



Office of Children and Family Services

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Local Commissioners Memorandum

Transmittal:	16-OCFS-LCM-02
To:	Local District Commissioners
Issuing Division/Office:	Child Welfare and Community Services
Date:	February 3, 2016
Subject:	Changes Impacting Adoption Assistance Payments
Contact Person(s):	OCFS Bureau of Permanency Services, Carol McCarthy at 518-474-9406 or by email at Carol.McCarthy@ocfs.ny.gov
Attachments:	No

I. Purpose

The purpose of the Local Commissioners Memorandum is to inform local departments of social services (LDSSs) of policy changes regarding the administration of the adoption subsidy program, in particular concerning the failure by the adoptive parent(s) to provide any support to the adopted child, annual certifications, recovery of overpayments and termination/suspension of adoption subsidy payments.

II. Background

In November of 2014, the New York State Office of Children and Family Services (OCFS) requested approval from the federal Administration for Children and Families (ACF) of proposed changes to the administration of the New York State adoption subsidy. OCFS sought verification from ACF that the proposed policy changes would not impact continued state and local eligibility for federal Title IV-E adoption assistance reimbursement.

The proposed changes in the administration of the adoption subsidy program were generated, in part, from concerns raised by LDSSs and other sources, and are intended to support the basic purpose of the program, which is to provide financial support for adopted children with special needs while also addressing the rights and legitimate interests of adoptive parents.

The following reflects the feedback recently received by OCFS from ACF.

III. Program Implications

Changes in and clarification of OCFS policy in regard to the administration of the adoption subsidy program are reflected in the following scenarios:

1) LDSS Is Notified by Any Source that the Adoptive Parent(s) Is No Longer Providing Any Support to the Adopted Child.

A. Acceptable LDSS Follow Up

There are cases where the LDSS is contacted by the adoptee, current caregiver, court, attorneys, or other concerned individuals notifying the LDSS that the adopted child is no longer receiving any support from the adoptive parent(s). When this occurs, giving rise to the LDSS having reasonable cause to suspect that the adoptive parent(s) is no longer providing any support, additional follow up by the LDSS is warranted in order to verify that the adoptive parent(s) continue to provide support to the adopted child. Additional follow up may include contact with the adoptive parent(s) by letter or phone, or may include a visit to the home where other means of contact have not been successful. In these cases, the adoptive parent(s) will be required, as a condition for the continuation of the subsidy payments, to produce evidence of the support that is being provided on behalf of the adopted child. Merely a statement from the adoptive parent(s) that the adoptive parent(s) is providing support is not adequate verification.

The federal and state standard is “any support,” so the LDSS cannot mandate a dollar for dollar accounting of the subsidy payment. The operational definition of “any support” is limited to support that is directly for the benefit of the adopted child that meets the food, clothing, education, medical and shelter needs of the adopted child and which has an identifiable value.

Failure to produce such evidence of “any support” in the cases outlined above would be the basis for termination of adoption subsidy payments. Acceptable evidence may include receipts or other written documentation that demonstrates that the adoptive parent is providing direct financial support to the adopted child in meeting the food, clothing, education, medical and shelter needs of such child. The LDSS would also need to determine if recovery of overpayment is appropriate.

B. Termination

If the LDSS makes a determination that termination of adoption subsidy is appropriate, adoption subsidy payments must end. In accordance with the terms of the adoption subsidy agreement, the adoptive parent(s) must be notified in writing of the date the adoption subsidy will be terminated, the reason for termination, and the parent(s) right to a fair hearing. Transfer of subsidy to another individual (legal guardian, legal custodian, representative payee, or the adoptee) is only appropriate in the case where the adoptive parent(s) has died and an amendment to the adoption subsidy agreement is executed as specified in 09-ADM-OCFS-14.

C. Recovery of Overpayment of Adoption Subsidy

There are circumstances when the LDSS is responsible for recovery of overpayment, such as when it has been determined that the adoptive parent(s) has not been providing any support to the adopted child yet adoption subsidy payments continued, or the sole remaining adoptive parent(s) has died but adoption subsidy payments continued to their bank account through direct deposit. Another situation is where the adoptee has died and the adoptive parent failed to notify the social services official of the death. In these cases, the LDSS must determine appropriate action based on the case circumstance. Appropriate action is not to unilaterally reduce the adoption subsidy payment for another adopted child in the home.

In cases where the sole remaining adoptive parent has died and payment continued to a bank account, the LDSS should notify the bank and any identified estate or family lawyer as soon as possible of any overpayment and seek return of the funds. Where the adoptive parent has died, the LDSS needs to determine the age of the adoptee and whether a guardian or legal custodian has been appointed for the adoptee. Communication with guardians, legal custodians, or other family members may be helpful in this process. The LDSS should consult OCFS release 09-OCFS-ADM-14 regarding the standards and the steps to be taken upon notification of the death of the last surviving adoptive parent.

2) Adoptive Parent(s) Fails to Respond to Annual Certifications Regarding Support

Where the adoptive parent fails to respond to requests for completion of the annual certifications attesting to providing any support for the adopted child or being legally responsible for support of the adopted child, OCFS has been informed by ACF that the LDSS may not withhold adoption subsidy payments on those grounds. In these cases, additional follow up by the LDSS noted in section 1 above is advised.

3) Adoptive Parent(s) Fails to Respond to Annual Certifications in Regard to Employment, Education or Medical Condition for Hard-to-Place Adoptee Child Age 18 and Over

The one exception to the prohibition against suspending adoption subsidy payments because of the failure by the adoptive parent(s) to submit a timely certification referenced in section 2 above, approved by ACF, involves the case where: a) the adoptee is over the age of 18, b) had attained the age of 16 before the adoption subsidy agreement took effect, and c) was determined to be Title IV-E eligible as a hard-to-place child. In these cases, the LDSS must verify that the adoptee satisfies employment, education, or medical conditions to maintain Title IV-E eligibility. Accordingly, where the adoptive parent(s) fails to respond to at a minimum of two written notices for completion of the annual certifications attesting to the employment, education, or medical status for hard-to-place youth over age 18, the LDSS adoptive parent(s) is to be informed in writing that authorization of adoption subsidy payment will be withheld until the necessary certification is received. Adoption subsidy payments will resume effective as of the date of the receipt of the required certification.

This modifies the direction provided in OCFS release 10-OCFS-ADM-10 on the subject of suspension of adoption subsidy payments.

4) Adopted Child Re-Enters Foster Care

For the period of time the adopted child is in foster care, the LDSS, at its discretion, may afford the adoptive parent(s) the option to voluntarily consent to the suspension or the reduction of adoption subsidy payments. In exchange for the voluntary suspension or reduction of adoption subsidy payments, the LDSS would agree not to refer the adoptive parent(s) to the Child Support Unit to seek support toward the cost of the foster care placement, in accordance with 18 NYCRR Part 422. If and when the child is discharged from foster care to the adoptive parent(s), adoption subsidy payments would resume in accordance with the terms and conditions of the adoption subsidy agreement.

Questions on implementing these policy changes should be referred to the OCFS Bureau of Permanency Services at (518) 474-9406.

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Issued By:

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