

**NORTH CAROLINA DIVISION OF SOCIAL SERVICES
FAMILY SERVICES MANUAL
VOLUME I: CHILDREN'S SERVICES
CHAPTER XIII – CHILD WELFARE FUNDING MANUAL**

Change # 04-2010

ADOPTION ASSISTANCE PAYMENTS

OCTOBER 2010

CHAPTER XIII: CHILD WELFARE FUNDING MANUAL

SECTION 1600- ADOPTION ASSISTANCE PAYMENTS

**CHANGE NOTICE: 04-2010
OCTOBER 2010**

I. INTRODUCTION

In years past, many children were deemed to be “un-adoptable” and languished in foster care, in part due to a lack of financial resources available to support them in an adoptive home. Beginning as early as 1968, some states started a program in which cash benefits were provided to families who adopted special needs children. North Carolina was among these pioneering states that provided state funded adoption assistance. However, there was a financial disincentive for these states (and others who were considering the programs) since the states issuing adoption subsidies were solely responsible for meeting costs. Federal programs only offered financial assistance to children in foster care. This changed dramatically in 1980 with the passage of P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980. The Act required all states to establish an adoption subsidy program, removing the financial disincentive to states by providing federal dollars to be used as a portion of the cost.

Determination of eligibility for adoption assistance and administration of the benefits are the responsibility of the child’s resident county Department of Social Services, regardless of whether the child is in the custody of the county Department of Social Services or is in the placement responsibility of a private child-placing agency.

If North Carolina residence cannot be established for a child who is the placement responsibility of a North Carolina private child-placing agency, (for example, if neither of his birth parents is a resident of the state), the Department of Social Services in the county of the private agency’s main office shall be the agency to determine the child’s eligibility and to administer the program.

II. IV-E ADOPTION ASSISTANCE ELIGIBILITY

Title IV-E adoption assistance is available on behalf of a child if s/he meets all of the eligibility criteria and the County agency enters into an adoption assistance agreement with the prospective adoptive parent(s) prior to the finalization of the adoption

A county agency shall enter into an adoption assistance agreement with the adoptive parents of a child determined to have special needs and provide adoption assistance if the child meets specific requirements.

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A. ELIGIBILITY OF THE APPLICABLE CHILD

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), enacted on October 7, 2008, amended the eligibility requirements for the Title IV-E adoption assistance program. The revised eligibility criteria will be phased in for specific children over a nine year period beginning in Federal fiscal year (FFY) 2010 (October 1, 2009). A child for whom the revised eligibility criteria apply is referred to as an **“applicable child.”** An applicable child is defined as a child who meets the applicable age requirements, or a child who has been in foster care for at least 60 consecutive months, or a sibling to either such child if both are to have the same adoptive placement. A child who is a “non-applicable child” is one for whom the revised eligibility criteria do not apply. For each pathway described below, the child must also be either a United States citizen or a Qualified Alien:

1. APPLICABLE CHILD – AGE

The eligibility requirements of an “applicable child” must be applied to any applicable child based on his or her age if the child has attained the applicable age any time before the end of the Federal fiscal year during which the adoption assistance agreement is entered into. The applicable age for a child begins at 16 years old in FFY 2010 and decreases by two years for each fiscal year until a child of any age meets the applicable age requirements in FFY 2018. Beginning October 1, 2017, the applicable child eligibility criteria will apply to children of all ages. See the chart below:

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**FEDERAL FISCAL YEAR
OCTOBER 1 – SEPTEMBER 30**

Age Attained During Fiscal Year	2010	2011	2012	2013	2014	2015	2016	2017	2019
17									
16									
15									
14									
13									
12									
11									
10									
9									
8									
7	Non-Applicable Child								
6	Non-Applicable Child								
5									
4									
3									
2									
1									
0									

For example, the agency enters into an adoption assistance agreement on behalf of a 15 year old child on October 15, 2009. The child will turn 16 years old on January 3, 2010. Because the child turns 16 in FFY 2010, the applicable age during that fiscal year, the “applicable child” eligibility requirements apply. However, if the child in the same situation would turn 15 years old on October 5, 2009, s/he would not reach the applicable age before the end of the fiscal year (September 30, 2010). In that case, the child is a “non-applicable child” and the eligibility criteria for a non-applicable child would apply.

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2. APPLICABLE CHILD – TIME IN FOSTER CARE AND SIBLINGS

As of FFY 2010, the law also defines an “applicable child” to include:

- a. a child who has been in foster care under the responsibility of the DSS agency for 60 consecutive months (any 60 consecutive months prior to the finalization of the adoption); or
- b. a child who is a sibling of an applicable child by virtue of age or time in foster care and is placed in the same adoptive arrangement as his/her sibling.

A child under (1) or (2) above is not automatically eligible for title IV-E adoption assistance. In both situations, the agency must apply the applicable child eligibility requirements, inclusive of the special needs criteria, as described below.

3. APPLICABLE CHILD. – SPECIAL NEEDS DETERMINATION

As part of determining eligibility for an “applicable child”, the agency must determine that the child meets the following special needs criteria:

- That the child cannot or should not be returned to the home of his parents. This means that the County agency must have reached that decision based on evidence by a court order legally clearing the child through TPR of both parents, or the existence of a petition for TPR of both parents, or a relinquishment by both parents to a child-placing agency (or some combination of these procedures to include both parents), or, in the case of an orphan child, verification of the death of both parents; and
- That there is a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under title IV-E and Medicaid, OR that the child meets all of the medical and disability requirements for Supplemental Security Income (SSI). If a child meets all the medical or disability requirements for SSI, the criteria for the factor or condition element of the special needs determination will be met. One or more of the following factors or conditions must exist and be documented in order for the child to be eligible for adoption assistance:

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- a. The child is six years of age or older;
- b. The child is two years of age or older and a member of a minority race or ethnic group;
- c. The child is a member of a sibling group of three or more children to be placed in the same adoptive home;
- d. The child is a member of a sibling group of two children to be placed in the same adoptive home, in which one or more of the siblings meet at least one of the other criteria for special needs;
- e. The child has a medically diagnosed disability which substantially limits one or more major life activity, requires professional treatment, assistance in self-care, or the purchase of special equipment;
- f. The child is diagnosed by a qualified professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and for which the child requires professional services;
- g. The child is diagnosed by a qualified professional to have a behavioral or emotional disorder characterized by inappropriate behavior which deviates substantially from behavior appropriate to the child's age or significantly interferes with child's intellectual, social and personal functioning;
- h. The child is diagnosed to be mentally retarded by a qualified professional;
- i. The child is at risk for a diagnosis described above in items e through h, due to prenatal exposure to toxins, a history of abuse or serious neglect, or genetic history. Note: if the child qualifies only under this criteria, the child must be placed in the potential category where they shall receive Medicaid but will receive a zero amount monthly payment until a diagnosis is made.

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When the diagnosis is made and documented appropriately, a change shall be made to the DSS-5095 to reflect payment beginning the month following diagnosis.

- j. The child meets all of the medical and disability requirements for Supplemental Security Income (SSI).
- That a reasonable, but unsuccessful, effort has been made to place the child with adoptive parents without providing adoption assistance or Medicaid. Such an effort might include the use of adoption exchanges, referral to appropriate specialized adoption agencies, or other such activities. The only exception to this requirement is when it would not be in the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of those parents as a foster child. The exception also extends to other circumstances that are not in the child's best interest, as well as adoption by a relative, in keeping with the statutory emphasis on the placement of children with relatives.

The County agency must document in each child's case record the specific factor(s) that make the child difficult to place and describe the efforts to place the child for adoption without providing assistance. In an effort to find an appropriate adoptive home for a child, and meet the requirement that a reasonable, but unsuccessful, effort be made to place the child without adoption assistance, it is not necessary for the agency to "shop" for a family while the child remains in foster care. Once the agency has determined that placement with a certain family is in the child's best interest, the agency should make full disclosure about the child's background, as well as known or potential problems. If the agency has determined that the child cannot or should not return home and the child meets the statutory definition of special needs with regard to specific factors or conditions, then the agency can pose the question of whether the prospective adoptive parents are willing to adopt without assistance. If they say they cannot adopt the child without adoption assistance, the requirement for a reasonable, but unsuccessful, effort to place the child without providing adoption assistance will be met and must be documented on the DSS-5012.

4. APPLICABLE CHILD – OTHER ELIGIBILITY CRITERIA

The agency must also determine an “applicable child” with special needs meets one of the four following eligibility requirements:

Child meets specific requirements at the initiation of adoption

proceedings: the child, at the time of the initiation of adoption proceedings, was in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to:

- An involuntary removal in accordance with a judicial determination to the effect that it was contrary to the child’s welfare to remain in the home; OR
- A voluntary placement agreement or voluntary relinquishment. Thus, for an “applicable child”, there does not have to be a Title IV-E payment made under a voluntary placement agreement.

Child meets all medical and disability requirements of SSI: the child meets all medical and disability requirements of SSI with respect to eligibility for SSI benefits. An “applicable child does not have to meet the needs-based requirements of SSI.

Child of a minor parent: the child was residing in a foster family home or child care institution with his/her minor parent and the minor parent was removed from home pursuant to either:

- a. an involuntary removal in accordance with a judicial determination to the effect that it was contrary to the child’s welfare to remain in the home; or
- b. a voluntary placement agreement or voluntary relinquishment.

Child was eligible in prior adoption: the child was adopted and was determined eligible for title IV-E adoption assistance in a prior adoption (or would have been found eligible had the Adoption and Safe Families Act of 1997 been in effect at the time of the previous adoption), and is available for adoption because the prior adoption has been dissolved or the child’s adoptive parents have died. In such an instance, the child may retain eligibility for adoption assistance payments in a subsequent adoption.

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The agency need only determine that the child is still a child with special needs to be eligible for adoption assistance. Note that foster care eligibility would be based on the circumstances around the removal from the adoptive parents.

P.L. 110-351 prohibits the payment of adoption assistance payment (including payments of non-recurring expenses) on behalf of an “applicable child” who is not a citizen or resident of the United States (U.S.) and was either adopted outside of the U.S. or brought to the U.S. for the purpose of being adopted, except if the child meets the eligibility criteria after the disruption of the international adoption.

Note that background check requirements for prospective adoptive parents also apply.

B. ELIGIBILITY OF THE NON-APPLICABLE CHILD

For a child determined to be a “non-applicable child”, the following eligibility requirements apply.

1. NON-APPLICABLE CHILD – SPECIAL NEEDS DETERMINATION

As part of determining eligibility for a “non-applicable child”, the agency must determine that the child meets the following special needs criteria:

- That the child cannot or should not be returned to the home of his parents. This means that the County agency must have reached that decision based on evidence by a court order legally clearing the child through TPR of both parents, or the existence of a petition for TPR of both parents, or a relinquishment by both parents to a child-placing agency (or some combination of these procedures to include both parents), or, in the case of an orphan child, verification of the death of both parents; and
- That there is a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under title IV-E and Medicaid. One or more of the following factors or conditions must exist and be documented in order for the child to be eligible for adoption assistance:

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- a. The child is six years of age or older;
- b. The child is two years of age or older and a member of a minority race or ethnic group;
- c. The child is a member of a sibling group of three or more children to be placed in the same adoptive home;
- d. The child is a member of a sibling group of two children to be placed in the same adoptive home, in which one or more of the siblings meet at least one of the other criteria for special needs;
- e. The child has a medically diagnosed disability which substantially limits one or more major life activity, requires professional treatment, assistance in self-care, or the purchase of special equipment;
- f. The child is diagnosed by a qualified professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and for which the child requires professional services;
- g. The child is diagnosed by a qualified professional to have a behavioral or emotional disorder characterized by inappropriate behavior which deviates substantially from behavior appropriate to the child's age or significantly interferes with child's intellectual, social and personal functioning;
- h. The child is diagnosed to be mentally retarded by a qualified professional;
- i. The child is at risk for a diagnosis described above in items e through h, due to prenatal exposure to toxins, a history of abuse or serious neglect, or genetic history. Note: if the child qualifies only under this criteria, the child must be placed in the potential category where they shall receive Medicaid but will receive a zero amount monthly payment until a diagnosis is made. When the diagnosis is made and documented appropriately, a change shall be made to the DSS-5094 to reflect payment beginning the month following diagnosis.

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- That a reasonable, but unsuccessful, effort has been made to place the child with adoptive parents without providing adoption assistance or Medicaid. Such an effort might include the use of adoption exchanges, referral to appropriate specialized adoption agencies, or other such activities. The only exception to this requirement is when it would not be in the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of those parents as a foster child. The exception also extends to other circumstances that are not in the child's best interest, as well as adoption by a relative, in keeping with the statutory emphasis on the placement of children with relatives.

The County agency must document in each child's case record the specific factor(s) that make the child difficult to place and describe the efforts to place the child for adoption without providing assistance. In an effort to find an appropriate adoptive home for a child, and meet the requirement that a reasonable, but unsuccessful, effort be made to place the child without adoption assistance, it is not necessary for the agency to "shop" for a family while the child remains in foster care. Once the agency has determined that placement with a certain family is in the child's best interest, the agency should make full disclosure about the child's background, as well as known or potential problems. If the agency has determined that the child cannot or should not return home and the child meets the statutory definition of special needs with regard to specific factors or conditions, then the agency can pose the question of whether the prospective adoptive parents are willing to adopt without assistance. If they say they cannot adopt the child without adoption assistance, the requirement for a reasonable, but unsuccessful, effort to place the child without providing adoption assistance will be met and must be documented on the DSS-5012.

2. NON-APPLICABLE CHILD – OTHER ELIGIBILITY CRITERIA

There are four ways that a child can be eligible for title IV-E adoption assistance. For each pathway described below, the child must also be either a United States citizen or a Qualified Alien. To be eligible, the non-applicable child must meet one of the following criteria:

NON-APPLICABLE CHILD IS ELIGIBLE FOR AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) AND MEETS THE DEFINITION OF A CHILD WITH SPECIAL NEEDS – Adoption assistance eligibility that is based on a child's AFDC eligibility (under rules in effect on July 16, 1996) is based on a child meeting the criteria for eligibility at the time of removal. In addition, the county agency must determine that the child meets the definition of a child with special needs prior to finalization of the adoption.

The method of removal has the following implications for the AFDC-eligible child's eligibility for title IV-E adoption assistance:

- If the child is removed from the home by a judicial determination, such determination must indicate that it was contrary to the child's welfare to remain in the home. Note that there is no requirement under IV-E adoption assistance for there to have been a finding of reasonable efforts to prevent removal. Though this is a requirement of IV-E foster care, it is not a requirement of IV-E adoption assistance.
- If the child is removed from the home by a voluntary placement agreement, that child must have actually received a title IV-E foster care payment to be eligible for title IV-E adoption assistance. Children placed by a voluntary placement agreement under which a title IV-E foster care maintenance payment is not made are not eligible to receive title IV-E adoption assistance. Note that there is no requirement under IV-E adoption assistance for there to have been a finding of best interest to remain in care for children removed by a voluntary placement agreement. Though this is a requirement of IV-E foster care, it is not a requirement of IV-E adoption assistance.

A child for whom eligibility for title IV-E adoption assistance payments is being established need not have been continuously eligible for AFDC during his or her tenure in foster care. The law requires that the child be eligible for AFDC only at the time of the child's removal from the home. This means that the child must meet AFDC need and deprivation requirements only once – at the time of removal.

NON-APPLICABLE CHILD IS ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME (SSI) BENEFITS AND MEETS THE DEFINITION OF A CHILD WITH SPECIAL NEEDS – A child is eligible for adoption assistance if the child meets the requirements for SSI benefits and is determined by the State to be a child with special needs prior to the finalization of the adoption.

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There are no additional criteria that a child must meet to be eligible for title IV-E adoption assistance when eligibility is based on a special needs child meeting SSI requirements. Specifically, how a child is removed from his or her home or whether the county agency has responsibility for the child's placement and care is irrelevant in this situation.

Unlike AFDC eligibility that is determined by the county agency, only a designated Social Security Administration claims representative can determine SSI eligibility and provide the appropriate eligibility documentation to the county agency.

NON-APPLICABLE CHILD IS ELIGIBLE AS A CHILD OF A MINOR PARENT AND MEETS THE DEFINITION OF A CHILD WITH SPECIAL NEEDS – A child is eligible for title IV-E adoption assistance in this circumstance if: prior to the finalization of the adoption, the child's parent was in foster care and received a title IV-E foster care maintenance payment that covered both the minor parent and the child of the minor parent and is determined by the county agency to meet the definition of a child with special needs.

There are no additional criteria that must be met in order for a child to be eligible for title IV-E adoption assistance if the child's eligibility is based on his or her minor parent's receipt of a foster care maintenance payment while placed with the minor parent in foster care. As with SSI, there is no requirement that a child must have been removed from home pursuant to a voluntary placement agreement or as a result of a judicial determination.

NON-APPLICABLE CHILD IS ELIGIBLE DUE TO PRIOR TITLE IV-E ADOPTION ASSISTANCE ELIGIBILITY AND MEETS THE DEFINITION OF A CHILD WITH SPECIAL NEEDS – In the situation where a child is adopted and receives title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die, a child may continue to be eligible for title IV-E adoption assistance in a subsequent adoption. The only determination that must be made prior to the finalization of the subsequent adoption is whether the child is a child with special needs.

Need and eligibility factors must not be redetermined when such a child is subsequently adopted because the child is to be treated as though his or her circumstances are the same as those prior to his or her previous adoption.

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Since title IV-E adoption assistance eligibility need not be re-established in such subsequent adoptions, the manner of a child's removal from the adoptive home, including whether the child is voluntarily relinquished to an individual or private agency, is irrelevant for determining eligibility for adoption assistance.

The eligibility requirements for adoption assistance do not specify that the DSS agency must have placement and care responsibility for a non-applicable child to qualify for adoption assistance. There are some situations, however, in which the criteria dictate that a child must have been under the placement and care responsibility of the DSS agency in order to be eligible for title IV-E adoption assistance. These are:

- a. a child who is placed pursuant to a voluntary placement agreement and who must have had a title IV-E foster care maintenance payment paid on his or her behalf under the agreement.
- b. a child who is eligible for title IV-E adoption assistance based upon his or her minor parent's eligibility for title IV-E foster care while in the custody of the DSS agency and who must have had a title IV-E foster care maintenance payment paid that covered both the minor parent and the child of the minor parent while in care.

Note that there is no requirement for the infant to have been in custody or care of a DSS. That requirement only applies to the minor parent.

If the child meets the criteria for adoption assistance, the county agency shall enter into adoption assistance agreements with the adoptive parents of children with special needs. Further, counties are required to make payments of nonrecurring adoption expenses incurred by or on behalf of parents in connection with the adoption of a child with special needs and/or adoption assistance payments on behalf of a child who meets the requirements for eligibility.

III. IV-B ADOPTION ASSISTANCE ELIGIBILITY

Children who are determined to meet the special needs criteria but are not eligible for IV-E adoption assistance may be eligible for IV-B adoption assistance. Funding for this assistance is a combination of federal IV-B funds, state funds and county funds. In order to be eligible for IV-B adoption assistance the following criteria must be met prior to the finalization of the adoption:

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- The child must be or have been in the placement and care of a county DSS prior to the finalization of the adoption.
- The child must meet the criteria for Special Needs for the “non-applicable child”.
- The child must not be eligible for IV-E adoption assistance.

IV. STATE ADOPTION ASSISTANCE ELIGIBILITY

Children who are determined to meet the special needs criteria but are not eligible for IV-E or IV-B adoption assistance may be eligible for State adoption assistance. Funding for this assistance is a combination of federal IV-B funds and state funds. No county funds are required. In order to be eligible for State adoption assistance the following criteria must be met prior to the finalization of the adoption:

- The child must be or have been in the placement and care of a North Carolina licensed private agency prior to the finalization of the adoption.
- The child must meet the criteria for Special Needs for the “non-applicable child”.
- The child must not be eligible for IV-E or IV-B adoption assistance.

V. PAYMENT ISSUES

The General Assembly changes the amounts of foster care maintenance payments from time to time. Adoption Assistance payments are tied to the foster care board rates and go up or down with changes in legislation. The amounts as of January 1, 2009 are as follows:

\$475	0-5 years
\$581	6-12 years
\$634	13-18 years

A county Department of Social Services shall pay, at a minimum, the monthly graduated adoption assistance payment for eligible children as set by the General Assembly.

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A county Department of Social Services may make adoption assistance payments in excess of the monthly graduated rates, but cannot make adoption assistance payments in excess of the amount that child would have received if s/he had been in a foster care home (standard board rate).

For example, children who are HIV positive may receive additional payments while in foster care and may receive these additional benefits as part of the adoption assistance payment. Other children may receive additional money for their therapeutic needs while in foster care, and the county may choose to continue this supplement when the child is adopted. If a county has agreed to participate in the Special Children Adoption Incentive Fund, the state will share in the supplemental payment when the child is adopted.

The use of a means test is prohibited in the process of selecting a suitable adoptive family, or in negotiating an adoption assistance agreement, including the amount of the adoption assistance payment. Once a child has been determined eligible, adoptive parents cannot be rejected for adoption assistance or have payments reduced without their agreement because of their income or other resources.

Standard monthly cash payments are issued from the Division of Social Services' Controller's Office from information entered on the DSS-5095. The deadline for entry is the 3rd to the last working day of the month. Failure to meet the deadline is a county's responsibility and that agency is responsible for the payment to the adoptive parent(s).

The State system will automatically increase the adoption assistance payment as a child ages into a higher payment category.

Since it is the county's responsibility to enter data for receipt of the standard cash payments, questions by adoptive parents regarding these payments should be answered by the county. It is inappropriate to advise adoptive parents to call the Division if cash payments, including the HIV supplemental payments and the Special Children Adoption Incentive Fund payment, have not been received or have been misplaced.

Contacts on matters regarding adoption assistance benefits should be between adoptive parents and the county, then the county and the state office. This is most important because a check cannot be tracked without the SIS identification number. It is the responsibility of the agency to provide this number to the Division. In no instance, should adoptive parents be advised to call the Division of Social Services' budget office regarding cash payments.

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A. BEGINNING MONTHLY CASH PAYMENTS AFTER THE DECREE OF ADOPTION

Children approved to receive Adoption Assistance benefits become eligible to receive these benefits the first month following the month in which the Decree of Adoption is issued, except for those eligible under the at risk category, who begin to receive benefits when the special needs are identified. The child's social worker is responsible for assuring that the proper information is entered into the Child Placement and Payment System. (See Child Placement and Placement System Manual.)

There may already be a DSS-5095 because non-recurring benefits were paid using the child's name and SIS number for foster care. Close any existing DSS-5095 and DSS-5094. Complete a new DSS-5095 in the child's adoptive name according to the instructions in the CPPS manual for all children for whom on-going adoption assistance benefits will be made.

Any request for cash payments following the entry of the Decree of Adoption requires a fair hearing (See section on Appeals). Payments are to be made only for benefits or services provided on or after the effective date of the Adoption Assistance Agreement. Therefore, when retroactive payments are approved the date on the Adoption Assistance Agreement must cover the period for the retroactive payment.

Benefits of this program cease at the time of the child's 18th birthday or at the time the adoptive parents no longer have financial and/or legal responsibility for the child. In cases where adoption assistance terminates before a child's 18th birthday, the adoptive parents must be given the right to appeal any decision to terminate the assistance. Adoptive parents must be informed that they are responsible for notifying the child's agency if the child is no longer eligible for adoption assistance and they will be responsible for reimbursement to the agency in the event they receive a payment after the child's eligibility ceases. See section on Terminations below.

B. HIV PAYMENTS

HIV supplemental payments are made in separate payments to the adoptive parent(s). For initial eligibility, DSS-5159 form and a copy of the physician's statement must be submitted. No supplemental payments will begin until a copy of the physician's letter confirming the child's current diagnosis is received. The county must make monthly requests for the continuation of HIV payments.

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Requests should be received by the 15th of the month. Positive or negative changes in medical status which result in a change in the HIV supplemental adoption assistance amount shall be reported on the DSS-5159 form within 30 days of the date of agency notification by the physician. Counties will be responsible for making adjustments for overpayment in the event of seroreversion or death of the child. Maintenance of letters and records verifying eligibility status will be subject to county audit.

The HIV Diagnostic Classifications from the National Center for Disease Control have been used to determine the amount of supplemental HIV payment for a child. The chart below provides the amounts and diagnoses:

CODE	VALUE	AMOUNT
E	Prenatally exposed infant 0-24 mos. Who cannot be classified as definitely infected, but who has antibody to HIV, indicating exposure to an infected mother.	\$800.00
N	Infant, child or youth who meets one of the CDC definitions for infection but who has no previous signs or symptoms of HIV.	\$1000.00
A	Infant, child or youth who shows mild signs or symptoms of HIV.	\$1200.00
B	Infant, child or youth who shows moderate signs or symptoms of HIV.	\$1200.00
C	Infant, child or youth who shows severe signs or symptoms of HIV.	\$1200.00
T	Child aged 0-21 with laboratory evidence of HIV infection who has a resulting terminal diagnosis with a life expectancy of less than six mos.	\$1600.00

VI. ADOPTION ASSISTANCE AGREEMENT (DSS-5013)

The adoption assistance agreement (DSS-5013) must be completed before adoption assistance benefits can be provided. This agreement must be a written instrument that is binding on all the parties. It is entered into by the prospective adoptive parent(s) and the child's agency (the agency responsible for determining eligibility). . The agreement must be signed by all parties to the agreement (namely, the adoptive parents and a County agency representative) before the final decree of adoption in order to meet the requirements for an adoption assistance agreement.

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The agreement must spell out all of the responsibilities of the parties and detailed financial reporting requirements. The agreement must specify the types and amounts of assistance, the types of services available, and the conditions under which benefits or services may be increased or decreased. The agreement must specify the date for beginning and ending benefits and services. (The agreement must state the beginning month and year rather than indicating “a month after the Decree of Adoption”. If the exact month and year are not known, it is permissible to give a date when assistance is reasonably expected to begin.) The agreement must include specific discussion of what will happen if the adoptive family moves out of state or if the adoptive parents die. The agreement must describe the procedure for requesting a fair hearing. Provisions of the agreement can be changed only after negotiation with the adoptive parents and their agreement with any change.

Prospective adoptive parent(s) may decline any or all components of adoption assistance benefits and at a later date request participation in the adoption assistance program. If an adoptive parent declined adoption assistance benefits, upon written request, benefits may be activated effective the month following the request.

Under the conditions of a deferral of adoption assistance benefits, the child's eligibility for adoption assistance benefits has been established, and if the adoptive parent(s) request benefits in the future adoption assistance is activated upon request of the adoptive parent(s). This eliminates the need for an adoption assistance appeal in the event a request is made by the adoptive parent(s). Adoptive parent(s) may not request retroactive adoption assistance benefits in this situation.

After finalization of the adoption the adoption assistance agreement may be amended with the mutual agreement of the adoptive parents and the agency. Adoption Assistance Agreement Amendment (DSS-5307) is used to request an amendment to an existing adoption assistance agreement when there has been a change in the documented special needs of the child and/or a new service is being requested for a pre-existing condition.

A. TERMINATIONS

Once an adoption assistance agreement is signed and in effect, it can be terminated under three circumstances only. Namely,

1. the child has attained the age of 18;
2. the State determines that the adoptive parents are no longer legally responsible for support of the child; or

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3. the State determines that the adoptive parents are no longer providing any support to the child.

A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.

"Any support" includes various forms of financial support. Payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs, are acceptable forms of financial support. Consequently, the County may continue the adoption assistance subsidy, if it determines that the parent is, in fact, providing some form of financial support to the child.

VII. INTERSTATE ISSUES

Who is responsible for entering into an adoption assistance agreement in interstate adoptions?

If the County DSS agency has responsibility for placement and care of a child, that county is responsible for entering into the adoption assistance agreement and paying the title IV-E adoption subsidy, even if the child is placed in an adoptive home in another State. If the County DSS agency does not have responsibility for placement and care, it is the adoptive parents' State of residence where the adoption assistance application should be made. In that event, the public child welfare agency in the adoptive parents' State of residence is responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement and paying the subsidy, consistent with the way public benefits are paid in other programs.

What happens in interstate adoptions when the adoptive parents die or the adoption is dissolved?

If a title IV-E adoption dissolves or the adoptive parents die and the child is placed with a State agency that assumes responsibility for placement and care, it is the placing State's responsibility to determine whether the child meets the definition of special needs, and pay the subsidy in a subsequent adoption. If, however, a public child welfare agency is not involved in the subsequent adoptive placement of a child, it is the public child welfare agency in the subsequent adoptive parents' State of residence that is responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement, and paying the subsidy. The State of the child's initial adoption or the State that pays the title IV-E adoption assistance in the child's initial adoption is irrelevant in a subsequent adoption.

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A. INTERSTATE PROCEDURES

The adoption must be finalized before the Interstate Compact on Adoption and Medicaid Assistance (ICAMA) paperwork can be completed. Once the Decree of Adoption has been issued, all paperwork must be sent to the NC ICPC Office to be forwarded to the child's state of residence. Submit all documents in triplicate

Three (3) standard forms are required to process an ICAMA case:

1. Form 6.01 (DSS-5249) – Notice of Medical Assistance Eligibility/Case Activation

Complete all sections of Form 6.01 Requires child(ren)'s name(s), birthdate(s), gender(s) & ethnicity and a valid Social Security Number (SSN). (NOTE: the SSN assigned at birth or the new SSN obtained after finalization may be used.)

- In Section A, No. 6, circle the basis for Medicaid Eligibility. The State Option category includes all children whose assistance is funded by IV-B or SAF.
- In Section D, the referral source is:

Interstate Compact Administrator
DHHS, DSS
Child Welfare Services
325 N. Salisbury Street
2409 Mail Service Center
Raleigh, NC 27699-2409
- Section E must be completed by an agency representative.
- Attach a copy of the signed adoption assistance agreement and a copy of the Decree of Adoption.

2. Form 6.02 (DSS-5248) – Notice of Action

Form 6.02 is notice to the adoptive parent(s). The county should send the family a completed ICAMA Form 6.02 (DSS-5248), a copy of the ICAMA Form 6.01 (DSS-5249) that was sent to the receiving state, and a copy of the child's Adoption Assistance Agreement.

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3. Form 6.03 (DSS-5250) Report of Change/Family Status.

This form should be completed and should accompany the Form 6.01 (DSS-5249) and is to be used whenever you are aware of a change in status.

- a. The Adoption Assistance State uses the ICAMA 6.03 to report/notify the resident state of changes in the child or family status.
- b. The new resident state uses the ICAMA 6.03 to notify the Adoption Assistance State that a child receiving
- c. adoption assistance from their State has been issued a Medicaid card in the new State.

VIII. MEDICAID

Title XIX Medicaid coverage is required under title IV-E Adoption Assistance. Children receiving IV-E adoption assistance are categorically eligible for Medicaid and generally receive benefits under the IAS Medicaid category. Children who are IV-E eligible but not receiving cash benefits due to their “potential” status, should be evaluated for the MAF Medicaid category. Children who receive benefits under IV-B adoption assistance or State adoption assistance should be evaluated for the MAF Medicaid category.

INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE (ICAMA)

North Carolina joined the Interstate Compact on Adoption and Medical Assistance (ICAMA) in October 1999, thereby becoming one of several states that provide Medicaid for non IV-E children who receive adoption assistance benefits. Refer to policies and procedures established by the Division of Medical Assistance (Family and Children’s Medicaid Manual Section MA-3230).

IX. SOCIAL SERVICES BENEFITS

Children who are recipients of adoption assistance are eligible for the provision of social services without regard to income. This provides an opportunity for the social worker and family to identify a set of post-adoption services that may be helpful in keeping the new family system intact.

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X. NON-RECURRING EXPENSES OF ADOPTION

Parents adopting special needs children are eligible for reimbursement of non-recurring costs of the adoption up to a maximum of \$2,000 for each adoptive placement (per adoption episode). The non-recurring expenses for the adoption of a special needs child must be reimbursed by the county agency responsible for the administration of the adoption subsidy program. This is true whether the adoption is an independent placement or one facilitated by a public or private agency.

When the adoption involves an interstate placement, the county agency entering into the Adoption Assistance Agreement with the prospective adoptive parent(s) is responsible for paying the Non-recurring adoption expenses. If no Adoption Assistance Agreement exists for ongoing adoption assistance, the agency in the county in which the final adoption decree is filed is responsible for reimbursing the Non-recurring adoption expenses if the child is determined to have special needs.

The only eligibility criterion to be applied for reimbursement of the nonrecurring expenses of adoption is that the County agency determine that the child meets the three part definition of special needs. A child does not have to be eligible for AFDC, title IV-E foster care, or SSI in order for the adoptive parents to receive reimbursement for their nonrecurring adoption expenses. Nor does the child have to be under the responsibility for placement and care of the County agency in order for the adoptive parents to be reimbursed for the nonrecurring expenses of adoption.

The term “nonrecurring adoption expenses” is defined as the reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State or Federal law, and which have not been reimbursed from other sources or funds. “Other expenses” are defined as the costs of adoption incurred by or on behalf of the parents and for which parents carry the burden of payment, such as the adoption study, including health and psychological examinations, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the adoption process.

The County agency may be reimbursed for the nonrecurring expenses of adoption even if the adoption is never finalized if:

- there is a title IV-E agreement for the nonrecurring expenses of adoption between the adoptive parent(s) and the County agency; and
- the County agency has determined that the child is a child with special needs.

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XI. SSI AND IV-E

There is no prohibition under title IV-E against claiming adoption assistance for a child who receives benefits from SSI. Under title IV-E adoption assistance, the scope of eligibility specifically includes children with special needs who are eligible to receive SSI as well as those eligible for AFDC and title IV-E foster care.

Title XVI (SSI) is a needs based program and, as such, requires a test of income and resources of the adoptive parents in determining the amount of the SSI benefit to which a child with a disability(ies) may be entitled. If (or when) the parental resources and income exceed a maximum level determined by the SSI program, the child is no longer eligible for SSI payments.

If the adoptive parents decide to decline adoption assistance and choose to receive only SSI for the child, and if they have not executed an adoption assistance agreement before the adoption is finalized, they may not later receive title IV-E adoption assistance payments, as the child would no longer meet all of the eligibility requirements as a child with special needs. It may be prudent for the decision maker (parent, guardian, custodian, caretaker relative) to arrange for an adoption assistance agreement which does not provide for payment, but which does provide for SSI and Medicaid coverage, and which may at some future date, upon review, be renegotiated to provide for payment of adoption assistance funds.

The adoptive parents of a child eligible for title IV-E adoption assistance and SSI benefits may make application for both programs and the child, if eligible, may benefit from both programs simultaneously.

In cases where the child is eligible for both SSI and title IV-E and there is concurrent receipt of payments from both programs, “the child’s SSI payment will be reduced dollar for dollar without application of any exclusion”, thus decreasing the SSI benefit by the amount of the title IV-E payment (SSI Program Operations Manual). To reiterate, concurrent receipt is subject to the SSI rule that the SSI payment will be reduced by the amount of the adoption assistance payment.

XII. VENDOR PAYMENTS TO MEDICAL OR THERAPEUTIC PROVIDERS

Vendor payments provide financial assistance for services or treatments for special needs which existed **prior to the time of the child's adoption**. The vendor payments must relate to a pre-existing physical, emotional or psychological handicapping condition and must be at the reasonable, customary and usual rate in the child's community as determined by the local Department of Social Services.

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In addition, the pre-existing condition must not be covered by private health care insurance or Medicaid.

Vendor payments are not intended to pay for the normal expenses of raising a child, such as child care, summer camp, tutoring, clothes, orthodontics and other such expenses, unless those expenses are specifically intended to treat or serve a pre-existing physical, emotional or psychological handicapping condition.

It is not necessary for these conditions to have been identified prior to the adoption, but rather to have existed. For example, if a child is adopted, and subsequently breaks his spine as a result of an accident, he has a physically handicapping condition but it did not exist prior to the adoption and as a result he may not use vendor benefits to pay for his care related to that condition.

If, however, after adoption, the child is diagnosed as having had a degenerative bone disease which becomes known only after adoption, he may use vendor benefits for this condition, as it existed, but was not known to anyone, prior to the adoptive placement.

Vendor payment reimbursement approval requires documentation of the child's specific special needs and the special training, licensing or credentialing of the individual recommending the services. The training, licensing or credentialing must be appropriate for the type of vendor payment being requested. Documentation shall not be deemed sufficient if it is solely from the provider of the service or treatment. Reimbursement shall not be made until the county Department of Social Services has approved the requested service or treatment. The written request shall include service goals, evaluation plan, duration, unit costs and projected total cost.

Vendor payments may be provided up to a maximum of \$2,400 per state fiscal year for any combination of medical and/or non-medical services or treatment not covered by any medical insurance program, such as Medicaid or private insurance. This means the total amount of \$2,400 may be used solely for medical services; the total amount of \$2,400 may be used solely for non-medical services; or the total amount of \$2,400 may be used for a combination of medical and non-medical services.

Any approval of vendor payments shall document each fiscal year the appropriate answers to the following questions:

1. What are the child's special needs related to a physical, emotional or psychological handicapping condition identified on the DSS-5012? If there are no conditions that meet this criteria (for example the child qualified based on age, sibling group or potential risk), then a vendor payment is not appropriate. Note that pre-existing conditions may be added to the Adoption Assistance Agreement when appropriate by way of the DSS-5307 (Adoption Assistance Agreement Amendment).

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2. How does the vendor payment request provide a service or treatment related to the special needs identified above?
3. Is the vendor payment request at the reasonable, customary and usual rate in the child's community?
4. Is the vendor payment request covered by any other source such as private health insurance or Medicaid?
5. What are the goals that this vendor payment request is intended to accomplish and how will achievement of these goals be measured?
6. What are the qualifications of the person documenting the need for the vendor payment and is there a conflict of interest involved?

Note that any vendor payment request for educational needs such as tutoring, summer camp, computers and field trips are not appropriate unless they address the child's pre-existing documented special needs. Requests for vendor payments for educational needs in general should clearly document that the local educational agency is unable to meet that need.

Counties make payments directly to the provider or the adoptive parents and request reimbursement through the use of the DSS-5095. The DSS-5115, Adoption Assistance Program Payment Instructions, should be used to document these transactions.

Vendor benefits are available to providers of medical, psychological, therapeutic and/or remedial services either through direct payments or through reimbursement to the adoptive parents. A request for vendor benefits may be made at any time following the entry of the Decree of Adoption.

XIII. SPECIAL CHILDREN ADOPTION INCENTIVE FUND (ONLY APPLIES TO COUNTIES THAT PARTICIPATE IN THIS FUND)

The Special Children Adoption Incentive Fund was established by the General Assembly in the 2000 legislative session. The Fund is capped at \$1,000,000 and is available on a "first come, first served" basis to a child who qualifies and is in the custody of a county Department of Social Services that has agreed to participate in the Fund. The purpose of the Fund is to make adoption a possibility for children with very special needs who would otherwise remain in the foster care system because of the financial loss to foster parents. Counties who participate in the Special Children Adoption Fund must commit to provide 50% of the cost of the incentive; the state provides the other 50%. The entire amount of the supplement is paid to the adoptive parents by the state and the state charges the county for its share of the cost.

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Special Children Adoption Incentive payments are determined on an individual basis. These supplemental payments are also made in separate payments to the adoptive parent(s). Monthly requests from counties are not required for the continuation of these payments to the adoptive parents. After approval is given by the Division for a child to receive payments from the Special Children Incentive Fund and the Decree of Adoption has been entered, the Division will submit the payment requests to the Controller's office. Monthly payments will continue until the county advises the Division to terminate the payments. The following procedure must be followed before a child is approved and payments begin.

Submit the following forms to establish the child's potential eligibility for monthly payments from the Fund to:

Adoption Program Coordinator
North Carolina Division of Social Services
325 North Salisbury Street, Suite 742A
2408 Mail Service Center
Raleigh, NC 27699-2408

1. DSS-5213 Verification of Child's Need for Daily Supervision
2. DSS-5214 Agency's Verification of Legal Custody and Child's Living Arrangement for Past Six Months
3. DSS-5215 Verification of Child's Health Condition
4. A letter from the adoptive parents(s) regarding the daily needs of the child.

Once these forms are received, the Division will determine the child's eligibility and will provide written notification immediately to the requesting agency. If approved, the agency will have 60 days, unless a written request is approved for an extension, to submit the following documents:

1. DSS-1814 Decree of Adoption
2. DSS-5013 Adoption Assistance Agreement
3. DSS-5211 Special Children Adoption Incentive Fund-Request for Payment
4. DSS-5212 Special Children Adoption Incentive Fund- Supplemental Adoption Assistance Agreement

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5. DSS-5095 Child Placement and Payment System showing that child's payment has begun.

When the final documents are received, and the agency has entered a DSS-5095 for the child to receive the standard adoption assistance rate, the Division will submit information to the controller's office for the supplemental checks to be sent to the adoptive parent(s). These checks are usually sent out after the 10th of the month.

XIV. DOCUMENTATION AND PERIODIC REVIEWS

Establishing the eligibility for adoption assistance is a task of the services staff of a child's resident agency. The agency is required to use the Adoption Assistance Eligibility Checklist (DSS-5012). Documentation sufficient to establish eligibility can be in the form of statements of diagnosis and/or prognosis from physicians, psychiatrists, speech and other therapists, etc. Documentation in reference to high risk potential should be supported by information about the child's and birth parents' background. This documentation shall be attached to the DSS-5012

The final step in the eligibility process is to have a completed, signed adoption assistance agreement with the adoptive parents. This can be entered into anytime after placement, but must be signed before the Decree of Adoption. Once a child has been determined eligible for adoption assistance, no redetermination of his eligibility is necessary; however, the child's agency must review the adoption assistance agreement on periodic basis to ensure that the child remains in the financial responsibility of the adoptive parent(s). As long as the parents remain financially and legally responsible, even if the child is out of the home, adoption assistance can continue. (See Terminations in Section VII.) Agencies must send a yearly notice to adoptive parents to determine the status of the child. See the Sample Letter for Annual Adoption Assistance Eligibility Review in Appendix H.

Note: If an agency has not established eligibility or has determined incorrectly that a child is ineligible, a request for a hearing on this matter from the adoptive parents shall provide the opportunity for the county to reverse an earlier decision in reference to making adoption assistance benefits available. In effect, this allows agencies to begin adoption assistance any time after the adoption is final following a request from the adoptive parents regardless of whether or not the above eligibility process had been followed prior to the adoption.

All of a worker's time spent in adoption activities, including time spent in evaluating a child's need for Adoption Assistance, in establishing his eligibility, in negotiating an agreement with the adoptive parents, in determining when it is appropriate to initiate both monthly cash and vendor payments, and in accomplishing annual review of the adoption assistance agreement is viewed as service time.

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Use SIS codes found in the Services Information System (SIS) manual on day sheets to claim reimbursement for worker's time.

XV. ADOPTION ASSISTANCE CASE RECORD

When a child is placed into an adoptive home, a new file must be created which will reflect adoption assistance information and documentation. This file is to be in the child's adoptive name. The file must contain a cross-reference to the child's original file so that should the case be audited, documentation establishing the child's eligibility for benefits can be made readily available to the auditors. The new Adoption Assistance case file is to be given a new county case number in accordance with standard agency procedure.

A. ORIGINAL CASE FILE (THE FOSTER CARE RECORD)

The agency must retain the original file of all children eligible for adoption assistance at least until the child becomes 18. This is not exclusive to files pertaining to children who are eligible for adoption assistance only. The original file of all children the agency placed for adoption should be retained permanently (10A NCAC 70H.0112(d)). This file must contain documentation of eligibility for the original funding program (foster care), either IV-E or SFHF, and thus will provide a complete audit trail.

At a minimum, this file shall contain background information of the child and his biological family, placement history, the child's medical, psychological and/or psychiatric information, educational information (i.e. child's pre-placement summary), documentation to support eligibility for adoption assistance and documentation of the child's legal clearance for adoption. While the primary purpose of this file is to create an audit trail, it is critical to remember that this serves as a repository of information to be shared with the child when he reaches his majority to enable him to understand the reasons and process of his placement.

B. CONTENTS OF THE CHILD'S ADOPTION ASSISTANCE CASE FILE

Assistance Case File must contain the following:

1. Adoption Assistance Eligibility Checklist (DSS-5012). This form must indicate those components of the program for which the child is eligible or may be eligible under the category of potential handicap.

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2. Medical records, psychological reports, etc. that are needed in cases in which documentation of a handicapping condition must be provided. At the time the new case file is set up, every effort must be made to delete any identifying information contained on such documents such as the child's original name, names of siblings, other relatives, etc.
3. Copies of the Adoption Assistance Agreement (DSS-5013) and Periodic Review Letters.
4. Copy of Petition for Adoption (DSS-1800).
5. Copy of Decree of Adoption (DSS-1814).
6. Service Client Information Change Notice (DSS-5027).
7. Child Placement and Payment System Form (DSS-5095).
8. Copies of statements from vendors, if applicable.
9. EIS forms related to Medicaid, as need and eligibility indicate, according to instructions in the EIS User's Manual.
10. All correspondence pertaining to the child's receipt and termination of Adoption Assistance benefits.

XVI. ADOPTION ASSISTANCE APPEALS

Adoptive parents, or prospective adoptive parents, of a child with special needs have the right to appeal the agency's denial, failure to inform them of the availability of assistance, the amount, a decrease, or termination of Adoption Assistance benefits for the child.

Grounds for an Adoption Assistance Appeal include, but are not limited to:

- relevant facts regarding the child were known by the State agency or child-placing agency and not presented to the adoptive parent(s) prior to the finalization of the adoption;
- denial of assistance based upon a means test of the adoptive parent(s);

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- adoptive parent(s) disagree with the determination by the State that a child is ineligible for adoption assistance;
- failure by the State agency to advise potential adoptive parent(s) about the availability of adoption assistance for children in the State foster care system;
- decrease in the amount of adoption assistance without the concurrence of the adoptive parent(s);
- denial of a request for a change in payment level due to a change in the adoptive parent(s) circumstances; and
- failure of the State agency to complete the required paperwork prior to the finalization of the adoption.

If applicants or potential recipients of financial benefits or service programs believe they have been wrongly denied financial assistance, not informed of the availability of a program of assistance, or excluded from a service program, they have a right to a hearing. They shall be informed in writing of their rights to an Adoption Assistance Appeals at the time of their request and at the time of any action affecting their Adoption Assistance benefits. It is the responsibility of a fair hearing officer to determine whether extenuating circumstances exist and whether the applicant or recipient was wrongly denied eligibility.

A. PROCESS OF APPEALS

Policy requires that eligibility for Adoption Assistance monthly cash payments be established prior to the child's placement for adoption and requires, also, that the Adoption Assistance Agreement be signed prior to entry of the Decree for Adoption. Requests for monthly cash assistance made for children not covered under the provisions described above must follow the appeals process for resolution. The Adoption Assistance appeals process is the same as that used for other Public Assistance appeals and would be resolved through the same channels. The Adoption Assistance Appeal must be conducted by an impartial official or designee of the agency. The official or designee cannot have been directly involved in the determination of eligibility for adoption assistance benefits. The county department of social services staff member assigned to hear Public Assistance appeals is the person who should conduct the hearing. (At no time shall someone in a decision-making capacity regarding the child's eligibility serve as hearing officer.)

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The following procedures should be followed when a parent requests adoption assistance cash payments:

1. The adoptive parents should be advised to submit a written request to the child's agency for adoption assistance monthly cash payments.

Within five days notification, the county department of social services must notify the parents that a hearing will be held and hold the hearing. NOTE: If the adoptive parents request benefits that have previously not been provided, and the agency agrees that the child should have been found eligible, the agency may not administratively change its eligibility determination, but may avoid a trial-type evidentiary hearing. The undisputed documentary evidence could be presented to the hearing officer for his or her review and determination made on the written record (ACYF-CB-PA-01-01).

2. At the hearing, the agency may make a determination as to whether or not sufficient information has been presented to substantiate that, based on eligibility requirements in place prior to adoptive placement, the child could have been found eligible for Adoption Assistance monthly cash payments at that time.
3. If the agency finds the child to be eligible negotiations can be made at that time with the adoptive parents to determine the beginning date and amount of payment for the child. If the agency and the parents cannot reach an agreement, the agency shall advise the parents of their right to appeal the agency's decision in regard to the amount and beginning date. The parents should be advised to notify the agency of their decision to appeal within fifteen days of the mailing of the agency's letter.

If the agency determines that the child would not have been found eligible, the adoptive parents must be notified of this by the agency in writing. The agency shall advise the adoptive parents of their right to appeal the denial of assistance within 15 days of the mailing of the agency's letter.

4. If the parents wish to appeal the agency's decision, the agency completes the Request for State Appeal form (DSS-1473) When completed, the form and other required materials are sent to the State Hearings and Appeals Section, Division of Social Services.

The State Hearings Officer will make arrangements with the parents and agency for the date and time of the hearing, which will be held in the agency.

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Following the hearing, the State Hearings Officer will notify the parents of the decision in regard to Adoption Assistance. If the parents are dissatisfied with the decision, their appeal for review can be submitted to the Chief of the Hearings and Appeals Section, Division of Social Services.

5. Final decisions of the Hearings and Appeals Section, if not to the satisfaction of the parents, can be appealed to the Superior Court in accordance with N.C.G.S. §. 108A79 (k), provided such appeal is filed within thirty (30) days of the date of receipt of the final decision. The decision by the Chief Hearing Officer is the final decision for the agency.

B. RESULTS OF SUCCESSFUL APPEALS

If the child is found eligible for Adoption Assistance, the county department, in conjunction with the State Division of Social Services, is responsible for negotiating with the parents to establish the effective date of initiating benefits, unless the date is otherwise established by the State Hearings Officer or the Superior Court.

A guide to an appropriate retroactive beginning date would be either:

- the month following entry of the Decree of Adoption in the case of a child with a known physical, mental, emotional, or other condition creating on-going expense for proper care/treatment at that time: or
- the month in which the adoptive parents first request the monthly cash payment, based on the child's needs. This could be soon after the Decree of Adoption was filed or it could be several years later.

An Assistance Agreement must be prepared and backdated to the beginning date of the retroactive payments. This is important because adoption assistance cannot be given without an agreement to cover the period in which it is given.

The county department shall notify the Division of Social Services of the decision in writing. The letter should include the adoptive parent's address and social security numbers, the child's SIS I. D. number, the funding source, a copy of the decision as a result of the appeal, the beginning date for retroactive payments, and the monthly and yearly break-down of payments

Payment will be issued from the Division, with a sight draft sent to the county department for its share of the payment. (The state may claim Federal Financial

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Participation for IV-E eligible children from the earliest date of eligibility as reflected in the signed agreement).

For continuing payments to the adoptive parents the adoption assistance information must be entered on the DSS-5095.

XVII. LOST OR STOLEN ADOPTION ASSISTANCE CHECK

If for some reason the check is not delivered to the adoptive parent(s), it is returned to the county office. It is important to see if the check has been returned to the county before requesting a replacement check. A request for a replacement check, Form DSS-8129 must be completed by the agency if a check is lost or stolen and mailed to:

DHHS- Controller's Office
Program/Benefit Payments Section
2019 Mail Service Center
Raleigh, NC 27609-2019

The controller's office will not issue a replacement check until it has been shown that the original check has cleared. Therefore, adoptive parents must be advised that a request for a replacement check cannot be made before the 10th of the month. Replacement checks are mailed to the agency and not to the adoptive parent. If an adoptive parent is in desperate need for cash assistance, the agency may provide the payment and request reimbursement from the adoptive parent when the replacement check is issued. This agreement must be between the adoptive parent and the agency. The controller's office will not issue replacement checks payable to the agency.

XVIII. OVERPAYMENT OF ADOPTION ASSISTANCE

When it is determined that an overpayment to an Adoption Assistance recipient has occurred, the county should establish a repayment agreement and repayment schedule with the family at that time.

When payments are made by the family, the county should complete a DSS-1656, Refund Receipt, and send a copy of the receipt and a county check to the following address:

DHHS Controller's Office
Program/Benefit Payments Section
2019 Mail Service Center
Raleigh, NC 27699-2019

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The repayment will be credited to the child's check history screen in the Child Placement and Payment System. You may verify the adjustment through your PQA 403, Cash Adjustment Register.

XIX. CRIMINAL RECORDS CHECKS

The Adam Walsh Child Protection & Safety Act of 2006 (P.L. 109-248) mandates that states must complete a fingerprint-based background check of the National Crime Information Databases (NCID) before approving an adoptive parent regardless of whether Title IV-E adoption assistance payments are made on behalf of the child.

The procedures for approving adoptive placements were rewritten within N.C.G.S. §48-1-101 and N.C.G.S. §48-3-309. Effective October 1, 2007 an applicant cannot receive Adoption Assistance payments if the applicant, or any member of the applicant's household 18 years of age or older:

Refuses to consent to a criminal history check required by N.C.G.S. §131D, Article 1A, or

A. HAS BEEN CONVICTED OF A FELONY INVOLVING OR THERE IS A PENDING FELONY INDICTMENT INVOLVING:

1. child abuse or neglect;
2. spouse abuse;
3. a crime against a child or children (including child pornography); or
4. a crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery, or

B. HAS WITHIN THE LAST FIVE YEARS BEEN CONVICTED OF A FELONY INVOLVING OR THERE IS A PENDING FELONY INDICTMENT INVOLVING:

1. physical assault;
2. battery; or
3. a drug-related offense.

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For criminal convictions other than those listed above, a determination must still be made as to that individual's fitness to have responsibility for the safety and well-being of children based on the following factors:

1. nature of the crime;
2. length of time since the conviction;
3. circumstances surrounding the commission of the offense or offenses;
4. number and type of prior offenses;
5. evidence of rehabilitation;
6. age of the individual at the time of the commission of the offense or offenses; and
7. letter of support for licensure from the executive director of the agency.

Once the prospective adoptive parent is approved, subsequent fingerprint-based criminal background checks are not required as long as the home remains continuously approved.

Note: Not only can a State not approve a prospective adoptive parent with a criminal history, as now defined, it can not claim FFP for any adoption assistance made on behalf of a child placed in the home of an adoptive parent with such a criminal history.

The Act also requires States to conduct a check of the State child abuse and neglect registries in all States in which the prospective adoptive parent(s) and all other adults living in the adoptive homes have resided in the last five years.

Criminal record checks must be included in pre-placement assessments before approval can be given for the adoption of a child who is or was in the custody of a department of social services. Adoption assistance cannot be provided if field #29 is not completed on the DSS-5095. When approval is given for retroactive payments for adoptions that were finalized prior to January 1, 1999, enter the date of the decision of the appeal hearing and note in the record that the adoption was finalized prior to 1999.

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XX. WORKING WITH PRIVATE AGENCIES

The private agencies must depend on the departments of social services to determine eligibility and provide adoption assistance benefits to children who are relinquished to the custody of private agencies.

Therefore, it is incumbent on the departments of social services to provide timely services to these agencies so placements will not be delayed. When a request is made to an agency, the eligibility determination should be completed within 30 days of the referral. Private agencies should not have to make repeated calls to the departments of social services asking for action on the request.

The determination and administration of the benefits are the responsibility of the child's resident county department of social services. The child's resident county is the county where the mother resided at the time of the child's birth. The permanent address of the mother is indicated on the DSS-1804, Relinquishment of Minor for Adoption by Parent or Guardian.

It is the responsibility of the departments of social services to obtain the necessary documents for the determination of eligibility from the referring private agencies. The departments of social services shall not set higher standards for documentation from the private agencies than are required for children in agency.

PROCEDURES FOR REQUESTING ADOPTION ASSISTANCE BENEFITS FOR CHILDREN IN THE CUSTODY OF PRIVATE AGENCIES

Children in the placement responsibility of private agencies must meet all the eligibility and special needs requirements for adoption assistance in order to be eligible for ongoing monthly cash payment, vendor payment and medical assistance benefits. The following guidelines shall be followed in handling requests for adoption and assistance benefits for children in the custody of licensed private child placing agencies:

- a. Private agency requesting Adoption Assistance benefits for special needs children in its custody shall complete and submit parts I-VII of Adoption Eligibility Checklist (DSS-5012) with all supporting documentation to the department of social services representative.
- b. The department of social services representative will review the information to make an eligibility determination and
 - contact the private agency representative if additional documentation is necessary; or

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- notify the private agency of the child's eligibility for adoption assistance benefits.
- c. If child is eligible for Adoption Assistance benefits, the department of social services representative will complete North Carolina Adoption Assistance Agreement (DSS-5013) and contact the prospective adoptive parents to inform them of the availability of adoption assistance benefits for the child and ascertain their willingness to adopt the child without the provision of adoption assistance benefits.
- d. The private child placing representative will make full disclosure of the child's background as well as known and potential problems (Information Sharing Acknowledgement (DSS-5146)) to prospective adoptive parent(s).
- e. The department of social services representative shall sign an Adoption Assistance Agreement before discussing the Adoption Assistance Agreement with the prospective adoptive parents and securing their signatures.
- f. The department of social services representative will provide a copy of the Adoption Eligibility Checklist (DSS-5012) and Adoption Assistance Agreement (DSS-5013) to prospective adoptive parent(s) and the private child placing agency.
- g. The private agency will send a copy of the Decree of Adoption (DSS-1814) to the department of social services representative once the adoption has been finalized.
- h. The department of social services representative will open the adoption assistance case and initiate adoption assistance benefits via DSS-5095.

Note: Adoption Assistance benefits approved under Potential Handicap category may only begin at the point of the manifestation of the handicapping condition.

XXI. TAX BENEFITS FOR ADOPTION

Refer to IRS publication 968 for detailed information on tax benefits to adoptive parents. This publication can be found at <http://www.irs.ustreas.gov>. Adoption assistance payments for children with special needs are not countable income for tax purposes. Adoptive parents should keep records, including adoption assistance agreement, to provide proof that the child receives adoption assistance because of his or her special needs.

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Adoptive parents may be able to take a tax credit for qualifying expenses paid to adopt an eligible child (including a child with special needs). In addition to the credit, certain amounts paid by an employer for qualifying adoption expenses may be excludable from gross income. For both the credit or the exclusion, qualifying expenses include reasonable and necessary adoption fees, court costs, attorney fees, traveling expenses (including amounts spent for meals and lodging while away from home), and other expenses directly related to and for which the principal purpose is the legal adoption of an eligible child.

An eligible child must be under 18 years old, or be physically or mentally incapable of caring for him or herself. The adoption credit or exclusion cannot be taken for a child who is not a United States citizen or resident unless the adoption becomes final. A taxpayer also may be eligible to take an increased credit or exclusion for expenses related to the adoption of a child with special needs if the child otherwise meets the definition of qualifying child, is a United States citizen or resident and a state determines that the child cannot or should not be returned to his or her parent's home and probably will not be adopted unless assistance is provided. The credit and exclusion for qualifying adoption expenses are each subject to a dollar limit and an income limit. Persons should be referred to Web site at <http://www.irs.gov/taxtopics/tc607.html> or by calling the IRS at Toll-Free, 1-800-829-1040.

XXII. SCHOOL ATTENDANCE

Counties must assure that every child who receives adoption assistance and is of the compulsory age (seven to sixteen) for school attendance under state law is enrolled as a full-time elementary or secondary school student or has completed secondary school. "Elementary or secondary school student" is defined to include a child that is

- a. enrolled in an institution which provides elementary or secondary education in compliance with state law,
- b. instructed in elementary or secondary education at home in accordance with state law on home schools,
- c. in an independent study program in elementary or secondary education that is administered by the local school or school district and is in accordance with state law.

If none of these are applicable, documentation must support that the child is incapable of attending school on a full-time basis due to a documented medical condition, physical and or therapeutic condition(s). Documentation shall be maintained in the adoption assistance case record.