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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER C. SOCIAL SERVICES
ARTICLE 2. FAMILY AND CHILDREN'S SERVICES
PART 421. STANDARDS OF PRACTICE FOR ADOPTION SERVICES

Current through September 15, 2011

* Section 421.24.* Adoption with subsidy.

(a) Definitions.

(1) Child means a person under the age of 21 years whose guardianship and custody have been committed to a social services official or a voluntary authorized agency, or whose guardianship and custody have been committed to a certified or approved foster parent pursuant to a court order prior to such person's 18th birthday, except as provided in section 384-b(3)(g) of the Social Services Law and section 631 of the Family Court Act, or a person under the age of 21 whose care and custody have been transferred prior to such person's 18th birthday to a social services official or a voluntary authorized agency pursuant to section 1055 of the Family Court Act or section 384-a of the Social Services Law, whose parents are deceased or where one parent is deceased and the other parent is not a person entitled to notice of an adoption pursuant to sections 111 and 111-a of the Domestic Relations Law, and where such official or agency consents to the adoption of such person in accordance with section 113 of the Domestic Relations Law.

(2) Handicapped child means a child who possesses a specific physical, mental or emotional condition or disability of such severity or kind which, in the opinion of the department, would constitute a significant obstacle to the child's adoption. Such conditions include, but are not limited to:

(i) any medical or dental condition which will require repeated or frequent hospitalization, treatment or follow-up care;

(ii) any physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for remunerative occupation, as described in sections 1002 and 4001 of the Education Law; or makes or may be expected to make a child handicapped, as described in section 2581 of the Public Health Law;

(iii) any substantial disfigurement, such as the loss or deformation of facial features, torso or extremities; or

(iv) a diagnosed personality or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his peers and/or authority figures, including mental retardation or developmental disability.

(3) Hard-to-place child means a child, other than a handicapped child:

(i) who has not been placed for adoption within six months from the date his or her guardianship and custody were committed to the social services official or the voluntary authorized agency; or

(ii) who has not been placed for adoption within six months from the date a previous adoption placement terminated and the child was returned to the care of the social services official or the voluntary authorized agency; or

(iii) who meets any of the conditions listed in clauses (a) through (f) of this subparagraph, which the Office of Children and Family Services has identified as constituting a significant obstacle to a child's adoption, notwithstanding that the child has been in the guardianship and custody of the social services official or the voluntary authorized agency for less than six months:

(a) the child is one of a group of two siblings (including half-siblings) who are free for adoption and it is considered necessary that the group be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; and

(1) at least one of the children is five years old or older; or

(2) at least one of the children is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or

(3) at least one of the children is otherwise eligible for subsidy in accordance with the provisions of this subdivision;

(b) the child is the sibling or half-sibling of a child already adopted and it is considered necessary that such children be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; and

(1) the child to be adopted is five years old or older; or

(2) the child is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or

(3) the sibling or half-sibling already adopted is eligible for subsidy or would have been eligible for subsidy if application had been made at the time of or prior to the adoption;

(c) the child is one of a group of three or more siblings (including half-siblings) who are free for adoption and it is considered necessary that the group be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; or

(d) the child is eight years old or older and is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or

(e) the child is 10 years old or older; or

(f) 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 adoption placement agreement by such foster parent(s) and has developed a strong attachment to his/her foster parent(s) while in such care and separation from the foster parent(s) would adversely affect the child's development.

(4) Board rate means the board rate paid to the boarding family including any rate increases in room and board rates and clothing replacement allowances as a result of, but not limited to cost of living adjustments and a change in the age of the child. Such rate includes board, clothing replacement allowance, child's allowance, and any other routine cash payments made to the boarding family for this child, or that would have been made for this child if boarded out, which rate was established pursuant to section 398-a of the Social Services Law as implemented by Part 427 of this Title. In the case of a minor parent who is adopted, such rate also includes amounts as may be necessary to cover the costs associated with the care and maintenance of the child or children of such minor parent who remain(s) with the minor parent following adoption.

(5) Applicable board rate means:

(i) in the case of a child in the guardianship and custody of a social services official and placed out for adoption, the board rate of the social services district placing the child for adoption or of the social services district in which the adoptive parent(s) reside(s), at the discretion of the placing district; or

(ii) in the case of a child in the guardianship and custody of a social services official and adopted by parent(s) residing outside the State, the board rate governing in the social services district which had custody of the child; or

(iii) in the case of a child in the guardianship and custody of a voluntary authorized agency and placed out for adoption with adoptive parent(s) residing in the same district, the board rate of such district; or

(iv) in the case of a child in the guardianship and custody of a voluntary authorized agency placed out for adoption with adoptive parent(s) residing in another district, the board rate of such other district; or

(v) in the case of a child in the guardianship and custody of a voluntary authorized agency and adopted by parent(s) residing outside the State, the board rate of the district where the voluntary authorized agency

has its principal office or business.

(6) Maximum rate of reimbursement for applicable board rates means the maximum rate of payment for care provided in a foster boarding home, as determined by the department pursuant to section 398-a of the Social Services Law, as implemented by Part 427 of this Title and the annual appropriation set forth in the State's aid to localities budget. State reimbursement may not exceed the maximum rates set forth below. Social services districts may set an amount less than the maximum rate. For the period July 1, 1991 through June 30, 1992, the maximum rate of reimbursement for applicable board rates are as follows:

(i) Maximum rates for board and care:

(a) For adoptions finalized prior to July 1, 1987:

Region	Age 0-5	Age 6-11	Age 12 and over
New York City and Nassau, Suffolk, Rockland and Westchester Counties	\$310	\$365	\$423
All other counties	284	340	395

For children who require special foster care services

--up to \$681 per month

For children who require exceptional foster care services

--up to \$1,033 per month

(b) For adoptions finalized on or after July 1, 1987:

Region	Age 0-5	Age 6-11	Age 12 and over
New York City and Nassau, Suffolk, Rockland and Westchester Counties	\$386	\$455	\$526
All other counties	353	424	490

For children who require special foster care services

--up to \$845 per month

For children who require exceptional foster care services

--up to \$1,281 per month

(ii) The maximum rates for clothing replacement:

Age	Yearly rate for replacement
0-5	\$292
6-11	409
12-15	634
16 and over	775

(iii) The maximum rates for diaper allowance:

Age	Monthly allowance
0-3	\$45

(7) Voluntary authorized agency means an authorized agency as defined in paragraphs (a) and (c) of section 371(10) of the Social Services Law.

(8) State income standard means the most recent Federal income official poverty line (as defined and annually revised by the Federal Office of Management and Budget) updated by the department for a family size of four and adjusted by the department for family size.

(9) Applicable State income standard means 275 percent of the State income standard.

(10) Social services official means a county commissioner of social services, a city commissioner of social services, or an Indian tribe with which the department has entered into an agreement to provide adoption services.

(11) Appropriate social services official means the social services official with guardianship and custody of

the child, or for a child in the guardianship and custody of a voluntary authorized agency and placed out for adoption, the social services official of the district where the prospective adoptive parent(s) resides.

(b) Application for adoption subsidy.

(1) The social services official or voluntary authorized agency responsible for an adoption placement must provide information to foster parent(s) and prospective adoptive parent(s) regarding the adoption subsidy program, including an explanation of the criteria used to determine whether a particular child is hard-to-place or handicapped, at the time a child is identified to a person or persons interested in adopting that child or at the time the foster parent(s) with whom the child is residing are told that a proceeding to free the child for adoption has been commenced.

(i) Prior to placing a child in an adoptive home, or approving foster parent(s) as adoptive parent(s) for a child, the social services official or authorized agency must document whether the person(s) with whom the child will be placed or the foster parent(s) with whom the child is living will adopt the child with or without an adoption subsidy.

(ii) The official or agency must also document its assessment as to whether or not the child may be currently eligible for an adoption subsidy. If a child does not appear to be eligible for the adoption subsidy and the prospective adoptive parent(s) or the foster parent(s) indicate an inability or unwillingness to adopt the child without subsidy, the social services official or voluntary authorized agency must seek an alternative adoptive placement for the child. Efforts to locate adoptive parent(s) willing to accept the adoptive placement of the child without payment of an adoption subsidy must be documented by the caseworker.

(2) At the time of an adoptive placement, the social services official or voluntary authorized agency responsible for placement must provide an adoption subsidy agreement to any person(s) who indicate(s) a desire to apply for an adoption subsidy.

(i) Written notice must be given to any person(s) applying for an adoption subsidy that:

(a) except as specifically provided in this clause, the person(s) applying for an adoption subsidy must submit a completed subsidy agreement and supportive documentation to the social services district or voluntary authorized agency as early as possible but in no event after the date the child's adoption is finalized. The notice must indicate that completed subsidy agreements and supportive documentation may only be submitted after finalization of the child's adoption in cases where:

(1) the adoptive parent can establish that he or she was unaware of any handicapping condition affecting the child at the time the child's adoption was finalized;

(2) a physician submits a written diagnosis of the child's medical condition, certifies that such condition existed prior to the date the child's adoption was finalized, and describes the basis for making each of these findings; and

(3) the child's adoption was finalized on or after January 1, 1982;

(b) if an adoption subsidy is denied or granted in an amount which the applicant determines to be inadequate or inappropriate or if the application for the subsidy is not acted upon within 30 days of filing, such person has the right to a fair hearing pursuant to subdivision (g) of this section.

(ii) In the case of a child in the guardianship and custody of a social services official, but placed out for adoption by a voluntary authorized agency, or in the case of a child in the guardianship and custody of a voluntary authorized agency and placed out for adoption by such voluntary authorized agency, the agency must attach any and all agency documentation relevant to eligibility for an adoption subsidy to the adoption subsidy agreement and must forward completed subsidy materials to the appropriate social services official for review and approval within 15 working days of receipt of the subsidy agreement.

(iii) Within 15 working days of receipt of the subsidy agreement and the documentation provided by the voluntary authorized agency responsible for the adoptive placement or by the adoptive parent(s), the social services official must complete an assessment of eligibility and, unless authorized by the department to approve the agreement, must forward its recommendation and the completed subsidy materials to the State Adoption Service for review and final approval.

(iv) Within 30 working days of receipt of the subsidy agreement and documentation provided by the voluntary authorized agency, if authorized by the department, the social services official must approve or disapprove the agreement. If the agreement is not approved or disapproved within 30 days of submission, the voluntary authorized agency may submit the agreement to the department for approval or disapproval.

(c) Payments for the care and maintenance of a handicapped or hard-to-place child.

(1) A social services official must make monthly payments, for the care and maintenance of a handicapped or hard-to-place child, to the person(s) with whom the child has been placed out for adoption or by whom the child has been adopted. Such payments must be applied for either prior to adoption, or subsequent to the

adoption if the person(s) adopting the child first became aware of the child's physical or emotional condition or disability subsequent to the adoption and a physician certifies that the condition or disability existed prior to the child's adoption. All applications for adoption subsidies must be made on forms and reviewed according to procedures as may be established by the department.

(2) Such payments must be made as follows:

(i) In the case of a child in the guardianship and custody or the care and custody of a social services official who is being adopted by the foster parent(s) with whom the child has been boarded, such payment must continue as a foster care payment until the date of the court order finalizing the adoption and must be made in accordance with Part 427 of this Title. Monthly payments for the care and maintenance of the child as an adopted child under the provisions of this subdivision must begin on the date of the court order finalizing the adoption.

(ii) In the case of a child in the guardianship and custody or the care and custody of a social services official who is placed with and is to be adopted by foster parent(s) other than the foster parent(s) with whom the child had been previously boarded and who is otherwise eligible for an adoption subsidy payment, such payment must initially be made as a foster care payment and must be made from the day of placement for adoption to the foster parent(s) with whom the child is placed, provided such placement does not result in a violation of section 378.3 or 378.4 of the Social Services Law and/or section 443.1(j) of this Title. If the placement would result in a violation of either of such sections, the person(s) adopting the child must be approved adoptive parent(s) and payment must be made as an adoption subsidy payment from the date of placement in accordance with the provisions of subparagraph (iii) of this paragraph. Foster care payments under this provision must be made in accordance with Part 427 of this Title. Except where the provisions of section 378.3 or 378.4 of the Social Services Law and/or section 443.1(j) of this Title require that adoption subsidy payments be made to the prospective adoptive parent(s) prior to finalization of the adoption, such payments must begin upon the date of the court order finalizing the adoption and must be made in accordance with the provisions of this section.

(iii) In the case of a child in the guardianship and custody or the care and custody of a social services official who is freed for and placed for adoption, is otherwise eligible for adoption subsidy payments and is to be adopted by approved adoptive parent(s) who are not also certified or approved foster parent(s), such payment must be made as an adoption subsidy payment from the date of placement with the approved adoptive parent(s).

(iv) In the case of a child in the guardianship and custody of a voluntary authorized agency who is freed for and placed out for adoption, and who is otherwise eligible for an adoption subsidy, an adoption subsidy payment for the care and maintenance of the child will be made from the date the department approves the subsidy agreement submitted for approval if:

(a) an approved home study has been completed; and

(b) a placement agreement has been signed and the child has been placed in the home.

(3) Payments must be made only pursuant to a written agreement between the social services official or agency and the person(s) with whom the child has been placed out for adoption or by whom the child has been adopted. The written agreement must include, but is not limited to, the following:

(i) the date on which the agreement is entered;

(ii) the first name and birthdate of the child for whom the payment is to be made;

(iii) the nature of the child's handicap, if any, indicated both in terms of the diagnosing physician and in lay terms; or

(iv) the condition(s) which make the child hard-to-place, as determined from paragraph (a)(3) of this section; and

(v) the family's annual income, as determined from paragraph (9) of this subdivision;

(vi) the amount to be paid monthly for the care and maintenance of the child, and the board rate upon which the amount of payment is based;

(vii) the provisions contained in paragraph (4) of this subdivision relating to payment when the child is out of the home and/or the custody of the adoptive parent(s);

(viii) the conditions under which the agreement may be modified;

(ix) a provision that whenever applicable board rate increases or whenever a change in the age of an adopted child qualifies such child to receive adoption subsidy payments at an increased rate, the social services official responsible for making adoption subsidy payments will adjust the adoption subsidy payments to reflect such increases; and

(x) such other provisions as the department, the social services official or the adopting parent(s) may agree to.

(4) Where more than one child is placed with the same person(s) for adoption subject to payments for care and maintenance, a separate written agreement must be completed for each child.

(5) The written agreement authorizing monthly payments will remain in effect until the child's 21st birthday. No payments may be made if the social services official determines that the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents. Such written agreement must state that it will be the responsibility of the adoptive parent(s) to inform the appropriate State or local official when they are no longer legally responsible for the child or no longer providing any support to the child.

(6) The written agreement shall not be affected by amelioration, remission or cure of the handicapping condition, if any.

(7) The amount of the monthly payment must be determined in accordance with paragraphs (11) and (12) of this subdivision.

(8) The income of the person(s) adopting a handicapped or hard-to-place child shall not be considered by the local social services official in determining whether or not to enter into such an agreement.

(9) Once an agreement to provide a subsidy payment is made, the annual income of the person(s) adopting the child will be considered only for the purpose of determining the amount of the monthly payment to be made, according to the provisions of paragraphs (11) and (12) of this subdivision.

(10) Computation of annual income shall be subject to the following provisions:

(i) Only income earned as wages or salary from employment and/or net income from nonfarm self-employment or net income from farm self-employment as defined in section 404.5(b)(5) of this Title shall be considered in computing annual income. The income of persons other than the adopting parent(s) shall not be considered.

(ii) As evidence of income, a social services official may request wage stubs, or the most recent W-2, or an employer's statement of wages, or, in the case of income other than wages or salary, a copy of the adopting person's latest Federal income tax return.

(iii) When a person adopting is 62 years old or older, or will be subject to mandatory retirement from present employment within five years of the date of adoptive placement, such person's income shall be disregarded in computing annual income.

(11) If the annual income of the person(s) adopting a handicapped or hard-to-place child pursuant to the provisions of this section, as determined by the applicable provisions of paragraph (10) of this subdivision, is equal to or less than the applicable State income standard, the monthly payment for care and maintenance of the adopted child must be 100 percent of the applicable board rate, unless the person(s) adopting voluntarily and, in writing, request and agree to a lower rate.

(12)(i) If the annual income of the person(s) adopting a handicapped or hard-to-place child pursuant to the provisions of this section, as determined by the applicable provisions of paragraph (10) of this subdivision, is greater than the applicable State income standard, a social services district has two options in determining the amount to be paid for care and maintenance of the child. Unless the person(s) adopting voluntarily and, in writing, request and agree to a lower amount, such amount must be either:

(a) 100 percent of the applicable board rate regardless of the annual income of the person(s) adopting; or

(b) an amount less than 100 percent, but not less than 75 percent, of the applicable board rate, as determined in accordance with the following formula. The social services district must:

(1) calculate the annual income of the person(s) adopting pursuant to the applicable provisions of paragraph (10) of this subdivision;

(2) determine what percentage such annual income is of the applicable State income standard; and

(3) use the following schedule to determine the amount to be paid based on the percentage calculated in subclause (2) of this clause:

ADOPTION SUBSIDY PAYMENTS SCHEDULE

Annual income of person(s) adopting; percentage of applicable State income standard	Amount of adoption subsidy payment
Over 100% but not more than 110%	95% of Applicable Board Rate
Over 110% but not more than 120%	90% of Applicable Board Rate
Over 120% but not more than 130%	85% of Applicable Board Rate

Over 130% but not more than 140%
Over 140%

80% of Applicable Board Rate
75% of Applicable Board Rate

(ii) The social services district must use the same option for all subsidized adoptions. If a social services district wishes to change from one option to the other option, the district must inform the department in writing of the intended change at least 30 days prior to the effective date of the change. The district must use the newly selected option in all new subsidy agreements entered into on or after the effective date of the change. Subsidy agreements finalized before the effective date of the change will not be affected by the change.

(13) The department may authorize the social services official to approve or disapprove the written agreement on behalf of the department pursuant to section 453(2) of the Social Services Law.

(i) The standards for authorization include, but are not limited to, the following:

(a) the social services district must submit a written request to the department requesting authorization to approve adoption subsidy agreements concerning hard-to-place and/or handicapped children;

(b) the social services district must have an adequate number of staff who have been properly trained in the requirements of the Federal and State adoption assistance program and the agreement approval process;

(c) the social services district must have a satisfactory and effective system in place to complete the review and approval of written adoption subsidy agreements;

(d) the social services district must assume responsibility for maintaining the necessary files and documentation for Federal and State audits and fair hearings, and for providing information to the department related to such audits and hearings; and

(e) the social services district must be willing to assume fiscal responsibility for those cases which the district has been authorized by the department to approve.

(ii) The department may require social services districts to comply with additional standards to ensure that a social services district complies with State and Federal adoption assistance requirements, and may revoke the authority of a social service official to approve written adoption subsidy agreements when the social services district fails to comply with the Federal or State statutory and regulatory standards relating to the administration of the adoption assistance program.

(14) Except where the social services district has been authorized by the department to approve or disapprove written adoption subsidy agreements, all written agreements for payments for the care and maintenance of handicapped or hard-to-place children must be submitted to the department for approval or disapproval, in accordance with the provisions of title 9 of article 6 of the Social Services Law and this section. A disapproval must be in writing and must state the reasons therefor. If an agreement is not disapproved in writing by the department or the social services district, where the social services district has been authorized by the department to approve or disapprove the written agreement within 30 days after its receipt, it will be deemed approved except that:

(i) in the case of an agreement submitted pursuant to section 453(d) of the Social Services Law, approval will be granted contingent upon commitment of the guardianship and custody of the child to an authorized agency; and

(ii) in the case of an agreement submitted by a voluntary authorized agency to a social services official, the voluntary agency may submit the agreement directly to the department for approval or disapproval if the agreement is not approved or disapproved by the social services official within 30 days of submission.

(15) Neither the written agreement nor the amount of the payment is subject to an annual review, except as provided for by paragraph (17) of this subdivision. However, the adopting person(s) may request a review of the agreement and/or a change in the amount paid under the agreement. Such review or change may be granted at the discretion of the social services official in accordance with the regulations, and subject to the approval of the department if the agreement was approved by the department, as set forth in paragraph (14) of this subdivision.

(16) The social services official may adjust the monthly payment in accord with the provisions of the schedules in paragraphs (9) and (12) of this subdivision and changes made thereto by the department pursuant to the provisions of section 453(3) of the Social Services Law. Except as provided for by paragraph (17) of this subdivision, any change in the amount of the monthly payment must be made by amendment to the written agreement and must require the consent of the adoptive parent(s) and the approval of the department if the agreement was approved by the department, as set forth in paragraph (14) of this subdivision.

(17) Whenever the applicable board rate increases due to an increase in the board rate, and/or the clothing replacement allowance or whenever a change in the age of an adopted child qualifies such child to receive adoption subsidy payments at an increased rate, the social services official responsible for making adoption subsidy payments must adjust the adoption subsidy payments to reflect such increases. A review must be conducted by such official to ensure that such adjustments are included in the adoption subsidy payments made to the persons who have entered into adoption subsidy agreements. The official must provide such person(s) with appropriate notice of such adjustments. Such notice will constitute an amendment to the adoption subsidy agreement and must be attached to such agreement. Such adjustments in payments are neither subject to the approval of the department nor subject to the consent of the adoptive parent(s).

(18)(i) Upon the death of the person(s) who adopted the child prior to the 21st birthday of the child, payments made pursuant to this subdivision must continue and must be made to the legal guardian or custodian of the child under the age of 18 upon the issuance of letters of guardianship or order of custody until the child has attained the age of 21. If the guardian or custodian was the caretaker of the child under the age of 18 prior to the issuance of letters of guardianship or order of custody, such payments must be made retroactively from the death of the adoptive parent or parents. All provisions of this section applicable to maintenance payments made to the person(s) who adopted the child will be applicable to maintenance payments made to the legal guardian or custodian of the child.

(ii)

(ii)(a) Upon the death of the sole or surviving adoptive parent or both adoptive parents after the 18th birthday and before the 21st birthday of the adopted child, where such adoptive parent or parents were receiving adoption subsidy payments at the time of death, such subsidy payments must continue, but must be made to the guardian of the child on behalf of such child, where the child consents to the appointment of a guardian. Such subsidy payments must be made retroactively from the death of the adoptive parent or parents to the appointment of a guardian, and must continue until the 21st birthday of the child. If, however, there is no willing or suitable person to be appointed as guardian, or the child does not consent to the appointment of a guardian, such subsidy payments must be made retroactively from the death of the adoptive parent or parents and must continue to be made until the 21st birthday of the child:

(1) through direct payments to the child, if the social services official determines that the child demonstrates the ability to manage such direct payments; or

(2) to a representative payee certified by the social services official.

(b) Upon receipt of notification of the death of the sole or surviving adoptive parent or both adoptive parents after the 18th birthday and before the 21st birthday of the adopted child, where such adoptive parent or parents were receiving adoption subsidy payments at the time of death, the social services official must notify the child of:

(1) the processes available to continue subsidy payments until the 21st birthday of the child including appointment of a guardian under the Surrogate's Court Procedure Act, application to be approved for direct subsidy payments, or the appointment of a representative payee; and

(2) the right of the child to be involved in all such processes.

(c) Where the social services official has determined that the child does not demonstrate the ability to manage direct subsidy payments, the social services official must certify payment to a representative payee on behalf of the child. Subsidy payments received by the representative payee must be held and used strictly for the use and benefit of the child. Designation of the appropriate entity or individual and investigation of an individual for certification as a representative payee must be conducted by the social services official responsible for payment of the adoption subsidy pursuant to this section.

(1) The social services official may designate an employee of the social services district to be the representative payee responsible for receipt of the adoption subsidy on behalf of the child only where the official determines that such employee has no conflict of interest in performing the duties and obligations as representative payee. If the child resides in a social services district other than the district responsible for payment of the adoption subsidy, the social services district in which the child resides may be designated the representative payee and a social services official of such district must select an employee of such social services district to be responsible for receipt of the adoption subsidy as the representative payee, only where the official determines that such employee has no conflict of interest in performing the duties and obligations as a payee. Where a voluntary authorized agency has a prior relationship with a child, or where the social services district does not have sufficient or appropriate staff available to perform the functions of the representative payee, the social services district may contract with a voluntary authorized agency as the representative payee on behalf of the

child where the social services district determines it would be in the best interests of the child to do so.

(2) The social services official may designate an individual for certification as a representative payee who must perform the functions and duties of a representative payee in accordance with the best interests of the child. In determining whether an individual is appropriate to be certified as the representative payee, the social services official must first consult with the child and must give the child's preferences significant weight. The child's preference must be determinative of the representative payee only where such preference does not conflict with the best interests of the child. Prior to designation of an individual by the social services official for certification as a representative payee, the social services official must:

- (i) collect proof of identity and a verifiable social security number of the nominated representative payee;
- (ii) conduct an in-person interview of the individual;
- (iii) investigate any potential conflicts of interest that may ensue if such individual is certified; and
- (iv) determine the capabilities and qualifications of the individual to manage the subsidy payment for the child.

(i) If, after completion of the investigation, the social services official is satisfied that the individual is qualified, appropriate and will serve the best interests of the child, the social services official must certify the selected individual as the representative payee for the child.

(ii) If the 21st birthday of the child occurs while awaiting the certification of a representative payee, the child is entitled to retroactive direct payment of subsidy payments since the death of the adoptive parent or parents after the 18th birthday of the child.

(4) The representative payee must submit reports to the social services official no less than once a year describing the use of the payments in the preceding year. Such reports must be submitted by December 31st of each year. The social services official may also request reports from time to time from the representative payee. If a representative payee fails to submit a report, the social services official may require that the representative payee appear in person to collect payments. The social services official must keep a centralized file and update it periodically with information including the addresses and social security or tax-payer identification numbers of the representative payee and the child.

(5) The social services official must revoke the certification of a representative payee upon:

- (i) determining that the representative payee has misused the payments intended for the benefit of the child;
- (ii) the failure of the representative payee to submit timely reports or appear in person as required by the social services official after such failure; or
- (iii) the request of the child upon good cause shown.

(6) The social services official must notify the child of the contact information of the representative payee within five days of making a decision.

(7) A child may appeal the refusal of the social services official to certify the individual preferred by the child for certification as the representative payee or revoke the certification of a representative payee upon request of the child pursuant to section 455 of the Social Service Law.

(19) The social services official on an annual basis in a written notification must remind the adoptive parents of their obligation to support the adopted child and to notify the social services official if the adoptive parents are no longer providing any support or are no longer legally responsible for the support of the child. Where the adopted child is school age under the laws of the state in which the child resides, such notification must include a requirement that the adoptive parents must certify that the adopted child is a full-time elementary or secondary student or has completed secondary education. For the purposes of this paragraph, an elementary or secondary school student means an adopted child who is:

- (i) enrolled, or in the process of enrolling, in a school which provides elementary or secondary education, in accordance with the laws where the school is located;
 - (ii) instructed in elementary or secondary education at home, in accordance with the laws in which the adopted child's home is located;
 - (iii) in an independent study elementary or secondary education program, in accordance with the laws in which the adopted child's education program is located, which is administered by the local school or school district; or
 - (iv) incapable of attending school on a full-time basis due to the adopted child's medical condition, which incapacity is supported by annual information submitted by the adoptive parents as part of this certification.
- (d) Payments for nonrecurring adoption expenses.

(1) Nonrecurring expenses means reasonable and necessary adoption fees, court costs, attorney fees, the costs of an adoption study, including health and psychological examinations and consultations, the cost of supervising an adoption placement, transportation costs, the reasonable costs of lodging and food for a child and his or her adoptive parent(s), which are incurred by or on behalf of the adoptive parent(s) and not otherwise reimbursed from other sources, which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of Federal law or the laws of this State or any other state.

(2) As used in this subdivision, a child with special needs means a child who:

(i) the State has determined cannot or shall not be returned to the home of his or her parents;

(ii) is handicapped as defined in paragraph (a)(2) of this section or is hard-to-place as defined in subparagraph (a)(3)(iii) of this section; and

(iii) a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without adoption assistance, except where such an effort would not be in the best interest of the child.

(3) A social services official must make a payment for nonrecurring adoption expenses incurred by or on behalf of adoptive parents in connection with the adoption of a child with special needs through an authorized agency when the final decree of adoption was entered on or after January 1, 1987 or the final decree of adoption was entered on or after January 1, 1986 and before January 1, 1987, but nonrecurring adoption expenses were paid after January 1, 1987. The payment for nonrecurring expenses will be made as a one-time payment, not to exceed \$2,000.

(4) Payments for nonrecurring adoption expenses must be made either to the adoptive parents directly, to an authorized agency on behalf of the adoptive parents or to an attorney on behalf of the adoptive parents for the allowable amount of attorney's fees or court costs incurred in connection with a completed adoption. Such payments must also be made when a child is placed from this State by an authorized agency and is adopted in another state, and the adoptive parent(s) are not eligible for nonrecurring expenses in the other state, but are otherwise eligible for nonrecurring expenses in this State.

(5) Except as specifically provided in this subdivision, payment for nonrecurring adoption expenses must be made pursuant to a written agreement signed prior to the final decree of adoption. The exceptions are:

(i) the final decree of adoption was entered on or after January 1, 1987, and prior to June 14, 1989; or

(ii) the final decree was entered on or after January 1, 1986 and before January 1, 1987, but nonrecurring expenses were paid after that date.

(6) Parents who qualify for an exception as set forth in paragraph (5) of this subdivision must sign an agreement and file a claim for nonrecurring adoption expenses before December 14, 1990.

(7) The agreement for payment of nonrecurring adoption expenses may be part of the adoption subsidy agreement or may be a separate agreement for those who will not receive an adoption subsidy. The agreement for the payment of nonrecurring adoption expenses must include, but is not limited to, the following:

(i) the nature and amount of any payments to be provided for nonrecurring adoption expenses;

(ii) the condition(s) which make a child "a child with special needs" as defined in paragraph (2) of this subdivision;

(iii) a provision that the payment of nonrecurring adoption expenses will be made as a one-time payment, not to exceed a maximum of \$2,000;

(iv) a provision that the agreement will remain in effect if the adoptive parents move to another state; and

(v) a provision for the protection of the interests of the child where the adoptive parent(s) and the child move to another state while the agreement is effective.

(8) Documentation of the nonrecurring adoption expenses, defined in paragraph (1) of this subdivision, must be provided by the adoptive parent(s) to a social services official or authorized agency so that the amount of the payment for nonrecurring adoption expenses may be determined. Such documentation must be in the form of receipts or written verification of services received and paid for, or services rendered or being rendered but for which payment has not been made. Except for adoptions specified in paragraph (5) of this subdivision, all receipts or verifications must be received by the social services official or authorized agency with whom the adoptive parents have signed an agreement within two years of the date of the final adoption decree.

(9) All written agreements for the payment of nonrecurring adoption expenses must be submitted to the department for approval or disapproval. The procedures contained in paragraph (c)(13) of this section will apply to the approval or disapproval of agreements for the payment of nonrecurring adoption expenses.

(e) Medical subsidy payments.

(1) Any child with respect to whom payments made for care and maintenance under subdivision (c) of this section are federally reimbursable shall be deemed a recipient of aid to families with dependent children for purposes of determining eligibility for medical assistance. Payments for medical care, services and supplies for all such eligible children shall be made under and in accordance with the provisions of the State's program of medical assistance in Articles 3 and 4 of Subchapter E of this Title.

(2) For any handicapped child with respect to whom a payment made under subdivision (c) of this section is not federally reimbursable, the social services official must make payments for medical care, services and supplies subject to the following conditions:

(i) A social services official must make payments, without regard to the financial need of the person(s) with whom the child has been placed for adoption, for the costs of medical care, services and supplies provided to a handicapped child adopted or placed for adoption by the social services official or by a voluntary authorized agency. For the purposes of this subdivision, a handicapped child shall include, but not be limited to, a child with special needs where a social services official has determined that the child cannot be placed with an adoptive parent or parents without medical subsidy because such child has special needs for medical, mental health or rehabilitative care.

(ii) Payments made for medical care, services and supplies for a handicapped child shall be made only pursuant to written agreement between the social services official and the person(s) adopting the handicapped child.

(iii) A written agreement for medical subsidy payments made under the provisions of this subdivision shall remain in effect until the child's 21st birthday, provided that the child continues to reside in the home of the person(s) with whom the agreement is made or remains financially dependent on such person(s), except as may otherwise be provided in this section.

(iv) Medical subsidy payments shall be made only for the costs of such care, services and supplies as may be authorized under the State's program of medical assistance for needy persons according to the provisions of Articles 3 and 4 of Subchapter E of this Title. The amount of such payments shall not exceed the schedules of payments for such care, services and supplies as contained in Article 4 of Subchapter E of this Title.

(v) Medical subsidy payments shall be made only for the cost of care, services and supplies for which the child or the adoptive parent(s) will not receive payment or reimbursement from insurance, medical assistance or other sources.

(vi) Medical subsidy payments may not be limited to the particular condition for which a child was determined to be a handicapped child, but shall be made for all care, services and supplies payable under the State's program of medical assistance of needy persons.

(vii) Payments for medical care, services and supplies for a handicapped child shall be made only where the person(s) adopting the child has/have applied for such payments prior to the child's adoption, provided that an application may be made subsequent to the adoption if the person(s) adopting the child first became aware of the child's condition or disability subsequent to the adoption and a physician certifies that the condition or disability existed prior to the child's adoption.

(viii) Neither the application for, nor the agreement for medical subsidy payments shall require approval by the Office of Children and Family Services.

(ix) The agreement for medical subsidy payments shall not be subject to review or change, except that the social services official shall request, at the social services official's discretion, either annually and/or at the submission of any claim, information about medical insurance or other coverage from the adopting person(s) in order to determine compliance with subparagraph (v) of this paragraph.

(x) At the discretion of the social services official, or pursuant to provisions contained in the written agreement for medical subsidy payments, payments for medical care, services and supplies for an adopted handicapped child may be made either to the provider(s) of such care, services and supplies or to the person(s) with whom the agreement is made.

(3) Payments for medical care, services and supplies for a hard-to-place child with respect to whom a payment under subdivision (b) of this section is not federally reimbursable may be made only if any adopting person at the time of adoption is 62 years of age or older or is subject to mandatory retirement from his present employment within five years of the adoptive placement. Such payments shall be subject to the provisions of paragraph (2) of this subdivision.

(4) Upon the death of persons who have adopted the child prior to the 21st birthday of the child:

(i) the payments made pursuant to this subdivision shall continue and shall be made to the legal guardian of the child until the child has attained the age of 21;

(ii) the assistance provided pursuant to this subdivision shall continue in the form of a medical subsidy payment to the legal guardian of the child until the child has attained the age of 21, if the child would otherwise have been eligible for a medical subsidy at the time of the application for an adoption subsidy; and

(iii) provided the child is not eligible for medical assistance, the appropriate social services official shall make medical subsidy payments on behalf of a child who, upon the finalization of the adoption, was receiving federally reimbursable adoption assistance payments. Such payments may be paid to the legal guardian of the child until the child has attained the age of 21, provided the child would otherwise have been eligible for a medical subsidy at the time of the application for an adoption subsidy, or may be paid directly to a provider of medical care, services or supplies rather than to the legal guardian.

(5) All provisions of this section applicable to medical subsidy payments made to persons who adopted the child shall be applicable to medical subsidy payments made to the legal guardian of the child.

(f) Payments to out-of-state adoptive parents.

(1) Payments made pursuant to subdivision (b) or (c) of this section with respect to a child who was adopted within this State but who has been removed legally from this State by his adoptive parent(s) shall remain in effect until the child's 21st birthday. Such payments shall be made to the adoptive parent(s) at the out-of-state address.

(2) A hard-to-place or handicapped child, as defined in this subdivision, may be placed with residents of another state or of the Commonwealth of Puerto Rico, for the purposes of adoption with subsidy. Payments for a child adopted by such residents of another state or of the Commonwealth of Puerto Rico may be made pursuant to the provisions of this subdivision, provided that such payments are made pursuant to a written agreement between the social services official placing the child and making the payment and the adoptive parent(s) resident of such other state or the Commonwealth of Puerto Rico. The written agreement shall be in accord with the provisions of this subdivision. Payments made to adoptive parents resident of another state or the Commonwealth of Puerto Rico shall be made to the adoptive parents at the out-of-state address.

(3) An adoption subsidy agreement shall become void at such time as it is determined by a social services official that a child, on whose behalf payments for care and maintenance and/or medical care are being made pursuant to provisions of this section, was brought into this State for the sole purpose of qualifying the out-of-state adoptive parents for such payments.

(4) A social services official who makes a determination pursuant to paragraph (3) of this subdivision shall advise the adoptive parent(s) of his decision and shall advise the adoptive parent(s) that the determination may be appealed according to the provisions of section 455 of the Social Services Law and Part 358 of this Title. The local determination shall remain in effect unless and until reversed by the department.

(g) Appeals and fair hearings.

(1) Any person aggrieved by the decision of a social services official or an official of the department not to make a payment or by a decision to make the amount of such payment contrary to provisions of title 9 of article 6 of the Social Services Law or this section or by the failure of such official to determine any application made under this section within 30 days after it is filed with such official may appeal to the department and request a fair hearing thereon. A request for a hearing must be made within 60 days after:

(i) receipt of a written notice indicating denial of the subsidy application by the local social services official or the State adoption service;

(ii) receipt of a written notice indicating that an adoption subsidy will be granted in an amount which the applicant determines to be inadequate or inappropriate; or

(iii) the expiration of the 30-day period in which a social services official or an official of the department is required to either approve or disapprove an adoption subsidy application.

(2) A fair hearing under this section may address only the following issues:

(i) whether the social services official or an official of the department has improperly denied an application for payments to be made under this section, including the failure of such official to issue a determination of an application within 30 days of its filing;

(ii) whether the social services official or an official of the department has determined the amount of payment made or to be made in violation of the provisions of this section; or

(iii) whether the social services official or an official of the department has improperly discontinued payments made under an agreement entered pursuant to this section.

(3) The department shall affirm a social services official's denial of an application for payments under this section if it is found that:

(i) the child for whom payments would be made is not a handicapped or hard-to-place child; or

(ii) there is/was another approved adoptive parent or parents who is/was willing to accept the placement

of the child without payment under this section within 60 days of such denial and placement of the child with such other parent(s) would not be contrary to the best interests of the child.

(4) At least six working days prior to the scheduled date of the fair hearing, written notice thereof shall be sent to the parties and their representatives.

(5) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.

(i) The grounds for removing a hearing officer are that such hearing officer has:

(a) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or

(b) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or

(c) displayed bias or partiality to any party to the hearing.

(ii) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in subparagraph (i) of this paragraph.

(iii) The request for removal made by a party must:

(a) be made in good faith; and

(b) be made at the hearing in writing or orally on the record; and

(c) describe in detail the grounds for requesting that the hearing officer be removed.

(iv) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.

(v) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel or the general counsel's designee.

(vi) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.

(vii) The general counsel or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.

(viii) The written determination of the general counsel or the general counsel's designee will be made part of the record.

(6) The department shall render its decision within 30 days after the fair hearing.

(7) The department may also review, on its own motion, any decision of the social services official. All decisions of the department shall be binding upon the social services district involved, and shall be complied with by the social services official thereof.

(h) Applicability. Notwithstanding any other provision of this section, agreements for the care and maintenance or for medical care of adopted handicapped or hard-to-place children entered into prior to January 1, 1982, shall continue in force and effect as written.

(i) Information services.

(1) Each social services district, through the use of television, radio or newspaper media, shall inform the general public of the availability of adoption subsidy payments for handicapped and hard-to-place children available for adoption.

(2) Each social services district shall disseminate literature and shall make available other informational services regarding the adoption subsidy program to any person making inquiry, application or other expression of interest in adopting a child.

(j) Reimbursement.

(1) Subject to the provisions of this Title and only for payments for the care and maintenance or for medical care of adopted handicapped and hard-to-place children, the department shall pay to each social services district:

(i) the amount of Federal funds, if any, properly received or to be received on account of such payments;

(ii) except with regard to a child who was in the guardianship and custody of a voluntary authorized agency, seventy-five percent of the amount of such payments remaining after first deducting therefrom any Federal funds paid pursuant to subparagraph (i) of this paragraph for a handicapped or hard-to-place child who was in the care and custody of a social services official, where such child is freed for adoption because his or her parent or parents are deceased, or the guardianship and custody of a social services official at the time the child was placed out for adoption; provided, however, that when payments for the care and maintenance of a handicapped or hard-to-place child are made to a person or persons residing in a social

services district whose board rate exceeds that of the district making such payments, that portion of the payments which exceeds the board rate of the district making the payments shall be subject to reimbursement by the State in the amount of 100 percent thereof.

(iii) 100 percent of the amount of such payments remaining after first deducting therefrom any Federal funds paid pursuant to subparagraph (i) of this paragraph for a handicapped or hard-to-place child who was in the guardianship and custody of a voluntary authorized agency at the time the child was placed out for adoption, or was placed out for adoption or being adopted after being placed out for adoption by an Indian tribe.

(2) Where agreements for payment require review and/or approval by the department, reimbursement shall be available only for payments made under those agreements which have been submitted to and approved by the department in accordance with the requirements of this section.

(3) No payments shall be made pursuant to this section if the social services official determines that the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents.

(k) Claiming. Claims for reimbursement for payments made for adoption subsidies shall be made by each local social services district in the manner and upon such forms as shall be required by the department.

18 CRR-NY 421.24

18 CRR-NY 421.24

2011 WL 74156894

18 CRR-NY 421.24

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