

OFFICE OF CHILDREN AND FAMILY SERVICES

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 | INFORMATIONAL LETTER |
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TRANSMITTAL: 01 OCFS INF-03

DIVISION: Strategic Planning & Policy Development

TO: Commissioners of Social Services
 Executive Directors
 of Voluntary Authorized Agencies

DATE: July 20, 2001

SUBJECT: Title IV-E Adoption Assistance Eligibility
 for Children in the Guardianship and Custody
 of Voluntary Authorized Agencies

SUGGESTED

DISTRIBUTION: Child Welfare Executive and Supervisory Staff
 Legal Staff
 Adoption Staff
 Foster Care Staff
 Staff Development Coordinators

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ATTACHMENTS: LDSS 3912A (Interim) Eligibility for
 Title IV-E Adoption Assistance (For
 children in the guardianship and custody
 of a voluntary authorized agency)
 (not available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18NYCRR 421.24 and 426	SSL 451		ACYF-CB-PA 01-01 Issued (1/23/01

PURPOSE

This informational letter will serve as an interim release to inform voluntary authorized agencies of far reaching changes related to the standards for establishing eligibility for federal adoption assistance (Title IV-E Adoption Assistance Program) for children placed directly in the guardianship and custody of a voluntary authorized agency. These changes are in response to a recent policy release (ACYF-CB-PA-01-01) by the federal Department of Health and Human Services (DHHS) clarifying Title IV-E eligibility for children voluntarily relinquished (surrendered) to both public and voluntary authorized agencies. It is very important to note that these revisions to Title IV-E adoption assistance eligibility do not require any changes in eligibility standards for cases in New York State where a child is in the guardianship and custody of a social services district and is placed through a voluntary authorized agency.

While the new federal standards will not impact the current State eligibility criteria for adoption maintenance subsidy, they will significantly impact eligibility for Title IV-E reimbursable adoption assistance and therefore will significantly impact which children are eligible to receive medical assistance or medical subsidy. In the near future, the Office of Children and Family Services (OCFS) will issue an Administrative Directive (ADM) with more updated comprehensive information on the policies, procedures, required documentation, and any additional changes related to subsidy payments on behalf of children in the guardianship and custody of voluntary authorized agencies.

Current Standards

There are both federal and State eligibility standards for adoption assistance or subsidy. It is the responsibility of the voluntary authorized agency to assess if a child in its guardianship and custody meets the State subsidy eligibility standards provided in Sections 451-458 of the Social Services Law (SSL) and 18 NYCRR 421.24 and Part 426 of OCFS regulations, and the federal eligibility standards provided in Title IV-E of the Social Security Act (SSA).

The focus of this release is on federal eligibility for Title IV-E reimbursable adoption assistance. Title IV-E eligibility standards have several components, including whether the child satisfies the standards of the former Aid to Dependent Children (ADC) Program in effect as of July 16, 1996 or is eligible for Supplemental Security Income (SSI). In addition, for all children, the federal standards for a child with special needs must be satisfied. Finally, the issue of eligibility for medical assistance or medical subsidy must be addressed. OCFS will determine whether the child is eligible for Title IV-E adoption assistance based on the completed subsidy application and documentation provided by the voluntary authorized agency as set forth below.

Impact of DHHS Changes

Prior to the January 23, 2001 guidelines from DHHS, children relinquished (surrendered) to the guardianship and custody of a voluntary authorized agency were eligible for Title IV-E financial adoption assistance if they were determined to have special needs and met the federal eligibility criteria for the former Title IV-A (ADC) program or the Supplemental Security Income (SSI) Program. However, according to the DHHS policy announcement, eligibility for the former Title IV-A (ADC) can no longer be used to establish Title IV-E eligibility for these children. There are two situations where a child relinquished (surrendered) to a voluntary authorized agency may be eligible for Title IV-E adoption assistance. They are:

- (1) when a child is SSI-eligible at the time the adoption proceeding is initiated and the State determines that the child meets the statutory definition of special needs prior to finalization of the adoption; and
- (2) in a subsequent adoption, when a child received Title IV-E adoption assistance in a previous adoption that dissolved or in which the adoptive parents died, if the State determines that the child continues to be a child with special needs.

Effective January 23, 2001, OCFS/New York State Adoption Services (NYSAS) will use the criteria specified by DHHS in ACYF-CB-PA-01-01 to determine Title IV-E eligibility for all new subsidy applications submitted for children relinquished (surrendered) to the guardianship and custody of voluntary authorized agencies. Implementation of these changes will mean that children who are not Title IV-E eligible, and not handicapped, will not be eligible (in most cases) for medical assistance or medical subsidy. Only children who are Title IV-E eligible are categorically eligible for medical assistance. For non-Title IV-E eligible children, a case-by-case determination must be made to determine eligibility for medical assistance. A non-Title IV-E eligible handicapped child will probably be eligible for medical assistance under the Consolidated Omnibus Budget Reconciliation Act (COBRA). In the case of a non-Title IV-E eligible hard to place child, OCFS regulation [18 NYCRR 421.24 (e)(3)] provides that payment for medical care may be made only when, at the time of the adoption, the adoptive parent(s) is 62 years of age or older or is subject to mandatory retirement from his/her present employment within five years of the adoptive placement. As a result of these changes, at the time the adoption petition is filed, a determination of SSI eligibility must be made for handicapped children for whom the agency is applying for subsidy at a special or exceptional rate. Voluntary authorized agencies will also need to provide documentation of how the child came into care. OCFS urges voluntary authorized agencies to immediately provide written notice to prospective adoptive parents and any current adoptive parents who completed their adoption on or after January 23, 2001 of these changes.

Note: This release recognizes that the majority of children being placed in the custody and guardianship of a voluntary authorized agency are placed following a relinquishment (a surrender executed pursuant to section 384 of the Social Services Law). There may be rare cases where the child becomes freed based on a termination or parental rights or death of parent(s) following a voluntary placement agreement. Federal standards require where a child is placed pursuant to a voluntary placement agreement (section 384-a of the Social Services Law) the child must have been under the care and custody of a public agency in order to be eligible for Title IV-E foster care. Accordingly, children who are placed directly in the legal custody of a voluntary authorized agency through a voluntary placement agreement are not Title IV-E eligible, unless the child is determined to be eligible for Supplemental Security Income Benefits (SSI) prior to or at the time the adoption petition is filed. An Interim form (LDSS 3912A Eligibility For Title IV-E Adoption Assistance) has been developed to capture documentation needed to address the standards referenced in this release.

Documentation to be submitted with application for subsidy:

At the time the child is placed with the voluntary authorized agency, it is the agency's responsibility to obtain from the birth parent(s) all the necessary information and documentation needed to determine the child's eligibility for adoption subsidy. Also, the voluntary authorized agency is responsible for providing the prospective adoptive parent(s) with the subsidy application, helping the parent(s) to complete the application and submitting the completed application and necessary documentation to New York State Adoption Services (NYSAS) for final approval. NYSAS will continue to make the determination of whether a child is eligible for medical assistance or medical subsidy based on the documentation provided by the voluntary authorized agency and will provide adoptive parents with notification of what medical benefits a child is eligible to receive. The adoptive parents must present this information to the social services district to receive medical benefits for the child.

Interim form LDSS 3912A (Eligibility For Title IV-E Adoption Assistance): Please note that new changes have been included in this form: (2a) has been changed to include a statement and documentation demonstrating the legal basis for how the child came into care, and (4) includes the new criteria for Title IV-E eligibility.

Supplemental Security Income Determination: In all cases where the voluntary authorized agency is submitting an application to OCFS for adoption subsidy for a handicapped child and is requesting a special or exceptional rate, the agency must submit an application to the local Social Security Administration (SSA) for a determination of the child's eligibility for SSI. Copies of applicable pages with the name of the child for whom the application is being made, the name of the agency making the application, the date of the application, and the official signature of the staff person responsible for submitting the application; or the official response/determination of eligibility from SSI is to be included with the documentation submitted with the subsidy application. If an agency fails to apply for SSI and the submitted documentation indicates that the child may

be eligible for SSI, the application will not be approved and will be returned as incomplete.

Important note: For a handicapped child to be eligible for Title IV-E adoption benefits and therefore categorically eligible for medical assistance, the application for SSI must be submitted and eligibility determined by SSA prior to or at the time the adoption petition is filed. In cases where the eligibility for SSI benefits is verified and or approved by SSA after the adoption petition is filed with the court, the child will be determined ineligible for Title IV-E medical assistance. This is particularly important to the provision of medical benefits for children being placed in adoptive homes out of the State. Consequently, it is important for the agency to submit the application for SSI to the local SSA office as soon as possible after a handicapped child is placed with the agency so that the determination can be completed prior to the adoption petition being filed.

For agencies not familiar with the SSA standards for determining if a child meets the definition of disabled, the following are the four main elements in the new SSA "Disability Standard For Children" used in making a determination:

- * The child cannot be working;
- * The child must have a medically determinable impairment or combination of impairments;
- * The impairment or combination of impairments must be expected to result in death or last for a continuous period of at least 12 months; and
- * The impairment or combination of impairments must result in marked and severe functional limitations.

Agencies should call the local Social Security Office or call 1-800-772-1213 for information and instructions on how to apply for SSI benefits for children in the agency's guardianship and custody.

Medical and other records: At a minimum, the following are the records needed by OCFS/NYSAS to determine that the child has special needs:

- Child's birth certificate, and, if applicable, birth certificate of sibling(s);
- The surrender agreement, the adoption placement agreement, and court order(s) transferring legal authority to the voluntary authorized agency;
- Medical reports and other documentation related to the child's handicap or hard to place status;
- Documentation showing that reasonable efforts were made to place the child without subsidy or that it was not in the child's best interest to do so;

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- Documentation verifying the child's receipt of SSI or that the child is not eligible for SSI;
- Information verifying age and retirement status of the adoptive parent(s), if the adoptive parent(s) is subject to mandatory retirement within five years of the date of the adoptive placement.

This informational letter takes effect immediately, retroactive to January 23, 2001.

William F. Baccaglioni
Director
Strategic Planning
and Policy Development