meets the subsidy eligibility criteria the CPS will complete the **CFS-111 Child Care Referral** form (<http://ours.hhs.mt.gov/forms/forms.shtml#cfs>) and e-mail it to the RA of the county of financial responsibility of the child, copying the CPSS.
- The Regional Administrator either approves or denies CFSD requesting child care assistance from the ECSB. If the request is approved by the RA they will forward the CFS-111 to the Adoption Negotiations Program Manager in Central Office and notify the CPS and CPSS the subsidy is being requested.
- The Adoption Negotiations Program Manager will contact the family with information about the ECSB application process.
- The Adoption Negotiations Program Manager submits the CFS-111 Child Care Referral Form along with a cover letter to the Manager, Child Care Unit in the Early Childhood Services Bureau.
- The Manager, Child Care Unit communicates approval or denial of the request to the Adoption Negotiations Program Manager. The Adoption Negotiations Program Manager will share the ECSB decision with CPS, CPSS and RA.
- Subsidy approvals will be for a one year period, unless specifically stated otherwise.

After one year, the assistance can be renewed as follows:

- Three months before the assistance will expire; the Adoption Negotiations Program Manager will contact the family to determine whether the family continues to be eligible for assistance and what their current needs are.
- If the family continues to be eligible, the Adoption Negotiations Program Manager will communicate with the Regional Administrator of the child's financial county to get approval to extend the subsidy for one year.
- If the Regional Administrator grants approval, the



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Adoption Negotiations Program Manager fills out the CFS-111 Child Care Referral Form, and a cover letter. These forms are sent to the Manager, Child Care Unit in the Early Childhood Services Bureau.

- The Manager, Child Care Unit communicates approval or denial of the request to the Adoption Negotiations Program Manager. The Adoption Negotiations Program Manager will notify the RA of ECSB's decision.
- This approval will be for a one year period, unless specifically stated otherwise.

**NOTE:** CFSD staff should begin the referral process prior to the adoption being finalized but ECSB cannot officially approve the family for the subsidy until the adoption is finalized. Adoptive parent notification of the subsidy cannot take place until final approval by ECSB. The subsidy will begin the date the adoption was finalized.

Also, this subsidy can only be provided to adoptive families **residing in Montana**. Families, whose adoptions were finalized in Montana, who now reside in another State are not eligible for this subsidy.

**In-State  
Placements**

When the final decree of adoption is received by the Adoption Program Manager, Central Office will notify the CFSD IV-E Unit staff of the region of financial responsibility to close foster care-related Medicaid (if open). The Central Office will then forward a copy of the CFS-082, Subsidized Adoption Agreement and Application/Change Notice for Medicaid, to the Public Assistance Bureau (Central Office) of DPHHS/Human and Community Services Division. The Public Assistance Bureau will open subsidy-related Medicaid and a Medicaid card will be sent to the adoptive parent(s) of the child.

**Out-of-State  
Placements**

A child who is Title IV-E eligible and for whom a subsidized adoption agreement is in effect will be eligible for a Medicaid card in the state where he actually is a resident, even if it is not the state that entered into the adoption subsidy agreement or is not the state making the subsidy payment.

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**Interstate Compact on Adoption and Medical Assistance** If a child meeting Title IV-E eligibility criteria is placed in a state other than Montana or if a family who adopted in Montana moves to another state, the Interstate Compact on Adoption and Medical Assistance (ICAMA) outlines procedures to obtain Medicaid coverage in the state of residence. Technical assistance for field staff is available from the ICAMA/Adoption Negotiations Program Manager in Central Office.

If a family from out of state moves to Montana with a child eligible for adoption assistance Medicaid, the child is eligible for Montana Medicaid.

**Independent Adoptions** While it is highly improbable that a child who is adopted through an independent adoption (direct parental placement) will be eligible for Title IV-E adoption subsidy, there are two exceptions:

1. an applicable child who meets all medical or disability requirements of SSI prior to finalization of the adoption or a non-applicable child who is SSI eligible prior to finalization of the adoption; or
2. those children in subsequent adoptions who were previously eligible to receive a Title IV-E subsidy.

**International Adoptions** The Federal adoption subsidy program under Title IV-E is intended to provide permanency for children with special needs in public foster care by assisting States in providing ongoing financial and medical assistance to families who adopt them. No payments can be made to an adoptive parent for an applicable child who is not a citizen or resident of the United States or who was adopted outside of the United States or brought into the United States for the purpose of being adopted. Applicable children may be eligible for Title IV-E adoption assistance, however, if the international adoption disrupts and they are subsequently placed in foster care.

Non-applicable children must meet the three-pronged definition of a child with special needs in order to be eligible for a Title IV-E subsidy. Children who are adopted abroad, or are brought into the U.S. from other countries for the purpose of adoption, are not:

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1. AFDC eligible in their own homes;
2. SSI eligible prior to finalization of the adoption: or
3. eligible as a result of their minor parent's receipt of Title IV-E foster care maintenance payments.

Therefore, it is highly unlikely, if not virtually impossible, that they would meet the criteria for adoption assistance eligibility.

**Documentation**

Adoption Subsidy negotiation efforts made by the Adoption Negotiations Program Manager during any negotiation process will be added to the child's CAPS ACTD screen using the new adoption subsidy codes of ASN at "Activity Type" and ASE at "Purpose(s)" (\*See details of the new activity codes on page 2 of this policy).

**References**

Social Security Act Sections 471(a), 473, and 475(3)  
 45 CFR 1336.40, and 1356.30(b) and (c)  
 42 USC 672  
 Mont. Code Ann. § § 42-10-101 through 42-102-128  
 Mont. Code Ann. § 53-6-131 (1)(e)  
 Mont. Admin. R. 37.52.201 through 37.52.220

Rev. 10/03  
 Rev. 04/04  
 Rev. 10/05  
 Rev. 10/06  
 Rev. 04/07  
 Rev. 10/07  
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 Rev. 10/10  
 Rev. 10/11  
 Rev. 08/12  
 Rev. 05/13  
 Rev. 10/14  
 Rev. 07/18

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*Sample 1:*

MONTANA DIVISION OF PUBLIC HEALTH AND HUMAN SERVICES  
CHILD AND FAMILY SERVICES DIVISION

REFUSAL OF ADOPTION SUBSIDY

I/we \_\_\_\_\_ do not want an adoption subsidy for \_\_\_\_\_ . Adoption subsidy can include Medicaid, nonrecurring expenses, or a financial subsidy. MCA 42-10-108 states "...before the final decree of adoption is issued, there must be a written agreement between the family and the Division." Because of the requirements outlined in MCA, a written subsidy agreement between the prospective adoptive parents and the Division must be signed **BEFORE** the adoption is finalized. I/we understand by signing this document \_\_\_\_\_ will not be eligible for an adoption subsidy at a later date.

\_\_\_\_\_  
Adoptive parent's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Adoptive parent's signature

\_\_\_\_\_  
Date

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*Sample 2:*

DATE

ADDRESS

Re: Refusal of adoption subsidy

Dear

Enclosed is a document stating you do not want an adoption subsidy for \_\_\_\_\_ and you understand the implications of this decision. Please read the statement carefully, sign, and return it to me. My address is CFSD, \_\_\_\_\_. When I receive the signed statement I will send you a copy for your files.

If you change your mind and would like to consider negotiating an adoption subsidy, let me know. You can contact me at 406-841-2400.

Sincerely,

Adoption Negotiations Program Manager