

UNDERSTANDING ADOPTION SUBSIDIES

STATE-SPECIFIC GUIDES FOR ADOPTIVE PARENTS AND ADOPTION PROFESSIONALS

CALIFORNIA

CALIFORNIA TITLE IV-E ADOPTION SUBSIDY REGULATIONS

Introduction

California Adoption Subsidies are distributed under the “Adoption Assistance Program.” The purpose of the program is to provide stable and secure permanent homes to foster children and achieve a reduction of children in the foster care system. The intent of the payment is to enable adoptive parents to meet the needs of adoptive parents. *Cal Wel & Inst. Code §§ 16115-5.5*

In this guide, the term “department” refers to the California State Department of Social Services.

Federal Subsidies:

An adopted child will qualify to receive for federally funded Title IV-E adoption assistance if the child is:

- 1) a U.S. citizen;
- 2) eligible for:
 - a. the former ADC program when he or she most recently entered foster care or at the last redetermination of foster care funding eligibility and the court has determined that the if the child continued to be in the birth parent’s home it would be contrary to his or her welfare; or
 - b. SSI; and
- 3) 3 years old or greater, a member of a minority group, a member of a sibling group or has a need for medical, mental health or rehabilitative care.

If the child is eligible to receive the federally funded adoption subsidy, he or she is automatically eligible for Medicaid.

In California, the federal government provides 50% of the funding for the subsidies given to children eligible to receive federal Title IV-E funded subsidies. This is known as the Federal Financial Participation (FFP) rate. The remainder of the funding is paid with

75% state funds and 25% county funds.

<http://www.nacac.org/adoptionssubsidy/stateprofiles/california.html>

State Subsidies:

If the child does not meet the eligibility requirements for federal funding, the subsidy will be funded through the state. He or she will not be eligible to receive Medicaid benefits, but will qualify for Medi-Cal, which provides the same benefits.

Subsidy Eligibility and its Requirements

An adopted child will only receive adoption assistance if he or she is deemed eligible under the program requirements. A child is eligible to receive an adoption subsidy if: (must meet all 7 factors)

1. The child would most likely not be placed in an adoptive home without the aid of the adoption subsidy due to the child's; (a) race; (b) ethnicity; (c) color; (d) language; (e) age over 2 years old; or (f) biological parent's adverse medical or behavioral condition that will likely affect the child. If the child does not meet any of the above factors, he or she will still be eligible if placement without the subsidy is unlikely due to the child's mental, physical or medical disability that has been certified by a licensed physician;

2. The state has conducted a reasonable but unsuccessful search for an adoptive family that would take the child without an adoption subsidy or the state found that it was not in the child's best interest to place the child in a different home due to significant emotional ties with his or her foster parents;

3. The child is eligible to receive Supplemental Security Income at the time of the adoption petition or the child (a) is subject to an agency adoption and is a legal ward of the county, (b) was relinquished for adoption by his or her parent to a licensed California private or public agency and was subject to risk of dependency, or (c) was under the care of the department under §8805 or 8918;

4. The child is under the age of 18 or 21 if he or she has a disability;

5. The adoptive parents have taken responsibility for the child either through an adoptive placement agreement or a final decree of adoption and adoption assistance agreement;

6. The adoptive parents are legally responsible for and support the child; and

7. The department or county and the adoptive parents have signed an adoption assistance agreement.

Cal Wel & Inst Code §16120

As a condition of assistance eligibility, under factor 2, the agency must first seek adoptive parents for the child who do not need the subsidy. The agency must document the search in the child's case file showing that the child was discussed at a regional adoption agency exchange meeting or registered with the department's photo-listing album. The agency is not required to conduct this search if the child's current foster parents have established "significant emotional ties" with the child, they wish to adopt the child and the agency determines that they are a suitable placement for the child. 22 CCR 35327

The child's eligibility will be decided by department or the county responsible for making the foster care payments. *Cal. Wel. & Inst Code § 16118* The family's financial status or the adoptive parent's state of residence may not be used to determine the child's eligibility. *Cal Wel & Inst. Code § 16119(d)(1); Cal Wel & Inst. Code § 16121.1* Additionally, a child who meets the eligibility criteria is eligible for assistance regardless of whether the adoption is an independent adoption or an agency adoption. *22 CCR 35326(b)*

An adopted child is automatically eligible for an adoption subsidy if the child was eligible through a prior adoption which was dissolved and the former adoptive parent's rights were terminated or the child's former adoptive parents are deceased. *Cal Wel & Inst Code §16120*

The Subsidy Application Process

The agency must provide adoptive parents who wish to apply for adoption assistance or parents who are adopting a child believed to be eligible for assistance with a "Request for Adoption Assistance" form. *22 CCR 35325(b)* The parents must fill out the form and file it with the department for further evaluation. When the parents file an application for adoption assistance, the department must give the parents written information about the Adoption Assistance Program benefits, the difference between adoption assistance and foster care payments, the possibility of reimbursement for non-recurring adoption expenses and the availability of mental health care through Medi-Cal. *Cal Wel & Inst. Code § 16119(a)*

After the form has been filed, the department will determine if the child is eligible to receive the adoption subsidy using the eligibility criteria in the above section. If the agency finds that the child is eligible to receive adoption assistance benefits it will then: 1) inform the county which will make the payments, 2) fill out an application for Supplemental Security Income on behalf of the eligible child, 3) determine the amount and duration of the adoption assistance payment by negotiating these terms with the adoptive parents, and 4) enter into an adoption assistance agreement with the adoptive parents. If the agency has decided that the child is not eligible to receive adoption assistance benefits it must send notice to the adoptive parents and the county responsible for payments. *22 CCR 35325(e)*

Once a child has been deemed eligible, the department and parents must negotiate the amount, nature and duration of the assistance. During the negotiation process, the agency must make a good faith effort to negotiate with the parents, encourage the parents to ask for enough assistance to properly support the child, discuss with the parents the circumstances of the family and the needs of the child and inform the parents that the payment is not for any specific necessity, but rather to assist the parents in supporting the child. *22 CCR 35333(e)* The department and adoptive family must come to an agreement on all matters. After an agreement has been reached, the agency will authorize the payment of the adoption assistance, enter into an adoption assistance agreement with the parents and send the parents a Notice of Action stating that the assistance has been approved. *22 CCR 35333(f)* If the agency and the parents are not able to come to an agreement during negotiations, the agency will send the parents a Notice of Action stating that the adoption assistance has been denied. *22 CCR 35333(g)*

The agency must send the adoptive parents a Notice of Action when there is: 1) denial of adoption assistance; 2) completion of a deferred adoption assistance agreement; 3) authorization of the adoption assistance agreement; 4) completion of the review; 5) cessation of payment; 6) overpayment; and 6) any change in the amount of the payment. *22 CCR 35345*

The Subsidy Agreement

After the negotiation process has ended, the department and adoptive parents will enter into and adoption assistance agreement. This agreement is a legally binding document that must be signed by both parties. The adoption assistance agreement must state the amount, duration and type of assistance. It must also state the medical assistance which the federal government is responsible for. *Cal Wel & Inst Code § 16120.05; Cal Wel & Inst Code §16177*

After the parents have entered into the adoption assistance agreement with the state, they must notify the agency if there is a change in their mailing address, the child receives any unearned income, they no longer support the child or are no longer legally responsible for the child. *22 CCR 35337* The adoption assistance agreement must be reviewed at least every two years. *Cal Wel & Inst Code § 16120.05*

Duration

Payments will begin either on effective date of the adoption assistance agreement or adoption finalization so long as the adoption assistance agreement has been signed by both parties. *Cal Wel & Inst Code § 16121.05(c); 22CCR 35325(e)(3)(D)*

The adoption assistance agreement will end when the child turns 18, unless the child has a mental or physical disability requiring continuation of assistance, in which case it will end when the child turns 21. The payments will also cease if the parents are no longer legally responsible for the child or no longer financially support the child. *22 CCR 35333; 22 CCR 35337*

If the adopted child is placed into a state-approved group home or residential care treatment facility will continue to receive the adoption subsidy if the county agency determines that placement is necessary to aid with mental or emotional problems related to a condition that was in existence prior to the adoption. This placement is only allowed as part of a plan for the child to return to the adoptive family and payments will only continue for 18 months. *Cal Wel & Inst Code §16121(b)*

Deferred Payment

If the child currently has a mental, physical or emotional condition which does not need aid, but which may in the future, the family and agency may fill out an adoption assistance agreement stating that the family may request aid sometime in the future. In addition to a presently known condition, a family or personal history which is likely to lead to future mental, physical, medical or emotional condition will also give rise to a deferred adoption assistance agreement. *22 CCR 35339*

If the adoptive family does not wish to receive adoption assistance at the time of placement or adoption finalization, the agency must encourage the parents to enter into a deferred adoption assistance agreement. *Cal Wel & Inst Code § 16119(b); 22 CCR 35325*

Subsidy Payment Amounts

To determine the amount of the payment the agency must: 1) determine the foster care maintenance payment the child would have received by looking at the child's needs and the circumstances of the family (cannot exceed the state approved foster family home care rate); 2) determine any income that the parents receive on behalf of the child including SSI/SSP, social security benefits, inheritance, trust fund or settlements; 3) calculate the maximum adoption assistance payment for the child by subtracting the child's income from the foster care maintenance rate. The payment amount will be anywhere between zero and the maximum amount determined in step 3 above. The agency may not use a means test to determine the amount of the assistance payment. *Cal Wel & Inst Code §16121(a); 22 CCR 35333*

When looking into the foster payment the child would receive, the agency must assess the child's needs and identify the child's care and supervision needs which would qualify for foster care payments. This assessment must be conducted through direct observation of the child, the child's case record, foster care payments, and any information provided by the adoptive parents. *22 CCR 35333* When looking at the "circumstances of the family" the agency must look to a written statement by the parents showing how the child will be placed in the existing family and the impact of the placement on the family. *22 CCR 35333(d)*

The actual subsidy cash payment amount will be the amount that is agreed upon during negotiations between the parents and the department anywhere between zero and the maximum amount determined in step 3 above. The payment will be based on the child's needs and the family's circumstances, including the family's "standard of living", ability to integrate the child into the family's lifestyle, future plans and needs. *Cal Wel & Inst. Code § 1611(d); 22 CCR 35333*

The payment will be increased automatically in coordination with any increases to the foster care maintenance payments. *22 CCR 35333(h)* The adoptive assistance will continue at the same rate unless:

- the adoptive parent is no longer legally responsible for the child;
- the child is no longer receiving any support from the parent;
- the payment is larger than the maximum foster care payment amount;
- the parents show a need for an increased payment;
- the parents voluntarily agree to a reduced payment; or
- the parents show that the child has an extraordinary need that was not present at the time that the original adoption agreement was signed.

Cal Wel & Inst Code § 16119(f)

Basic Rates

Age	Rate
0-4	\$425
5-8	\$462
9-11	\$494
12-14	\$546
15+	\$597

<http://www.nacac.org/adoptionssubsidy/stateprofiles/california.html>

Specialized rates:

Vary from \$0 to \$1,500 and are in addition to the basic rate(authorized by the individual county). <http://www.nacac.org/adoptionssubsidy/stateprofiles/california.html>

Types of Available Subsidies

Maintenance Payments:

This subsidy is available to aid with everyday expenses associated with raising a special needs child. The adoptive parents are free to allocate this money in any manner they deem appropriate. This subsidy comes in the form of a monthly payment. Eligibility for the adoption support subsidy will be determined using the criteria in the above “eligibility” section.

Nonrecurring expenses:

In California, the department will reimburse eligible adoptive families for the non-recurring expenses associated with the process of adopting a child from foster care. The state will reimburse up to \$400 for each child. The agency must notify all adoptive parents applying for adoption assistance that there is a possibility of reimbursement for non-recurring expenses. If the parents wish to take advantage of this opportunity they must sign an agreement with the agency prior to the adoption finalization. *Cal Wel & Inst Code § 16120.1; 22 CCR 35352*

The amount of nonrecurring expenses reimbursed to the parents will be determined through agreement of the parents and department. The agreement must state the nature and amount of expenses to be paid, not to exceed \$400 for each child. The department will only reimburse for expenses that are not paid for or covered by other sources. Reimbursement is in addition to any adoption expenses paid under §16121. *Cal Wel& Inst Code §16120.1*

To receive reimbursement, adoptive parents must file a claim with the department showing the expense within 2 years of adoption finalization. *22 CCR 35352*

Respite Care:

Respite care may be covered through adoption assistance if it was negotiated as part of the adoption assistance agreement. The department and the Post Adoption Services Project (PASP) administer respite care in California. For more information on respite care, please contact DSS or visit the websites below.

<http://www.respitelocator.org/locatorsearch/SearchResults.asp>
http://php.com/include/agency/show_list.php?where_ServicesID=33
<http://www.strengthforcaring.com/util/resources/states/state/california.html>

Medical Coverage:

Eligibility for Medicaid will be determined by the department. Children eligible for Title IV-E federally funded subsidies are automatically eligible to receive Medicaid coverage. If the child is not eligible for federal funded subsidies, he or she will be eligible for Medi-Cal benefits. Any child who is eligible for the state adoption subsidy program in another state, but is currently a resident of California is eligible to receive Medi-Cal benefits. *Cal Wel & Inst Code § 16176*. In addition, if the adoptive parents enter into an adoption assistance agreement where no cash payments are given, the child is still eligible to receive Medi-Cal benefits if they are needed. *Cal Wel & Inst Code §16121(d)*

For more information on the Medi-Cal program, please visit:

<http://www.medi-cal.ca.gov/>
<http://www.dhs.ca.gov/mcs/medi-calhome/default.htm>

College Assistance:

There are multiple programs, grants and scholarships offered to current and former California foster children to help aid with college. For more information on these programs please visit: <http://www.fosteryouthhelp.ca.gov/College.html>

Interstate Adoption Compacts Program

Any child, eligible for the state adoption subsidy program in another state but currently residing in California, is eligible to receive Medi-Cal benefits. *Cal Wel & Inst Code § 16176* A child eligible for California Adoption Assistance living out of state is still eligible for Medi-Cal benefits if the new state will not provide medical coverage for the child. *Cal Wel & Inst. Code § 16176(a)(2)*

The Subsidy Fair Hearing and Appeals Process

If an adoptive parent is not satisfied with an action of the department dealing with the application for or receipt of adoption assistance or is not allowed to apply for adoption assistance, he or she

is entitled to a state hearing upon filing a request with the State Department of Social Services. The right to a state hearing is not present when the assistance has automatically been adjusted due to a state or federal law. *Cal Wel & Inst Code §10950*

Filing the Request

Adoptive parents must first file a complaint with the county. Subsequently, if they are not satisfied with the result of filing the complaint, the adoptive parents may request a fair hearing before an administrative judge. The adoptive parent must file a request for a fair hearing within 90 days of the action he or she is disputing, beginning on the day the notice is mailed to the adoptive parents. The “Request for State Hearing” form will be on the back of the Notice of Action form. The department must hold the fair hearing within 30 days of the request being filed and must send written notice of the time and place of the hearing to the parties as least 10 days before the hearing date *Cal Wel & Inst Code §10951; Cal Wel & Inst. Code §10952.*

If the action being challenged is either a cessation or reduction in the adoption assistance payments, the parents are entitled to continue to receive the payments throughout the hearing process, but if the hearing results in a ruling against the adoptive parents, there may be an overpayment owed to the state. “Your Rights Under California Welfare Programs”

The Hearing

Prior to the hearing, the adoptive parents may obtain a “position statement” from the county which will state the county’s actions and the reasons behind those actions. This must be provided at least 2 days prior to the hearing. At the hearing, the adoptive parents may submit their own position statement to the administrative law judge which will become part of the hearing record and be reviewed by the administrative law judge. *Cal Wel & Inst Code §10952.5; “Your Rights under California Welfare Programs”*

The hearing will be conducted in front of an impartial administrative law judge and will be conducted in an informal manner. The adoptive parents may be represented by an attorney and may bring any witnesses that they wish. The hearing is closed to the public but must be recorded in a means which may be reproduced in the future. *Cal Wel & Inst Code §10953; Cal Wel & Inst. Code §10955-6; “Your Rights under California Welfare Programs”*

At the hearing, both the parents and the county will present evidence. Both sides may call witnesses, who must testify under oath, and question each other and the other’s witnesses. The county has the burden of showing that the action taken was proper. *Cal Wel & Inst. Code §10955; “Your Rights under California Welfare Programs”*

The Decision

After the hearing, the administrative law judge will either issue a proposed decision or a final decision. The proposed decision must be approved by the director, while the final decision has already been approved. When the proposed decision is sent to the director, he or she will

adopt the decision, hold another hearing or issue his or her own decision. This must be done within 30 days. The director's decision is final. *Cal Wel & Inst. Code §§10958-59*; "Your Rights Under California Welfare Programs"

If the adoptive parents are not satisfied with the hearing decision they may request another hearing. This must be done within 30 days after receiving the final decision. The director then has between 5-15 working days to grant or deny the rehearing. If no action is taken within 15 days, the request is deemed to have been denied. *Cal Wel & Inst Code §10960*

If either the agency or the adoptive parents are not satisfied with the director's final decision, a petition may be filed with the superior court within one year of the director's decision. The superior court will then decide whether to review the case. The party that is successful at the judicial review will be entitled to reasonable attorney fees and costs. *Cal Wel & Inst. Code §10962*

CONTACT INFORMATION

State Agencies

Patricia Roth

Manager, Adoptions Services Bureau
Department of Social Services (DSS)
744 P Street, M.S. 3-31
Sacramento, CA 95814
Phone: 916-651-8089
Fax: 916-651-8143
E-mail: patricia.roth@dss.ca.gov

NACAC Subsidy Representatives (parent/advocate)

Sharon Selby

870 Lynn Lane
Chico, CA 95926
Home: 530-891-8393
Fax: 530-891-8341
E-mail: selbychico@sbcglobal.net

Robert Pewitt

149 Midvale Dr
Vacaville, CA 95687
Phone: 707-694-4094
E-mail: rpewitt@sbcglobal.net

Jayne Rovianek

17360 Oak Leaf Dr

Morgan Hill, CA 95037

Phone: 408-888-0789

Fax: 408-776-7863

E-mail: jrovianek@yahoo.com

Additional Groups

http://www.childsworld.ca.gov/AdoptionsA_327.htm

http://www.childsworld.ca.gov/CDSSAdopti_331.htm,