



Adoption Assistance for Children Adopted From Foster Care: A Factsheet for Families

Introduction

In every State there are children with special needs waiting in foster care for adoptive families. The most recent data estimate that 126,000 children are available to be adopted from foster care.¹ In the past, the costs of care and services were major obstacles to parents who would otherwise adopt and love these children, and most were not placed for adoption. The Adoption Assistance and Child Welfare Act of 1980² provided the first Federal subsidies to encourage the adoption of children from the nation's foster care system. These subsidies, known as adoption assistance, serve to minimize the financial obstacles to adoption. In addition, other types of assistance often are available to help with medical care or other services. Adoption assistance serves to remove barriers and contribute to an increase in adoption of children with special needs.

This factsheet discusses this assistance by reviewing:

- Federal Title IV-E adoption assistance
- State adoption assistance
- Arranging adoption assistance

Federal Title IV-E Adoption Assistance

Adoption assistance from the Federal government is administered under the Federal Title IV-E adoption assistance program. Payments to the parents of an eligible child with special needs can take the form of either one-time (nonrecurring) adoption assistance or ongoing (recurring) adoption assistance. These funds are paid through the State agency or through another public or nonprofit private agency and are available for children being adopted from foster care.

Nonrecurring Adoption Assistance. Nonrecurring adoption assistance is paid or reimbursed for one-time reasonable and necessary expenses directly related to the legal adoption of a child with special needs that have not been reimbursed from other sources or funds. These reimbursable expenses may include the home study fees, attorney fees, replacement of the birth certificate, and travel for visits to the child (including mileage, lodging, and meals). The Federal maximum for this type of assistance is \$2,000 for each adoptive placement.³ Some expenses in excess of this amount may be tax deductible.

Recurring Adoption Assistance. Ongoing adoption assistance provides funds that may be used for any identifiable need of the child. These usually take the form of

¹ This figure is according to Adoption and Foster Care Analysis and Reporting System (AFCARS) data for 2001. See <http://www.acf.hhs.gov/programs/cb/publications/afcars/report8.htm>.

² See P.L. 96-272 Adoption Assistance and Child Welfare Act of 1980 at <http://thomas.loc.gov/cgi-bin/bdquery/z?d096:HR03434:@@D|TOM:bss/d096query.html>.

³ See the Children's Bureau website for further information: http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=50#745.



monthly payments to the parents of eligible children. The maximum payment amount may not exceed the amount that would have been paid for maintenance if the child had remained in a foster home in that State. Payments can continue until the child reaches age 18 (or until age 21 where the State determines that the child has a physical, mental, or emotional disability), and these payments continue even if the family moves to another State. While adoption assistance is not taxable, portions could be taxed if the family cannot prove that the amount spent on the child's support was more than the amount of assistance received.⁴ Families are advised to consult a tax professional.

Eligibility for Federal IV-E Adoption Assistance. Eligibility for Federal Adoption Assistance has two main components, as outlined in this table:

Special Needs Determination The child must be determined to have "special needs," which include all three requirements listed below. ⁵ (This is required for both nonrecurring and recurring Federal adoption assistance.)	Eligibility Requirements The child must meet any one of four eligibility requirements provided by the law. (These are required only for recurring adoption assistance.)
1. The child cannot or should not be returned home to his or her parent(s). AND	1. The child was eligible for AFDC ⁶ during the month in which court proceedings were initiated or was eligible within 6 months prior to that time. OR
2. The child has a "factor or condition" (uniquely defined by each State) that qualifies him or her as having "special needs." Depending on the State, this factor or condition may include: <ul style="list-style-type: none"> • Ethnic background • Age • Membership in a sibling group • Medical, physical, or emotional condition or handicap The factor or condition must prompt the conclusion that the child cannot be placed without providing adoption assistance or medical assistance. AND	2. The child was eligible for Supplemental Security Income (SSI) programs under the Social Security Act before adoption. (A guide to Social Security benefits is available from the Casey Foundation at http://www.casey.org/Resources/Publications/GuideTOSSI.htm). OR
3. An attempt to place the child without adoption assistance was made but was unsuccessful except where it would be against the best interests of the child. ⁷	3. The child's parent was in foster care and receiving Title IV-E funds that covered both the parent and child when the adoption was initiated. OR
	4. The child previously received adoption assistance, and his or her adoptive parent died or the adoption was dissolved.

⁴ For a more complete explanation, see <http://www.nacac.org/subsidyfactsheets/taxes.html>.

⁵ See the text of the P.L. 96-272 Adoption Assistance and Child Welfare Act of 1980 at <http://www4.law.cornell.edu/uscode/42/673.html>.

⁶ This requirement dates back to the Title IV-E plan that was in effect prior to enactment of P.L. 104-193 and uses the AFDC definition of "dependent child" that was in effect July 16, 1996. P.L. 104-193 replaced the AFDC program with the Temporary Assistance for Needy Families (TANF) program, but the definition of "dependent child" is still used. See www.acf.hhs.gov/programs/ofa/ for more information on the TANF program.

⁷ For the full text, see <http://www4.law.cornell.edu/uscode/42/673.html>.

State Adoption Assistance

In some cases, prospective adoptive parents may know early on whether the child they are considering for adoption is eligible for adoption assistance. Such information may be included in a photolisting and in background information provided to prospective parents by the agency or social worker. (See the NAIC factsheet *Obtaining Background Information on Your Prospective Adoptive Child* at (http://naic.acf.hhs.gov/pubs/f_background.cfm.)

Family Income and Determination of Need. Federal law mandates that the resources of the adoptive parents cannot be considered when determining a child's *eligibility* for Title IV-E adoption assistance.⁸ However, the circumstances of the family and the needs of the child may both be taken into consideration when determining the *amount* of assistance.⁹

Medical Benefits. Children eligible for Title IV-E adoption assistance also are eligible for medical benefits under Title XIX (Medicaid). States may offer additional services through Title XX, which is a flexible block grant of monies from the Federal government to State governments. Title XX services may include counseling, legal aid, respite care, information, referral, and transportation services. States may offer additional adoption preservation services as well. Each State's Title XX program is different. Families should check with their State agency to determine what services are available.

State adoption assistance programs provide assistance for children with special needs who are not eligible under the Federal IV-E adoption assistance program. This assistance is funded by State and/or county dollars and is designed for children who are neither AFDC- nor SSI-eligible prior to adoption. Eligibility criteria for these programs vary by State, but State adoption assistance programs generally fall into three categories:

Medical assistance covers some or all the costs related to a child's specific medical condition that are not covered by the family's health insurance, as well as associated therapy, rehabilitation, and special education. (Most States call this assistance Medicaid; other States call it something else.)

Direct payment assistance refers to direct payments to the adoptive family to help meet the special physical, mental, or emotional needs of the child.

Supplemental adoption assistance varies greatly by State. Some States cover a child's emergency or extraordinary need; less often, assistance consists of repeated payments for services not covered by the medical or direct payments. Each State determines what is an allowable cost. Some States make this available for 3 months, others for 6 months, while still others provide one-time coverage for a specific service.

⁸See http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=81 to read the section of the *Child Welfare Policy Manual* that says that States cannot employ a "means test" in negotiating adoption assistance agreements.

⁹The full text of the law can be found at (<http://www4.law.cornell.edu/uscode/42/673.html>).

Arranging Adoption Assistance

Eligibility for State Adoption Assistance and Other Assistance. Eligibility for State adoption assistance varies but is linked to (1) determination of “special needs” from the Federal adoption assistance law (see above) and (2) unique aspects of the State adoption assistance program.

States sometimes consider the prospective adoptive family’s income and resources to determine if the family meets State eligibility requirements.

When a State agency has determined that the child has special needs (as defined by that State), the possibility of adoption assistance is discussed with the prospective adoptive parents. States are responsible for telling prospective adoptive parents about the availability of adoption assistance.¹⁰ Most children registered with agencies as having special needs have already been classified as eligible for adoption assistance.

Once a petition for adoption has been filed, a final determination of the child's eligibility under Title IV-E or the State program is made. The family applies for the adoption assistance to the State agency, through the local office. If approved, an adoption assistance agreement is drawn up between the public agency and the prospective parents, specifying the types of adoption assistance to be provided. This is usually done around the time of placement and must be done before finalization of the adoption. Each State has its own regulations for arranging a State-only subsidy, and each State establishes its own procedures to achieve compliance with the Federal Title IV-E program in arranging this type of assistance.

Deferred Adoption Assistance. In some States, it is possible for adoptive parents to defer adoption assistance until it is needed to meet the needs of the adopted child. In these cases, parents can elect to receive a Medicaid card only and sign the agreement with the payment level of \$0 – to be raised to meet the needs of the child at a future date. The adoption assistance agreement between the parents and the public agency is written in such a way as to clearly identify what event(s) would trigger services. Often, psychiatric reports and other documentation are necessary to justify the potential need for a future subsidy.

Appealing an Adoption Assistance Decision. Adoptive parents may appeal the State agency's decision regarding adoption assistance or the adoption assistance amount by using the State's fair hearing and appeals process. If the family is appealing a decision regarding a Title IV-E subsidy, the family files an appeal through the local agency that administers Title IV-E assistance. The local agency should inform the family about steps in the State fair hearing process. During the process, some families choose to hire an attorney or seek the advice of advocacy organizations for children with special needs. If a family wishes to appeal a decision regarding State adoption assistance, they should consult the local agency director about the existence of and steps in the State appeals (or “fair hearing”) process.

¹⁰ See http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=176 for information from the *Child Welfare Policy Manual* stating that it is the responsibility of the State to notify parents of adoption assistance availability.

Conclusion

Adoption assistance exists to help parents afford the costs associated with raising a child adopted from foster care. Current trends indicate that States are providing more and more such assistance, as the population of children in foster care shifts and a greater percentage of these children are adopted.¹¹ By providing financial assistance to these families, the State and Federal subsidy programs minimize the financial barriers to these adoptions, so that more children find permanent homes and families.

Adoption assistance payments are not the only type of financial assistance available to adoptive parents. Prospective adoptive parents should explore all potential resources to help make adoption an affordable option. The NAIC website (<http://naic.acf.hhs.gov>) offers several factsheets that provide this type of information. For example:

- Information on tax benefits and reimbursement for one-time adoption costs is included in the factsheet *Costs of Adopting*.
- Information on employer benefits is contained in the factsheet *Employer-Provided Adoption Benefits*.
- *Funding Resources for Adoption Services* lists websites of national organizations that provide adoption funding information.

¹¹ See <http://aspe.hhs.gov/hsp/fostercare-issues02/adoption/index.htm> for F. H. Wulczyn and K. B. Brunner's (2002) paper on statistics and projections of children adopted from foster care.