

22 VAC 40-260-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"AFDC" means the Aid to Families with Dependent Children Program.

"Adoption" means a legal process in which a person's rights and duties toward birth parents are terminated and similar rights and duties are established with a new family.

"Adoption assistance agreement" means a written agreement between the agency and adoptive parents that is binding on both parties. An adoption assistance agreement may be for a federal, state or local subsidy, a state or local subsidy, or a conditional subsidy.

"Agency" means a local Department of Public Welfare or Social Services.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by an agency or child placing agency which has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia which maintains a registry and photo-listing of children and families waiting for adoption.

"Child" means any person under 18 years of age.

"Child-placing agency" means any agency licensed to place children in foster homes or adoptive homes.

"Child with special needs" means any child in the custody of an agency or child placing agency who:

A. Is legally free for adoption; and The state has determined that the child is unlikely to return home because of termination of parental rights;

1. B. ~~For whom it has been determined that the child is unlikely to be adopted within a reasonable period of time due to one or more factors including, but not limited to~~ Has individual characteristics that make the child hard to place including:

1. Physical, mental, or emotional condition existing prior to adoption;
2. Hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability;
3. Individual circumstances of the child related to age, racial or ethnic background or close relationship with one or more siblings or foster parents.

C. Has had reasonable efforts made to place the child for adoption without subsidy.

D. For whom the above conditions were present at the time of adoption, but not diagnosed until after entry of the final order of adoption, and no more than one year has elapsed since the diagnosis.

“Department” means the Virginia Department of Social Services.

“Finalization of the adoption” means the court process of sanctioning the adoption which begins with the filing of a petition and ends with the entry of the final order of adoption.

“Maintenance payments” means payments made to adoptive parents on behalf of a child with special needs to help with daily living expenses.

“Nonrecurring expenses” means expenses of adoptive parents directly related to the adoption of a child with special needs including, but not limited to, attorney fees directly related to the finalization of the adoption;

transportation; court costs; and reasonable and necessary fees of child placing agencies.

"Special service payments" means payments or services provided to help in meeting the child's physical, mental, emotional, or dental needs.

"SSI" means Supplemental Security Income.

"Subsidy/adoption assistance" means a money payment or services provided to adoptive parents on behalf of a child with special needs.

22 VAC 40-260-20. Subsidy.

An adoption assistance agreement shall be executed by the agency or child placing agency for all children who have been determined eligible for subsidy.

A. Determining the Child's Eligibility Before Legal Adoption.

1. Basic Eligibility

The child must be:

- a. under 18 years of age;
- b. in the custody of a local board of public welfare/social services or licensed, private child placing agency at the time the petition for adoption is filed; and
- c. placed by the local board of public welfare/social services or licensed, private child placing agency with the prospective adoptive family for the purpose of adoption, except for those situations in which the child has resided for 18 months with foster parents who file a petition for adoption under Section 63.1-221 of the *Code of Virginia*.

2. Determining ~~the child's eligibility for subsidy.~~ that the child has special needs.

The agency or child-placing agency shall determine that:

- a. The child cannot be returned home because parental rights have been terminated;
- ~~a. Determine that the child is a child with special needs. A special needs child is any child in the custody of an agency or child placing agency who is free for adoption, but unlikely to be~~

~~adopted within a reasonable time due to one or more of the following conditions including, but not limited to:~~

b. The child has individual characteristics which make the child hard to place for adoption due to one or more of the following:

- (1) Physical, mental, or emotional condition existing before legal adoption;
- (2) Hereditary tendency, congenital problem or birth injury that could lead to a future disability;
- (3) ~~Is six years of age or older;~~ Is eight years of age or older;
- (4) Is a member of a minority or mixed racial heritage and three years of age or older;
- (5) Is a member of a sibling group that is ready for placement at the same time and that should not be separated; and
- (6) Has significant emotional ties with foster parents with whom the child has resided for at least 12 months; when the adoption is in the best interest of the child and when the subsidy is necessary to consummate the adoption by these foster parents.

~~b.c. Make reasonable efforts to first place~~ Reasonable efforts have been made to place the child

with appropriate adoptive parents without subsidy. A reasonable effort:

- (1) Shall be made except when it would be against the best interest of the child because of factors such as the existence of significant emotional ties with foster parents;
- (2) Shall be considered made if:
 - (a) ~~Local recruitment efforts have been undertaken and documented;~~ or

~~(b) Requirements for registration with AREVA have been met; and~~

~~(c) The child has been featured in the AREVA photo listing for a period of 30 days or other special recruitment efforts have been undertaken by AREVA and an appropriate family has not been identified for the child.~~

the special needs of the child have been discussed with the family and it is mutually determined that the family cannot adopt the child without financial assistance.

~~2. In order for a child to be eligible after legal adoption:~~

B. Determining the child's eligibility after legal adoption:

- ~~a. 1. The child must have a physical, mental or emotional condition that was present at the time of adoptive placement; or~~
- ~~b. 2. The need for subsidy results from a hereditary tendency, congenital problem, or birth injury; and~~
- ~~e. 3. In either a or b no more than one year has elapsed since the diagnosis was made.~~

B.C. Determining the type of agreement for which the child is eligible. The types of subsidy for which a child can be eligible are:

- 1. A federal subsidy. This type of subsidy is used for children whose foster care expenses are paid from federal and state funds. A federal/state subsidy agreement shall be executed for any special needs child who meets eligibility requirements for AFDC, AFDC-FC, or SSI.
- 2. A state subsidy. This type of subsidy is used for children whose foster care expenses are paid from state funds.

~~3. A conditional subsidy:~~

~~a. Shall be provided for any child with special needs, whose foster care expenses are paid from state and local funds, when payments and services are not needed at the time of placement but may be needed later. It is granted upon the request of the adoptive parents when a child:~~

~~(1) Has a physical, mental or emotional disability at the time of placement;~~

~~(2) Has a hereditary tendency, congenital problem or birth injury;~~

~~(3) Could develop emotional or other problems resulting from separation from birth parents, placement in foster care, or adoption;~~

~~(4) May need help later with daily living expenses.~~

~~b. Does not involve money payments or services. It is an agreement that allows the adoptive parent or parents to apply for a state or local subsidy after the final order of adoption;~~

~~c. Does not require that reasonable efforts first be made to place the child with an appropriate family without subsidy;~~

~~d. Commits the agency to providing a state subsidy when the adoptive parent or parents apply, if it is determined that the need is related to one of the conditions described in subdivision 3 a of this subsection;~~

~~e. Does not require annual certification.~~

~~C. D. Determining the types of payment to be made.~~

Adoption assistance payments must be negotiated with the adoptive family taking into consideration

the needs of the child and the circumstances of the family. In considering the family's circumstances, income shall not be the sole factor. Family and community resources must be explored to help defray the costs of adoption assistance.

There are three types of payment which shall be made on behalf of a child who is eligible for subsidy. The amount of payments made and services provided shall not exceed what would have been paid or provided had the child remained in foster care. The types of payment include:

1. Maintenance payments:

- a. A maintenance payment shall be approved for all children who are eligible for subsidy, ~~except those for whom a conditional subsidy will be provided,~~ unless the adoptive parent or parents indicate that a payment is not needed.
- ~~b. The amount of the payment shall be negotiated with the adoptive parents taking into consideration the needs of the child and circumstances of the adoptive parents.~~
- ~~c. The negotiated maintenance rate shall be approved by the department prior to signing the Adoption Assistance Agreement.~~
- ~~d. b.~~ Maintenance payments shall not be reduced lower than the amount specified in the initial subsidy agreement, unless requested by the adoptive parents.
- ~~e. c.~~ A maintenance payment may be paid for special services provided directly to the child by the adoptive parents. These are services provided by the parent to meet the special needs of a child. They are distinct from basic maintenance and supervision. The parents shall be qualified

by experience or specific training to perform such services. This item may be paid in addition to the basic maintenance payment.

f. d. Increases in the amount of payment shall be made when the child is receiving the maximum allowable basic maintenance payment and:

- (1) A child reaches a higher age grouping, as specified in foster care policy for maintenance payments; and
- (2) Statewide increases are approved for foster care maintenance payments.

f. Payments shall be made directly to the adoptive parent or parents on a monthly basis.

2. Special service payments:

a. A special service payment is used to help in meeting the child's physical, mental, emotional, or dental needs.

b. Types of expenses that are appropriate to be paid include:

- (1) Medical, surgical, or dental;
- (2) Equipment such as prosthetics, braces, crutches, hearing aids, eyeglasses, etc.;
- (3) Individual tutoring or remedial educational sessions, books or equipment;
- (4) Psychological and psychiatric evaluations and treatment;
- (5) Speech, physical, and occupational therapy;
- (6) Premiums for a major medical insurance policy for a child, if the child is not covered by a family policy; and .

- ~~(7) Special services provided directly to the child by the adoptive parents. These are services provided by the parent to meet the special needs of a child. They are distinct from basic maintenance and supervision. The parents shall be qualified by experience or specific training to perform such services. This item may be paid in addition to a maintenance payment.~~
- c. Special service payments may be provided, at the discretion of the agency, for other services needed to maintain the same level of service that the child received in foster care.
- d. A special service payment may be used for children eligible for Title XIX and the Social Services Block Grant (SSBG) to supplement expenses not covered by Medicaid or when SSBG funds are not available or do not provide adequate coverage.
- e. ~~Payments for special services are negotiated with the adoptive parents taking into consideration:~~
- ~~(1) The special needs of the child;~~
 - ~~(2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and~~
 - ~~(3) The circumstances of the adoptive family. In considering the family's circumstances, income shall not be the sole factor.~~
- f. e. Special service payments may be made directly to the providers of service or through the adoptive parents. A bill or receipt shall be submitted before payment. The agency shall not be responsible for bills or receipts submitted later than six months after the end of the month in

which the service was rendered.

~~g. f.~~ Providers shall be approved according to requirements for purchase of service specified by the Department of Social Services.

3. One time only payments:

Adoptive parents shall be reimbursed, upon request, for the nonrecurring expenses of adopting a special needs child.

a. Nonrecurring expenses shall include:

- (1) Attorney fees directly related to the finalization of the adoption, ~~not to exceed a reasonable rate set by the Department of Social Services;~~
- (2) Transportation and other expenses incurred by adoptive parents related to placement of the child. Expenses may be paid for more than one visit;
- (3) Court costs related to filing an adoption petition; and
- (4) Reasonable and necessary fees of adoption child placing agencies, ~~not to exceed a reasonable rate set by the Department of Social Services.~~

b. The total amount of reimbursement for non-recurring expenses is based on actual costs and shall not exceed \$2,000 per child per placement.

c. An adoption assistance agreement shall be signed and shall specify the services to be provided under this section.

d. Payment of nonrecurring expenses may begin as soon as the adoption assistance agreement has

been signed and the child is placed in the adoptive home. Payment may be made directly to providers of service or to the adoptive parents for expenses they have incurred.

- e. A bill or receipt shall be submitted before payment can be made. The agency shall not be responsible for bills or receipts submitted later than six months after the end of the month in which the expense was incurred.

D. Applying for subsidy.

1. Procedures for the child whose eligibility is established before legal adoption.

a. The adoption assistance agreement:

- (1) Shall be executed within 90 days of receipt of the application for adoption assistance;
- (2) Shall be signed before entry of the final order of adoption;
- (3) Shall specify the amount of payment and the services to be provided, including Title XIX and SSBG services;
- (4) May be adjusted with the concurrence of the adoptive parents, in the event of changes in the needs of the child;
- (5) Shall remain in effect regardless of the state of which the adoptive parents are residents at any given time; and
- (6) The interests of the child shall be protected through the Interstate Compact on Adoption and Medical Assistance, should the adoptive parents and child move to another state while the

agreement is effective.

2. Procedures for the child whose eligibility is established after legal adoption.

The application procedures are the same as for the child whose eligibility is established before adoption except:

- a. The application shall be submitted within one year of the diagnosis;
- b. The application shall be for a state subsidy.

E. Maintaining responsibility.

1. The adoptive parent or parents shall:

a. Submit annually to the agency or child placing agency an affidavit which certifies that:

- (1) The child for whom they are receiving subsidy remains in their care;
- (2) They are legally responsible for supporting the child; and, if applicable,
- (3) The child's condition requiring subsidy continues to exist.

b. Submit copies of all bills or receipts for special service payments made directly to the adoptive parents.

2. The agency or child-placing agency shall:

a. maintain responsibility for any payment or services identified in the agreement, regardless of where the family resides;

~~a.~~ b. inform prospective adoptive parents of the child's eligibility for subsidy. This shall include a full

disclosure of the services and payments for which the child is or may be eligible;

- ~~b.~~ c. Notify adoptive parent or parents who are receiving subsidy that the annual affidavit is due. The notification shall be sent to the adoptive parent or parents two months before the affidavit is due;
- ~~e.~~ d. Inform adoptive parent or parents, in writing, that they have the right to appeal decisions relating to the child's eligibility for subsidy and decisions relating to payments and services to be provided.

F. Terminating the subsidy agreement. The Adoption Assistance Agreement:

1. Shall be terminated when the child reaches the age of 18 unless the child has:
 - a. A physical or mental disability; or
 - b. An educational delay resulting from a physical or mental disability. This shall include educational delays resulting from a child's foster care circumstances.
 - c. If a child has one of the conditions in a and b above, the agreement shall be continued until the child reaches the age of 21;
2. Shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless;
 - a. It is determined that the child is no longer receiving financial support from the adoptive parents, or the child enters foster care; or
 - b. The adoptive parent or parents are no longer legally responsible for the child; or
 - c. The child's condition requiring subsidy no longer exists.
3. Shall not be terminated if the child's condition improves but could deteriorate again. In this case, the agreement shall be suspended without a payment, rather than terminated.