# 10 DEPARTMENT OF HUMAN SERVICES

148 BUREAU OF CHILD AND FAMILY SERVICES

Chapter 13: RULES FOR THE ADOPTION ASSISTANCE PROGRAM

SUMMARY

This chapter establishes the eligibility requirements and amount and duration of adoption assistance available to adoptive families in the adoption assistance program. The rules describe the terms of the agreement between the family and the State and the procedures for applying to the program. An annual determination of need is required.

1. GENERAL STATEMENT OF POLICY

Adoption assistance is an ongoing program within the Department of Human Services to make adoption possible for children who otherwise may not be adopted. Its purpose is to enable the child to become a permanent member of a family and to provide the benefits of family security, love, and nurture for children in special circumstances presently in the custody of the Department of Human Services or a non‑profit private adoption agency, licensed to operate in Maine. Adoption assistance may be authorized to supplement the resources of approved adoptive families in order to meet a portion of the basic needs of the eligible child without lowering the standard of living of the family. In all instances the primary consideration in whether to place the child for adoption is the best interests of the child. Funds for the adoption assistance program will be taken from those appropriated for child welfare services and from funds under Title IV‑E and Title IV‑B of the United States Social Security Act. The adoption assistance program will be limited to the availability of funds.

2. DEFINITIONS

As used in these rules, the following definitions shall apply:

a. The term "Department" refers to the Department of Human Services.

b. For adoption assistance purposes, the term "child" refers to a special needs child in the custody of the Department or in the custody of a non‑profit, private, licensed child placing agency in this State who is legally available for adoption, or who has been approved for legal risk placement according to Section VIII, Subsection B, of the Department of Human Services' Child and Family Services Policy Manual.

For reimbursement of non‑recurring adoption expenses purposes, the term "child" refers to any special needs child who is otherwise eligible for the reimbursement program in Maine.

c. The term "family" refers to any single person or married couple who wishes to apply for adoption assistance.

d. The term "special needs" refers to a child who has one or more of the following characteristics:

(1) Has a physical, mental or emotional handicap that makes placement difficult;

(2) Has a medical condition that makes placement difficult;

(3) Is a member of a sibling group to be placed together that includes at least one member who is difficult to place and who meets one or more of criteria 1, 2, 4, 5 or 6;

(4) Is age 5 or older;

(5) Is difficult to place because of race;

(6) Has been a victim of physical, emotional or sexual abuse or neglect that places the child at risk for future emotional difficulties; or

(7) Has factors in the child's background such as severe mental illness, substance abuse, prostitution, genetic or medical conditions or illnesses that place the child at risk for future problems. For purposes of this definition "at risk" is meant to have some significance in a statistical or medical sense, i.e., some probability of occurrence that is not merely speculative or statistically insignificant.

e. "Difficult to place child" is a child with special needs for whom reasonable but unsuccessful efforts to secure an appropriate, unassisted adoptive placement have been made, or for whom efforts to secure unassisted placements have been waived because it is in the best interests of the child: for example, adoption by a foster family with whom the child has established a meaningful, positive bond.

f. "Non‑recurring adoption expenses" are those one‑time adoption expenses directly related to the adoption of a special needs child, such as adoption fees, court costs, attorneys fees, etc., which are not incurred in violation of state or federal law, which have not been reimbursed from other sources or funds, and the adoptive parents have incurred these expenses.

g. Retroactive adoption assistance refers to adoption assistance approved by the Department for special needs children who are adopted without adoption assistance and who are later determined to be eligible pursuant to these rules. The term "retroactive" does not refer to, nor does it imply, the availability of assistance between the time of the adoption and the date the adoptive parents request "retroactive" adoption assistance, except as may be provided under section 5.c. of these rules.

h. Special foster family care rates refer to those rates established by the department in policy. (Child and Family Services Manual, Section V, G‑1, page 9.1.b.)

3. ELIGIBILITY CRITERIA

a. The Child

(1) For the adoption assistance program:

(a) The child must be in the legal custody of the Department or a non‑profit, private, licensed child placing agency in this State.

(b) The child must be legally available for adoption or approved for a legal-risk placement.

(c) The child must meet the definitions of a "special needs child" and a child who is difficult to place.

(d) Adoption must be considered to be in the best interest of the child.

(e) Children who are eligible for federally‑matched adoption assistance payments must be eligible for or a recipient of AFDC‑Foster Care payments or Supplemental Security Income (SSI) at the time of the adoptive placement, and at finalization of the adoption, and must be adopted no sooner than the beginning of the fiscal quarter after the date of the approval of the Department's Title IV‑E plan. These children must also meet criteria a‑d above.

(f) To be eligible for state‑funded adoption assistance, a child must meet criteria 1‑4 above, but does not need to meet #5 above.

(2) For purposes of reimbursement of non‑recurring adoption expenses:

(a) The child must meet the definitions of a special needs child and a child who is difficult to place.

(b) The child must be legally available for adoption or approved for legal risk placement.

(c) The child must not be receiving, or eligible for, adoption assistance from some other state's program, or for non‑recurring adoption expenses through some other funding source.

(d) The child must be placed for adoption in accordance with applicable state and local laws.

(3) For purposes of retroactive adoption assistance, the child must be special needs and be determined to be eligible by the Department.

(a) Grounds for eligibility for retroactive adoption assistance are as follows:

(1) Relevant facts regarding the child, the biological family or child's background were known and not presented to the adoptive parents prior to legalization of the adoption;

(2) Denial of assistance occurred based upon a means test of the adoptive family;

(3) The state agency erroneously determined that a child was ineligible for adoption assistance; or

(4) The state agency failed to advise adoptive parents of the availability of adoption assistance for a child with special needs.

(b) Applications will only be accepted from families whose eligible children are under 18 years of age at the time of application.

(c) Children must have been in the legal custody of the Department or a non‑profit, private, child‑placing agency licensed in this state. Children in the custody of private adoption agencies licensed in this state and adopted prior to the law authorizing adoption assistance for these children (June 30, 1992) are not eligible for retroactive adoption assistance.

b. The Adoptive Family

(1) For purposes of adoption assistance:

(a) Applications may be submitted by foster parents interested in adopting an eligible child in their care and other persons interested in adopting an eligible child.

(b) The family must have been studied and approved as meeting the Department's standards for adoption either by the Department or by a licensed child‑placing agency with an adoption program, except for financial eligibility.

(c) The circumstances of the family must be considered in determining adoption assistance of the type, duration and amount requested.

(d) For adoption assistance that exceeds one year in duration, there must be an annual redetermination of need in accordance with Part 8 of these rules.

(2) For purposes of reimbursement of non‑recurring adoption expenses:

(a) The family must have been studied and approved as meeting the Department's standards for adoption either by the Department or by a licensed child‑placing agency with an adoption program.

(b) The family is not otherwise able to adopt this special needs child without reimbursement of non‑recurring adoption expenses.

(c) The family must not have received, or be eligible for, reimbursement for these expenses from any other source.

(d) All applicable state and local laws must have been followed.

(3) For retroactive adoption assistance, the family must request such assistance in writing to the Department, and approval must be made pursuant to the rules.

c. In some instances there are no common definitions of acceptability of families or of the best interest of children. When such instances occur in these rules, the determination of acceptability of families or of the best interest of children shall be made at the discretion of the Department.

4. TYPES OF ASSISTANCE

a. Long Term Assistance

A monthly payment which may continue to the eligible family until the child attains the age of eighteen (or, until the child is age 21 where the state determines the child has need for educational benefits or has a physical, mental or emotional handicap which warrants the continuation of adoption assistance).

b. Limited Period Assistance

(1) A monthly payment for limited period of time.

(2) Payment (on a recurring basis for a specified period of time) of medical or mental health costs (such as orthodonture, medical treatment, physical and mental health therapy, etc.) or, if the child is between 18 and 21 years of age, educational benefits in accordance with the Department's Education Beyond High School Program.

c. One Payment Assistance

A one‑time, not recurring payment to meet a special need of the child. Examples of not recurring items are payment for an operation necessitated by a medical condition of the child, payment of legal fees for adoption, and payment for special orthopedic devices for a child.

d. Non‑recurring Adoption Expenses

One time expenses, not to exceed $2,000 per child, incurred by a family in the process of adopting an eligible special needs child (such as home study and legal fees, visitation and transportation expenses, fees for medical examinations required in the home study process, etc.)

e. Medicaid Card

Use of a Medicaid card to cover the child's medical, dental, psychological and other expenses allowable under Maine's Medicaid program, in accordance with Medicaid's law, rules, regulations and Policy, usually provided to the age of 18.

f. The Adoption Assistance Program does not cover the cost of placement in residential treatment programs or group homes.

5. AMOUNT AND DURATION OF ADOPTION ASSISTANCE

a. The amount of assistance may vary, depending on the circumstances of the adoptive family, the special needs of the child, and the availability of other resources. The amount of long term, limited period, or one‑payment adoption assistance, or any combination thereof, may not exceed the cost of caring for the child if the child had remained in the custody of the Department in a family foster home. The amount of non-recurring adoption expense shall not exceed $2,000 per child who is otherwise eligible. Federal financial participation may not exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home. Therefore, board and clothing payments may not exceed the board and clothing payments which would have been paid by the Department if the child had remained in its custody in a foster family home.

In some cases, the needs, conditions, or behaviors of the child may indicate a need for specialized care. When children, who are recipients of or are candidates for a special family foster care rate, are to be placed for adoption with an adoption assistance agreement, a Request for Special Foster Family Rate Form completed by the caseworker, must be submitted for rating. (See Child and Family Services Manual, Section V, G‑1. page 9.1.b.)

The specialized rate for adoption assistance is determined by the degree of physical, emotional, or behavioral handicap of the child and the specialized care provided by the parents to meet the identified needs. Rates will be determined as above and not by rate setting for children placed by child placing agencies in their therapeutic homes/specialized homes.

b. For reimbursement of non‑recurring adoption expenses, the amount of reimbursement may vary, but may not exceed $2,000.00 for each child.

c. When a special needs child is determined to be eligible for retroactive adoption assistance, that child is eligible prospectively for any assistance provided by the adoption assistance program. Assistance may be provided from the date the request for retroactive adoption assistance is made, forward. The retroactive rate of assistance will be determined by methods consistent with rate setting for the adoption assistance program.

In some special circumstances, the Commissioner, or his designee, may at his discretion, authorize payment up to a maximum of $12,000 for special costs incurred for an eligible child prior to the date of first request for retroactive assistance.

Payments for normal, usual and expected expenses of childhood will not be considered.

Special expenses that may be considered must:

(1) Be directly related to the special needs of the child, and

(2) Be extraordinary in nature, and,

(3) Must help the family in continuing their support of the specialized needs of the child.

Documentation/receipts related to the above expenses may be required.

d. All other resources, and benefits including insurance, Social Security, Supplemental Security Income, VA benefits, other benefit payments, and available medical programs must be utilized before assistance is considered. If such benefits are available for the child whose adoption is to be assisted, the amount of the assistance must be reduced by the amount of the benefits, as long as the adopted child continues to be eligible for these benefits. The adoptive family must apply for third party benefit payments on behalf of their child.

e. The duration of assistance may not exceed the terms of the written agreement made between the approved adoptive family and the Department.

f. When the approved adoptive family and the Department agree to adoption assistance for a period longer than one year, the continuance of assistance each year shall be subject to the family's continued eligibility based on an annual redetermination of the needs of the child and circumstances of the family.

If a special adoption assistance rate is granted, a Request for Special Family Foster Care Rate must be submitted with each adoption assistance renewal application. The special family foster care rate will be determined each year of renewal based on the same standards as if the child remained in foster care.

g. In no instance shall assistance continue past the time when the child attains the age of eighteen (or, until the child is age 21 where the state determines the child has need of educational benefits or has a physical, mental or emotional handicap which warrants the continuation of adoption assistance).

h. If the adopting family moves to another state, assistance will continue according to the agreement between the family and the Department as long as the family continues to be eligible based on the annual redetermination of need.

i. Adoption assistance payments will terminate if the state determines that the parents are no longer legally responsible for the child or if the state determines that the child is no longer receiving any support from such parents. The adopting family is responsible for immediately notifying the Department's Adoption Program Specialist in writing of any changes in the needs of the child, the circumstances of the family, or other benefits available for the child's support, which may affect their eligibility for adoption assistance or the amount of assistance required. The family shall notify the Department's Adoption Program Specialist in writing within 10 days of these changes(above).

k. The adoptive family is responsible for reimbursing any overpayment of adoption assistance funds to the Department.

l. The adopting family is responsible for immediately notifying the Department's Adoption Program Specialist in writing of any changes in address, custody or living arrangements of the child.

6. AGREEMENT BETWEEN THE APPROVED ADOPTIVE FAMILY AND THE DEPARTMENT

a. A written agreement between the family entering into assisted adoption and the Department must precede the adoptive placement. An exception can be made in accordance with Section 7 of these rules in the case of a request for retroactive adoption assistance approved in accordance with 3.b.3. of these rules.

b. The Commissioner of the Department or his designee will sign the agreement on behalf of the Department.

c. The agreement shall include the following:

(1) The amount and type of adoption assistance payments;

(2) A statement concerning eligibility for Title XIX benefits and Title XX services for children receiving federally‑matched adoption assistance payments;

(3) Designation of any Title XX benefits or additional services or assistance to be provided by the Department and how the costs for these items are to be met;

(4) The duration of the agreement;

(5) The process for annual redetermination of need and a statement that failure to reapply or failure to meet the standards for adoption assistance will result in the termination of the agreement;

(6) A statement that the adoptive family is responsible for immediately notifying in writing the Department's Adoption Program Specialist of any changes in address, custody, or living arrangements or changes in benefits for the child;

(7) A statement specifying how adoptive parents shall notify the Department in writing of changes in the needs of the child or the circumstances of the family that would affect their eligibility for, or the amount of, assistance required;

(8) A statement concerning interstate continuance of the agreement, specifying payments and services for which Maine will remain responsible if the family moves out of state;

(9) A statement specifying how adoptive parents shall be notified of any changes in the rates of adoption assistance payments and how they may request changes in the adoption assistance agreement;

(10) A statement of the terms of continued eligibility for adoption assistance;

(11) A statement regarding the right of the family to appeal decisions concerning adoption assistance and the procedure for doing so;

(12) The effective date for beginning adoption assistance payments will be the date the child is placed in the adoptive home with an approved adoption placement agreement (BCFSAC‑034).

7. PROCEDURES

a. For adoption assistance in general:

(1) The child must have been legally cleared for adoption by the Assistant Attorney General or approval of a legal risk placement must have been given by the Commissioner or his designee before placement may be considered. Eligible children in the custody of a non‑profit, private adoption agency licensed in this State must also be legally free for adoption, or approved for legal risk placement in accordance with the Department's Policy.

(2) The family must have been studied and approved as meeting the Department's standards for adoption by either the Department or a licensed child‑placing agency with an adoption program.

(3) The child's caseworker shall document the "reasonable, but unsuccessful" attempts to place the child without adoption assistance, in accordance with departmental policy. on forms to be provided by the department. These efforts can be waived in some instances, by the Adoption Program Specialist (see 2.e. of these rules).

(4) The reasons that the child cannot be placed without assistance and the reasons for the amount, type and duration of assistance must be established by Departmental staff on forms to be provided by the Department.

(5) The approved adoptive family must make application for assistance on forms to be provided by the Department. The application must give notice of the right to appeal a denial of subsidy through a fair hearing process.

(6) The plan to place the child with assistance must have the initial approval of the Department's Adoption Supervisor on forms to be provided by the Department.

(7) The application and written agreement, signed by the adoptive parents or parent in the case of a single parent, shall be sent together with forms indicated in Part 7, Sections C and E, to the Bureau of Child and Family Services of the Department for presentation to the Commissioner or his designee.

(8) The child may not be placed for adoption with adoption assistance until the plan has been approved and the written agreement signed by the Commissioner of the Department or designee. An exception can be made by the Commissioner or designee in certain conditions which develop or are discovered after the child has been placed for adoption but before the adoption is finalized by Probate Court, or in the case of a request for retroactive adoption assistance as indicated in Section 3.a.3. and 3.b.3. of these rules.

(9) If the Commissioner or designee does not approve the plan for adoption with assistance, the family shall be notified in writing, giving the reasons and stating the family's right to appeal the decision and procedures for appeal.

(10) In all instances, the decision whether to place a child for adoption rests with the Department, or the licensed child placing agency, which under law has the full parental responsibility for the child.

b. For non‑recurring adoption expenses:

(1) Application must be made on forms provided by the Department for reimbursement prior to the adoption of the special needs child. Original receipts must be attached.

(2) The child must be certified on forms Provided by the Department as a special needs child who also meets the definition of difficult to place.

(3) An agreement approving reimbursement for non‑recurring adoption expenses must be signed by the family and the Commissioner or his designee prior to the legal adoption of the child, except in certain cases prior to 1995 with an application now pending, where an agreement was not signed before the child's legal adoption and these rules were not in effect.

c. For retroactive adoption assistance:

A family must request assistance in writing to the Department's Adoption Program Specialist, then follow procedures as outlined in these rules.

8. ANNUAL REDETERMINATION OF NEED

a. Prior to the yearly anniversary of the assisted adoption placement, the Department shall send an application for continuation of assistance to the adopting family. The application must contain notice of the right to appeal a denial or reduction of assistance through the fair hearing process.

b. Within thirty days of the receipt of the yearly renewal application for the assisted adoption placement, the adopting family must return the completed application for continuation of assistance to the Department. Failure to do so will mean the loss of all future assistance after legally sufficient second notice.

c. If the Department finds that the family continues to be eligible for adoption assistance for another year, the Department shall inform the adopting family in writing. The amount of assistance each year will be determined in accordance with Part 5.

d. If the Department finds that the family does not continue to be eligible for assistance based on the annual redetermination, or at any time, the Department shall inform the family in writing that they have been found to be ineligible for any further assistance and the reasons therefore. The department shall notify the family of their right and the process to appeal.

e. Adoption assistance will not be terminated without legally sufficient second notice to the adoptive parents.

9. TRANSFERAL TO LEGAL GUARDIAN

Upon the death of both adoptive parents, adoption assistance may be transferred to the legal guardian as long as the child continues to be eligible for adoption assistance pursuant to the terms of the most recent adoption assistance agreement with the adoptive parents. The department shall enter into a new assistance agreement with the legal guardian.

10. APPEALS

Any individual who has applied for or is receiving adoption assistance, (or whose application for assistance is not acted upon with reasonable promptness), is entitled to appeal any decision made by the Department concerning adoption assistance. To appeal a decision, a written request for a fair hearing must be made to the Commissioner or his designee within 10 days of the decision.

11. CONFIDENTIALITY

Release of information concerning individuals assisted under the adoption assistance program shall be restricted to those instances set out in 42 USC 671(a)(8). [PL 96‑272 471(a)(8)]

12. EFFECTIVE DATE

These rules become effective on *(see History Note below)*.

13. AUTHORITY: 19 MRSA, Sections 1141, 1142,1143 and 1144, which applies when adoption petitions were filed prior to 8/1/94 and 18-A MRSA Part 4 Sections 9-401, 9‑402, 9-403 and 9-404, which applies when adoption petitions were filed 8/1/94 and after.

EFFECTIVE DATE:

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AMENDED:

February 15, 1996

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May 5, 1996

CORRECTIONS:

March 28, 2001 - missing 1996 amendment inserted into text

May 11, 2004 - corrected statutory authority

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