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### Administrative Directive

<b>Transmittal:</b>	10-OCFS-ADM-11
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	September 13, 2010
<b>Subject:</b>	<b>Payment of Adoption Subsidies to Certain Approved Adoptive Parent(s) Prior to Finalization of the Adoption</b>
<b>Suggested Distribution:</b>	Directors of Service Voluntary Agency Program Directors Child Welfare Supervisors Adoption Staff Foster Care Staff
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<b>Attachments:</b>	No
<b>Attachment Available Online:</b>	No

## Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
86-ADM-36		18 NYCRR 421.24	SSL §§378 and 453		

### I. Purpose

The purpose of this Administrative Directive (ADM) is to advise local departments of social services (LDSS) and voluntary authorized agencies of an amendment to 18 NYCRR 421.24 regarding adoption subsidies. The regulatory amendment concerns the payment of adoption subsidies to approved adoptive parent(s) prior to finalization of the adoption of a child under certain circumstances. The amendment also eliminates the requirement that such approved adoptive parent(s) also be certified or approved as foster parent(s). This directive describes the circumstances in which adoptive parent(s) may receive payment of an adoption subsidy prior to finalization of the adoption of a child in the guardianship and custody of the LDSS, and advises LDSS and voluntary authorized agencies on how to implement these changes to adoption subsidy requirements.

### II. Background

Historically, the Office of Children and Family Services (OCFS) regulation 18 NYCRR 421.24 generally required that adoption subsidy payments for a child in the guardianship and custody of an LDSS begin upon finalization of the adoption. Administrative Directive 86-ADM-36, *Adoption Subsidy Payments*, implemented and standardized the requirements related to the adoption subsidy payment process. The regulation and ADM required that until finalization, prospective adoptive parent(s) interested in adopting a child in the guardianship and custody of the LDSS were required to be certified or approved as a foster parent(s), and payments prior to finalization were to be made as foster board payments. The regulation and policy allowed that the criteria for approval of the adoptive parent(s) set forth in 18 NYCRR Part 421 (adoption) was to be used instead of those standards set forth in 18 NYCRR Part 443 for certification or approval of foster homes.

There was one exception where the regulation authorized the payment of an adoption subsidy prior to finalization of the adoption of a child in the guardianship and custody of the LDSS. This exception was when the placement of the child in the home of the prospective adoptive parent(s) would result in a

violation of the foster home capacity limitations set forth in section 378(3) or 378(4) of the Social Services Law (SSL). While the exception authorized the payment of adoption subsidy payments, it provided that the adoptive parent(s) had to satisfy the standards for the certification or approval of a foster home as set forth in 18 NYCRR Part 443, in lieu of being approved as adoptive parent(s) in accordance with 18 NYCRR Part 421. The regulatory amendment corrects this apparent inconsistency to clarify that in regard to this exception, the parent(s) must be approved adoptive parent(s) in accordance with the standards set forth in 18 NYCRR Part 421.

### III. Program Implications

LDSS will now provide adoption subsidy payments prior to an adoption finalization for those adoptive parent(s) who are approved for adoption, but are not certified or approved as foster parent(s). This addresses the situation where the adoptive parent(s) were not the child's foster parent caregiver prior to the adoptive placement. In such a situation, there is no practical need to require the adoptive parent(s) to be certified or approved as foster parent(s), along with satisfying the requirement to be approved as adoptive parent(s) [see 18 NYCRR 421.24(c)(2)(iii)].

As noted above, in regard to the situation where placement of a child or children for adoption would present a foster home capacity issue, the regulatory amendment eliminates the requirement that the caregiver(s) be certified or approved as foster parent(s) and requires that such person(s) satisfy the standards for an approved adoptive parent(s) [18 NYCRR 421.24(c)(2)(ii)].

For both categories of approved adoptive parent(s) noted in the preceding paragraphs, the adoption subsidy payment that has been approved via the Adoption Subsidy Agreement now begins on the date of the adoptive placement, which is defined as the date the Adoptive Placement Agreement (APA) is signed. This requires the Adoption Subsidy Agreement be completed and submitted to the New York State Adoption Services (NYSAS) unit as soon as an approved adoptive resource is identified as the prospective adoptive parent(s) for a child who is freed and not placed in an adoptive placement. Turnaround time for an adoption subsidy decision from NYSAS is within 30 days from the date of receipt of the completed Adoption Subsidy Agreement application. At the point that NYSAS approves the Adoption Subsidy Agreement, the child can be placed in the adoptive home and the approved adoptive parent(s) can begin receiving an adoption subsidy prior to the child's adoption in the amount that was approved by NYSAS. **A child should not be placed in the adoptive home until the Adoption Subsidy Agreement has been approved by NYSAS, because without the subsidy approval the approved adoptive parent(s) cannot receive any payment for the child's care.** This policy does not provide for retroactive

subsidy payments if the child is placed before the subsidy agreement application is approved by NYSAS. For such cases, the effective date of the subsidy is the date NYSAS approved the Adoption Subsidy Agreement

In cases where an adoption subsidy is being applied for by approved adoptive parent(s) who were not also certified or approved as foster parent(s), the criteria for a hard-to-place subsidy under the category of emotional attachment set forth in 18 NYCRR 421.24 (a) (3) (iii) (f) does not apply. This category is specifically for adoptive placements where the child “is hard-to-place with parent(s) other than his/her present foster parent(s) because he/she has been in care with the same foster parent(s) for 12 months or more prior to the signing of the APA by such foster parent(s) and has developed a strong attachment to his/her foster parent(s) while in their care such that separation from them would adversely affect the child’s development.” This category is not applicable because these prospective adoptive parents would not have been foster parents to the child prior to the signing of the APA.

*It is important to note that payment of adoption subsidy prior to finalization of the adoption is not authorized when either*

- ❖ *the adoptive parent is the child’s foster parent; or*
- ❖ *the adoptive parent is also approved or certified as a foster parent, is not currently the child’s foster parent, and placement of the child in the home will not result in a violation of the foster home capacity limitations.*

*In these situations, the pre-adoptive (foster) parent must receive foster board payments until the adoption is finalized.*

### **Disruption of Adoptive Placement**

An adoption disruption occurs when the pre-adoptive family decides they no longer want to adopt the child prior to the adoption finalization. Normally, if an adoption disrupts, the child is moved to another foster home, pre-adoptive home or congregate care facility. If an adoptive placement where the adoptive parents are receiving an adoption subsidy prior to finalization disrupts, the adoption subsidy payments must cease on the date the child is physically removed from the pre-adoptive home. However, if the child is subsequently returned to the adoptive placement that had previously disrupted, a new Adoption Subsidy Agreement must be completed and submitted to NYSAS for approval, and upon approval and signature of a new Adoptive Placement Agreement, the adoption subsidy payment is to be restarted. The process for submitting this new Adoption Subsidy Agreement application is unchanged from the original process.

### **Temporary Placement Out of the Home**

There may be circumstances where a child whose approved adoptive parents are

receiving adoption subsidy payment prior to finalization needs to be placed out of the home or the child is not currently residing in the home. In these circumstances, a determination must be made by the LDSS of whether the adoptive placement has actually ended or the situation is temporary with a plan for the child to return to the same adoptive placement. If, after assessment, it is determined that the adoptive placement ended, this is a disruption and the adoption subsidy payment must cease as addressed in the preceding paragraph. Please note that if the adoption subsidy is terminated, the pre-adoptive parent(s) must receive notification of the termination and be notified of their fair hearing rights. If it is determined that the child is out of the adoptive home only temporarily with the intention that the child will return back to the same pre-adoptive placement, the subsidy payment is to be treated based on the circumstances as described below:

- Any congregate care level of care - adoption subsidy continues. The placement must be evaluated at least every 30 days to determine whether the plan is still for the child to return back to the pre-adoptive home. Consultation must be made not only with the adoptive parents, but with appropriate agency staff, to determine if the plan for the child has changed and to look at projected timeframes to return back to the adoptive placement. If at any point the plan changes and the approved adoptive parent(s) decide they no longer want the child to return to their home or the LDSS determines that the child cannot return to the pre-adoptive home for the foreseeable future, or is no longer approved to adopt the child, thus ending the placement (disruption), the adoption subsidy is to cease on the date the disruption decision is made.
- Temporary Placement in another foster home - adoption subsidy continues. The placement must be evaluated at least every 30 days to determine whether the plan is still for the child to return back to the pre-adoptive home. Consultation must be made not only with the adoptive parents, but with appropriate agency staff to determine if the plan for the child has changed and to look at projected timeframes to return back to the adoptive placement. If at any point the plan changes and the pre-adoptive parent(s) decide they no longer want the child to return to their home, thus ending the placement (disruption), the adoption subsidy is to cease on the date the disruption decision is made.
- Detention - adoption subsidy continues, for up to 45 days, after which an assessment of placement options must take place between the appropriate agency staff. (Children can only remain at a detention facility beyond 45 days with a court order or prior written approval by OCFS.) If at any point the plan changes and the pre-adoptive parent(s) decide they no longer want the child to return to their home, thus ending the placement (disruption), the adoption subsidy is to cease on the date the disruption decision is made.

- Child's medical hospitalization - adoption subsidy continues. The placement must be evaluated at least every 30 days to determine whether the plan is still for the child to return back to the pre-adoptive home. Consultation must be made not only with the adoptive parents, but with appropriate medical professionals responsible for the child's care to determine if the plan for the child has changed and to look at projected timeframes to return back to the adoptive placement. If at any point the plan changes and the pre-adoptive parent(s) decide they no longer want the child to return to their home, thus ending the placement (disruption), the adoption subsidy is to cease on the date the disruption decision is made.
- Psychiatric hospitalization - adoption subsidy continues. The placement must be evaluated at least every 30 days to determine whether the plan is still for the child to return back to the pre-adoptive home. Consultation must be made not only with the adoptive parents, but with appropriate therapeutic professionals responsible for the child's care to determine if the plan for the child has changed and to look at projected timeframes to return back to the adoptive placement. If at any point the plan changes and the pre-adoptive parent(s) decide they no longer want the child to return to their home, thus ending the placement (disruption), the adoption subsidy is to cease on the date the disruption decision is made.
- Absence Without Leave (AWOL) - adoption subsidy continues for up to 30 days after the child goes AWOL. If during this 30-day period after going AWOL, a child 14 years of age or over is located and refuses to return to the pre-adoptive family, the placement will be considered a disruption and the adoption subsidy will cease on the date the disruption decision is made. In all cases, if the child remains AWOL after the 30-day period, the adoption subsidy will cease due to the absence of any responsibility on the part of the pre-adoptive family to support the child. If the child returns from the AWOL after the subsidy has ceased and is placed back into the pre-adoptive home with the goal of adoption, the family may reapply for an adoption subsidy.
- Visitation/vacation out of home - adoption subsidy continues.
- Respite care provided in accordance with OCFS regulations 18 NYCRR Part 435 - adoption subsidy continues.
- College Attendance - adoption subsidy continues. The child's permanent address would still be considered the pre-adoptive home, and the expectation would be that they would be coming home during school and summer breaks.

In those circumstances listed above as a temporary placement outside of the home, a second Adoption Subsidy Agreement application does **not** need to be completed when the child returns to the pre-adoptive home. However, as previously stated, if at any point the placement is determined to be a disruption, and the child then returns to the pre-adoptive home, a new adoption subsidy agreement needs to be completed (see section above titled *Disruption of Adoptive Placement*).

### **Pre-Adoptive Supervision of the Home**

Unlike post-adoption subsidy placements, pre-adoptive subsidy placements receive supervision until the adoption finalization. These placements may be supervised by LDSSs or voluntary agencies. If a voluntary agency is supervising the placement, it will continue to receive its administrative rate as it would with any other pre-adoptive placement. If the agency doing the supervision is an adoption-only agency that is paid through a contract, and not with an administrative rate through WMS, payment of the supervision would be part of the contract and would be handled the same way it is now for pre-adoptive foster care placements with these agencies. If the child is placed out of state or in another county, supervision of the home and payment for supervision (if applicable) would be handled in the same manner as it is now for these pre-adoptive placements.

## **IV. Required Action**

### **Federal Adoption Assistance Eligibility Determination**

In order for New York to be able to claim Title IV-E Adoption Assistance reimbursement for a pre-adoptive placement, the Title IV-E eligibility determination must be in place with the necessary documentation that supports each of the federal eligibility requirements. If eligibility for federal Adoption Assistance is based on Aid to Families with Dependent Children (AFDC), the child must satisfy the AFDC standards at the time of removal only, or meet the de-linking standards as described in 09-OCFS-LCM-12 *Highlights of Changes in Adoption Assistance Eligibility*. If eligibility for federal Adoption Assistance is based on Supplemental Security Income (SSI) eligibility, the child must have been determined by a designated Social Security Administration (SSA) claims representative as meeting the requirements for SSI prior to the finalization of the adoption. The child must be determined to have special needs prior to the submission of the Adoption Subsidy Agreement Application. Once eligibility is initially determined, there is no requirement for a redetermination for federal Adoption Assistance. (See the systems section of this document for the eligibility codes that are entered into WMS.)

For assistance with making this eligibility determination, please see Chapter 1B of the Eligibility Manual for Child Welfare Programs found at:  
<http://www.ocfs.state.ny.us/main/publications/eligibility/>.

### **Level of Subsidy Determination**

The process for determining the level of subsidy payment (i.e. basic/normal, special or exceptional) will remain the same. The subsidy level will continue to be based on the board rate level the child is receiving in foster care (or would be receiving if the child was in foster care), so it is important for the board rate to reflect the current needs level of the child (i.e. basic/normal, special or exceptional). Documentation to support the requested level in the adoption subsidy application will need to be provided with the Adoption Subsidy Agreement. However, following the approval of the Adoption Subsidy Agreement by NYSAS, and prior to the finalization of the adoption, if there is a change in the child's medical condition and/or medical documentation verifies a change that warrants a subsidy payment at a higher rate, a new Adoption Subsidy Agreement, along with supporting documentation, can be submitted to NYSAS for approval. The effective date for this new subsidy rate due to a change in the child's condition is the date of the approval of the new agreement.

### **Adoption Subsidy Agreement**

For adoptive placements that qualify for adoption subsidy payments prior to finalization of the adoption, the process for completing the Adoption Subsidy Agreement application remains the same as the current process, except that the LDSS with the guardianship and custody of the child will need to complete and submit the Adoption Subsidy Agreement application **prior** to the child being placed in the pre-adoptive home. Consequently, an adoption worker will need to start the Adoption Subsidy Agreement paperwork early in the planning stages of the pre-adoptive placement. Once prospective adoptive parents have been approved as adoptive parents, in accordance with the standards set forth in 18 NYCRR Part 421, and have been selected for a child who is freed for adoption, the worker should assess whether the parents, in addition to being approved adoptive parents, are also certified or approved as foster parents. If they are not, then the worker needs to complete the Adoption Subsidy Agreement as soon as possible and submit it to NYSAS. When making an adoption placement plan, the worker should consider the amount of time needed for NYSAS to review and make a decision regarding the adoption subsidy application, which can be up to 30 days from receipt of the completed application.

Currently, the LDSS includes the date the APA is signed and the date the child entered the adoptive home on the Adoption Subsidy Agreement form. Because these specific adoption subsidy applications are being done prior to an adoptive placement, the worker submitting the Adoption Subsidy Agreement application will not be able to include either the placement date, because the child is not yet adoptively placed, or the date the APA has been signed. Consequently, the LDSS should leave these two fields blank on the Adoption Subsidy Agreement: "date of Adoptive Placement Agreement" and "date child entered adoptive home."



However, an LDSS must still execute the APA upon the child's placement in the adoptive home, and use the date of the execution of the APA as the date that starts the adoption subsidy payment. An adoption subsidy cannot be paid for a period of time prior to the Adoption Subsidy Agreement being approved by NYSAS. If the child is placed prior to the Adoption Subsidy Agreement being approved by NYSAS, the start of the adoption subsidy payment will be the date the Adoption Subsidy Agreement is approved by NYSAS.

There are no changes to the Adoption Subsidy Agreement application for children placed with adoptive parents who are the child's foster parent or who are already approved or certified as foster parents.

## **V. Systems Implications**

### **WMS**

If an adoption subsidy is to be paid prior to adoption finalization, the subsidy is to be authorized in WMS with a new Service Type **PF** (Adoption Subsidy Pre-finalization) in the child's case. Purchase of Service (POS) 61 (Foster Care), POS 62 (Emergency Service and Maintenance), 67 (Initial Clothing), 68 (Replacement Clothing), and 79 (Diaper Allowance) cannot be used for the same provider when POS PF is used. However, POS 61 and POS 62 can be used for a different provider under certain circumstances where a child is temporarily placed outside of the pre-adoptive home (see the section titled Temporary Placement Out of the Home for a list of these circumstances). The PF authorization period cannot overlap with any other Adoption Subsidy POS (POS 01, 49, 52, 77, or 80).

If a voluntary agency is supervising the adoptive home during the pre-finalization period, a new service type **PV** (Pre-finalization Administrative Rate) will be authorized to a voluntary agency vendor ID (PXXX0000) and will represent the administrative portion of the payment that is made to the voluntary agency, when applicable.

The amount for both service types PF and PV may be authorized as a "C" (as contracted) or an actual dollar amount.

See General Information System (GIS) message 10-005 for further information on the newly created purchase of services (POS) WMS codes. The WMS Services coding and error guides have been updated to reflect these changes. They are available, along with GIS messages, at the OCFS website:

<http://ocfs.state.nyenet/it/GeneralResources/GeneralResourcesDefault.asp>

### **BICS**

The Benefits Issuance and Control System (BICS) rate tables have been enhanced to process the new service type of PF by using the service type 52 (Post

Finalization Adoption Subsidy) rates for the child's level of care. If the amount is authorized as a "C," the 52 rate for the child's Level of Difficulty (LOD) is used by BICS to make payment. Service type PV has also been added, and if the amount is authorized as a "C", the R1 rate for that voluntary agency will be used to make payment. There will be no BICS review of legal codes or home certification for either PF or PV. The Maximum State Aid Rate (MSAR) edits will be applied for PF in the same manner as for service type 52, and for PV in the same manner as the administrative portion of the voluntary payment applied to service type 61. Any amount over the MSAR will be identified as non-reimbursable. The BICS category and appropriation account for the new service types (PF and PV) will be the same values as current service type 52. POS PF and PV will be included on the BICS Composite Rolls in the same location as service type 52 (Post Finalization Adoption Subsidy).

The vendor paid must have a commodity code of 17 (adoptive). All the edits/advisories are allowed for RETRO and any suffix code used is allowed for POS type code PF and PV to the same extent as POS code 52.

## **CONNECTIONS**

The LDSS responsible for the pre-adoption subsidy payment must establish a home in CONNECTIONS with the Setting of "Adoptive" and the Facility Type of "Adoption Subsidy Home." Doing so will send the appropriate commodity code (17-Adoption) to BICS and allow the district to make pre-adoptive subsidy payments.

## **CCRS**

The child should be transferred from Foster Home placement to Adoption Subsidy Pre-Finalization placement (different home) by input of:

- M981 (Intra-Agency Transfer) or M982 (Inter-Agency Transfer) with old/new facility ID in Modifiers A, B respectively with Modifier C (Reason for Transfer) = TE - Placed in Adoptive Home....**and**
- A550 (Child Placed in Adoptive Home) with Modifier A = N--Not Child's Current Foster Family
  - NOTE: A499 (Child Completely Freed for Adoption) must be entered with a prior date from the A550 in order to input the A550.

## **Medicaid Payments**

All children who are in the legal custody of an LDSS Commissioner are categorically eligible for Medicaid, as long as they are United States citizens or meet satisfactory immigration status and are otherwise eligible.<sup>1</sup> When a child is

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<sup>1</sup> General Information System (GIS) 05 MA/041, published on 10/27/05 by the Department of Health.

freed for adoption, LDSSs should already have an active non-services Medicaid case open. This case should be left open until finalization.

For Upstate LDSS pre-finalization cases, foster care Medicaid is paid until finalization. Once the adoption is finalized, if the child is eligible for Medicaid, Medicaid is to be authorized based on the adoption subsidy case. The foster care Medicaid case must be closed and a new Medicaid case is to be opened in WMS under appropriate coding for the post-finalization Medicaid.

For New York City's Administration for Children's Services (ACS), the process will be different due to Services/Medical Assistance Interface (SERMA). Operationally, workers will authorize service type PF in WMS when the child moves from regular Foster Care (POS 61) to the Adoption Subsidy Pre-Final setting/home (POS PF), and will maintain ongoing Medicaid coverage. Please note that SERMA cannot be used for children placed out of state, and in this circumstance, the agency should follow Interstate Compact on Adoption and Medical Assistance (ICAMA) medical insurance coverage rules and procedures, as they would for any other pre-adoptive placement in another state.

The Medical Assistance/Medical Subsidy (section V) of the Adoption Subsidy Agreement will assist workers with determining if a child is eligible for either Medicaid or State Medical Subsidy upon finalization of the adoption.

## **VI. Claiming Instructions**

The financial claiming for federal Adoption Assistance and Adoption Subsidy prior to finalization is separate and apart from the LDSS Foster Care Block Grant, so additional uncapped reimbursement is available for these cases. The same claiming process for adoption subsidy cases that are being paid post-adoption finalization is to be used. The expenditures are to be claimed on line 4a of the Schedule K (Reimbursement for Foster Care and Adoption Expenditures LDSS-3479) in column 2 if Title IV-E, or column 3 if non-Title IV-E. Additional information regarding Schedule K, Reimbursement for Foster Care and Adoption Expenditures (LDSS-34798), can be found in the Fiscal Reference Manual Volume 2, Chapter 3.

Reimbursement is at the same rates as all other adoption subsidy payments. Title IV-E expenditures are reimbursed at fifty percent federal share, thirty-six and three-quarters percent state share, and the local share is thirteen and one-quarter percent subject to federal change.<sup>2</sup> Non-Title IV-E expenditures are reimbursed at seventy-three and one-half percent state share and twenty-six and one-half percent local share.

## **VII. Additional Information**

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<sup>2</sup> Due to the American Recovery and Reinvestment Act of 2009 (ARRA), this reimbursement has been temporarily adjusted to 56.20 federal share, 32.193 state share, and 11.607 local share.

This ADM supersedes 86-ADM-36 in the relevant portions.

Information regarding these changes to the adoption subsidy regulations is to be provided when recruiting adoptive parents for children whose foster parents do not wish to adopt.

#### **VIII. Effective Date**

The amendment to 18 NYCRR Part 421.24 became effective on May 7, 2008. Therefore, this Administrative Directive is effective immediately, retroactive to that date.

*/s/ Nancy Martinez*

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**Issued By:**

Name: Nancy Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development