

# ***UNDERSTANDING ADOPTION SUBSIDIES***

## ***STATE-SPECIFIC GUIDES FOR ADOPTIVE PARENTS AND ADOPTION PROFESSIONALS***

### ***VIRGINIA***

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#### ***VIRGINIA TITLE IV-E ADOPTION SUBSIDY REGULATIONS***

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##### ***Introduction***

For purposes of this guide, the term agency refers to the requisite local social service department while a child-placing agency is any agency licensed to place children in foster care or adoptive homes. Department refers to the state of Virginia's Social Services Department. Subsidies and adoption assistance are monetary payments or services provided to persons adopting a child with special needs. The purpose of adoption assistance is to facilitate adoptive placement and ensure permanency for children with special needs. Va. Code Ann. § 63.2-1300.

An adoption assistance agreement is a written agreement between the adoptive parents and a state agency which, once signed, becomes a binding contract. Such agreements may be made for a federal, state or conditional subsidy.

***Federal Subsidies:*** This is available to children whose foster care expenses are paid from federal and state funds. It is used for any special needs child who meets the eligibility requirements of the Aid to Families with Dependant Children Program or the Supplemental Security Income. 22 VAC 40-260-20(D)(1).

A child is eligible for the Aid to Families with Dependant Children Program if your family income is below the limits set by the federal government.

A child is eligible for Supplemental Security Income if they are disabled and live in a home with limited income and resources.

***State Subsidies:*** This is available for children whose foster care expenses are paid out of pool funds from the Comprehensive Services Act and any child who is either placed through a non-custodial foster care agreement, committed or entrusted to local boards of social services or for whom a local agency is given responsibility for aftercare

supervision is eligible. 22 VAC 40-260-20(D)(2); Virginia Department of Social Services, Foster Care Policy Manual, Volume VII, Section III, Chapter B-12.7.2.

***Conditional Subsidy:*** This subsidy is available to any child with special needs, whose foster care expenses are paid from Comprehensive Services Act pool funds and is used when subsidy payments and/or services are not needed at the time of adoption but may be needed at a later date. It should be stressed that this type of subsidy does not involve money payments or services. It is merely an agreement that allows the adoptive parent(s) to apply for a state subsidy after the final order of adoption and commits the agency to providing a state subsidy when the adoptive parent or parents apply, if it is determined that the need is related to one of the conditions described below.

This reservation is most commonly used when the child had a physical, mental or emotional disability, a hereditary tendency, congenital problem or birth injury or if the child could develop emotional or other problems resulting from separation from birth parents, placement in foster care or adoption. But it is also available if the parents feel that while they do not currently need such help, they may need assistance with daily living expenses down the road.

The Department and the Department of Medical Assistance Services must include the adoption assistance and medical assistance terms for which the federal government is responsible for paying some or all of the costs, in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Titles IV (e) and XIX of the Social Security Act and any other federal laws. Va. Code Ann § 63.2-1405.

The federal contribution to Title IV-E-eligible children is 50.00% in Virginia which is known as the Federal Financial Participation (FFP) rate. The Departments shall apply for and administer all relevant federal aid in accordance with law and the remaining program costs shall be entirely funded with general state funds.

<http://www.nacac.org/stateprofiles/virginia.html>, May 25, 2005

### ***Subsidy Eligibility and its Requirements***

Qualification for subsidy payments shall be determined by the local board or by the licensed child-placing agency, whichever has custody of the child. Va. Code Ann. § 63.2-1303.

To be eligible for subsidy assistance, a child must meet the special needs criteria, be less than 18 years of age and under the custody of a local social services department or state licensed, private, child placing agency at the time the petition for adoption is filed. The child must have been placed with the prospective adoptive family for the purpose of adoption or must have lived with foster parents for at least 18 months before they file a petition for adoption under § 63.2-1229 of the Code of Va..

To be considered a special needs child, several different criteria must be satisfied. First, the child must be unable to return to the home because the birth parents' parental rights have been terminated. Then, it must be determined that the child is hard to place for adoption due to one or more of the following reasons.

- 1) Physical, mental, or emotional condition existing before legal adoption.
- 2) Hereditary tendency, congenital problem or birth injury that could lead to a future disability that has been verified by a medical or psychological statement.
- 3) Is six years of age or older.
- 4) Is a member of a minority or mixed racial heritage.
- 5) Is a member of a sibling group that should not be separated.
- 6) The child has significant emotional ties with foster parents with whom the child has resided for at least 12 months, the adoption is in the best interest of the child and the subsidy is necessary to complete the adoption by these foster parents.

Finally, it must be shown that reasonable efforts have been made to place the child with appropriate adoptive parents without subsidy which will be deemed satisfied if the child has been registered with the Adoption Resource Exchange of Virginia and featured in the photo listing. However, this requirement need not be fulfilled when it would be against the best interests of the child because of factors such as the existence of significant emotional ties with the child's current foster parents. 22 VAC 40-260-20(B).

If a parent wishes to seek an adoption subsidy after the adoption has already been finalized, the child must have a physical, mental or emotional condition or a hereditary tendency, congenital problem, or birth injury that was present at the time of adoption, but unknown to the parents and the diagnosis must have been made within the last year. 22 VAC 40-260-20(C).

### ***The Subsidy Application Process***

The adoption assistance agreement must be signed within 90 days of the receipt of the application and before the entry of the final order of adoption. The agreement must specify the amount of payment and the services to be provided, including Title XIX and Social Service Block grant services. The agreement may be adjusted with the consent of the adoptive parents, in the event of changes in the child's needs.

If a subsidy is sought after a legal adoption has been completed, the applications procedures are the same as above except the application must be submitted within one year of the diagnosis that makes the child eligible for the subsidy and can only receive a state subsidy. 22 VAC 40-260-20(F).

The local board or licensed child-placing agency must ensure that adoptive parents have received information about the child's special needs and the current and potential impact of those special needs, to the best extent possible. It must also inform them of the child's eligibility for subsidy and the explain the appeal's process that would take place in the

event of a disagreement between the adoptive parents and the local board or child placing agency and the procedures required for revising the adoption assistance agreement. Va. Code Ann. § 63.2-1302(B).

### ***The Subsidy Agreement***

The subsidy agreement is entered into by the local board and the adoptive parents or the local board, the licensed child-placing agency and the adoptive parents. Va. Code Ann. § 63.2-1302(B).

The agreement will remain in effect regardless of a change in the adoptive parents' state of residency and the interests of the child will be protected through the Interstate Compact on Adoption and Medical Assistance, should the adoptive parents and child choose to relocate while the subsidy agreement remains effective.

To remain eligible to receive payments under the subsidy agreement, the adoptive parent(s) must submit an annual affidavit within 30 days of the anniversary date of the agreement's approval. This affidavit must certify that the child remains under their care and legal responsibility and that the child's condition that originally warranted the adoption subsidy, continues to exist. The parents must also state whether or not they will request changes to the current subsidy agreement. Failure to provide this information annually may serve as grounds for suspending the subsidy payment until it's provided. Va. Code Ann. § 63.2-1302(B).

Parents must submit copies of all bills or receipts for special service payments made directly to the adoptive parents. The agency must maintain responsibility for any payment or services identified in the agreement, regardless of where the family resides. It must also provide them with a full disclosure of the services and payments that the child is or may be eligible for. 22 VAC 40-260-20(G)(2).

Usually, absent certain circumstances, the agreement remains in effect until it expires. Unless otherwise specified in the agreement, this occurs when the child turns 18. However, if the child has a physical or mental disability or an educational delay, including those arising from conditions or circumstances that occurred in foster care prior to the adoption, assistance may be extended until the age of 21. Maintenance payments can also be continued for a child who is turning 18 during his senior year of school, if the child is expected to graduate by the end of the school year in which he turns 18.

The agreement can not be terminated before the child's 18<sup>th</sup> birthday without the consent of the adoptive parents unless it is determined that the child is either no longer receiving financial support from the adoptive parents, the adoptive parent or parents are no longer legally responsible for the child or the child's condition requiring subsidy no longer exists.

If the child's condition improves but could deteriorate again, the agreement will not be terminated, but the payments could be suspended.

If the child receiving an adoption subsidy reenters foster care or the physical custody of the state, the local agency may renegotiate the adoption assistance agreement with the adoptive parents but any renegotiated agreement must receive approval from all parties to the agreement. 22 VAC 40-260-20(H).

### ***Subsidy Payment Amounts***

Adoption assistance payments amounts are negotiated, taking into consideration the needs of the child and the circumstances of the family. When considering the family's circumstances, income is not the sole factor looked at, but family and community resources will be explored to help reduce the amount of subsidy payment. In addition, the amount of payments made and services provided cannot exceed what would have been paid or provided had the child remained in foster care. 22 VAC 40-260-20(E).

Generally, subsidy payments will be made from appropriation for foster care services. The Commissioner will reimburse any agency making payments and any agency making subsidy payments may seek and accept funds from other sources, including federal, state, local and private ones. Va. Code Ann. § 63-1302(D).

Subsidy payments must be continued by the local board that initiated the agreement if the adoptive parents live in or move to another jurisdiction as long as they continue to meet the conditions of the agreement. However, if the appropriate agency of the new location agrees to provide the necessary assistance previously agreed to in the subsidy agreement the original agency is relieved of their obligation. Va. Code Ann. § 63.2-1302(C).

### ***Types of Available Subsidies***

Subsidy payments are available in many forms and can be disbursed in various different ways and/or combinations. This adds flexibility to the program so that it may better suit the needs of all the parties involved. Depending on what is agreed upon in the subsidy negotiation process, one or more of the following types of subsidies may be awarded to persons adopting special needs children.

***Maintenance Payments:*** This type of subsidy payment is made directly to the adoptive parents and is meant to help the family with daily living expenses. Maintenance payments are available to all children who are determined to be eligible for adoption subsidies and may be used to purchase childcare if necessary. However, this type of subsidy cannot be given in conjunction with conditional subsidies.

The payment is distributed on a reoccurring monthly basis and the amount cannot exceed the maximum regular foster care payment that would otherwise be made for the child. Maintenance payments cannot be reduced unless the circumstances of the child or adoptive parents have changed significantly according to the terms of the subsidy agreement and, unless the adoptive parents suggest it, such payments may not be reduced to an amount lower than that specified in the initial subsidy agreement. Va. Code Ann § 63.2-1302(A), (B). The monthly payment amount will automatically increase if the child

is receiving the maximum allowable basic payment and the child either reaches a higher age grouping or statewide increases are approved for foster care maintenance payments.

Basic rates:

Age	Rate
0-4	\$294
5-12	\$344
13+	\$436

*These rates are effective July 1, 2000, and are tied to foster care rates.*

<http://www.nacac.org/stateprofiles/virginia.html>, May 25, 2005

**One Time Only Payments:** This type of payment is available for expenses directly related to the adoption of a special needs child. These expenses may include, but are not limited to attorney fees directly related to the finalization of the adoption, transportation, court costs, and the reasonable and necessary fees of child placing agencies.

The adoption assistance agreement must specify the services that are to be paid for with this type of subsidy payment. The amount, which is limited to 2,000 per child, per placement, may be disbursed as soon as the adoption assistance agreement has been signed and the child has been placed in the adoptive home.

The payment itself may either be made directly to the service providers or to the adoptive parents for past expenses as long as a bill or receipt has already been submitted. However, the agency will not be held responsible for reimbursing bills or receipts submitted more than six months after the end of the month in which the expense was incurred. 22 VAC 40-60-20(E)(3).

<http://www.nacac.org/stateprofiles/virginia.html>, May 25, 2005

**Special Service Payments and Services:** This type of subsidy is available to help meet the child's physical, mental, emotional or dental needs. The needs paid for by this type of subsidy must be directly related to the characteristic that made the child hard to place or a physical, mental or emotional condition that existed at the time of placement but was not identified before the final order of adoption. Special service subsidy payments or services may be provided at the discretion of the agency in an effort to maintain the same level of service that the child received while in foster care.

Types of expenses that are appropriate include:

- 1) Medical, surgical or dental costs.
- 2) Equipment such as prosthetics, bras, crutches, hearing aids, etc..
- 3) Individual tutoring or remedial educational sessions, books or equipment.
- 4) Psychological and psychiatric evaluations and treatment.

- 5) Speech, physical, or occupational therapy.
- 6) Premiums for a major medical insurance policy for the child, if the child is not covered by a family policy.
- 7) Special services provided directly to the child by the adoptive parents. These are services provided by the parent to meet the special needs of the child and are different from basic maintenance and supervision because the parent must be qualified by experience or specific training to perform them. (This payment may be paid in addition to a maintenance payment.)

In addition, a special service payment may be used for children eligible for Title XIX and the Social Services Block Grant (SSBG), to supplement expenses not covered by Medicaid or when SSBG funds are not available or do not provide adequate coverage.

Payments for special services are negotiated with the adoptive parents taking into consideration the special needs of the child, alternative resources available to fully or partially reduce the cost of meeting the child's special needs and the circumstances of the adoptive family. When considering the family's circumstances, income shall not be the sole factor.

Special service payments may be made directly to the service providers or through the adoptive parents. A bill or receipt must be submitted before payment and the agency will not be held responsible for bills or receipts submitted more than six months after the end of the month in which the service was rendered. The bill rate of such payment may not exceed the prevailing community rate. 22 VAC 40-260-20(E)(2).

***Special Need Payments:*** These payments are used to provide services to the child that the adoptive parents cannot afford and are not covered by any insurance policy held by the child or the adoptive family. Such services may include, but are not limited to:

- 1) Medical, surgical and dental care.
- 2) Hospitalization.
- 3) Legal services in effecting adoption.
- 4) Individual remedial educational services.
- 5) Psychological and psychiatric treatment.
- 6) Speech and physical therapy.
- 7) Special services, equipment, treatment and training for physical and mental handicaps.
- 8) Cost of adoptive home study and placement by a child-placing agency other than the local board. Va. Code Ann § 63.2-1302(A).

***Respite Care:***

***Medical Coverage:*** Medical coverage is given to all children receiving a federal subsidy through Medicaid and is given to children receiving a state subsidy if the adoptive family meets the financial requirements of Medicaid or the child has special medical needs and

there is an adoption assistance agreement in effect. Virginia Department of Social Services Foster Care Policy Manual Volume VII, Section III, Chapter B-12.12.3.

***Tuition Grant Program for Special Needs Adoption Recipients:*** This program provides tuition and fees for any Virginia community college to any high school graduates or general education development (GED) completers who were in foster care or were considered a special needs adoption at the time of receiving their degree as long as he or she:

- 1) Enrolls in and maintains full-time enrollment in an eligible academic program of at least one academic year in length;
- 2) Is a resident of Virginia;
- 3) Meets the academic standards of the college for federal student financial aid programs;
- 4) Has not previously enrolled in a post-secondary institution as a full time student for more than five years; and
- 5) Maintains the required grade point average established by the State Board for Community Colleges.

There is no upper age limit and awards will be provided to eligible applicants who are not already receiving sufficient grant funds to pay for their tuition and fees, however, the awards may not exceed the cost of the tuition and required fees.

<http://www.vccs.cc.va.us/vccsasr/tuitiongrant/tuitiongrant.html>, May 26, 2005

To apply for this type of assistance, the child should apply to the community college of their choice and submit a Free Application of Federal Student Aid (FAFSA) to the U.S. Department of Education and the college's financial aid office. The FAFSA must be accompanied by documentation from the Department of Social Services regarding dates in foster care, or assistance received for a special needs adoption.

<http://www.dss.state.va.us/family/tuitiongrant.html>, May 26, 2005

Colleges will rank eligible first-year applicants based on when they received the admission application, federal financial aid data and the appropriate supporting documentation. Renewal students, who maintain eligibility, will be given priority.

<http://www.vccs.cc.va.us/vccsasr/tuitiongrant/tuitiongrant.html>, May 26, 2005

### ***Interstate Adoption Compacts Program***

The Governor is authorized to develop, participate in the development of, negotiate and enter into one or more interstate compacts on behalf of Virginia with other states in order to facilitate special needs subsidies and such compacts will have the force and effect of law.

Interstate adoption compacts must state that each instance of adoption assistance to which the compact applies must be covered by a written adoption assistance agreement between the adoptive parents and the child welfare agency of the state which undertakes to provide the adoption assistance, and further, that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance.

A compact may contain provisions establishing procedures and entitlements to medical, developmental, and child care or any other social services for the child even though the child and the adoptive parents are in a state other than the one responsible for or actually providing the services or funds to defray part or all of the costs. Va. Code Ann. § 63.2-1403.

***Medical Assistance:*** A child with special needs living in Virginia who is the subject of another state's adoption assistance agreement is entitled to receive medical assistance identification from Virginia if the adoptive parents file a certified copy of the adoption assistance entered into by the other state with the Department and show that the agreement is still in force or has been renewed annually at least once. The Department of Medical Assistance Services must consider the holder of a medical assistance identification under the laws of Virginia and must process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

In the event of a child living in another state who is the subject of a Virginia adoption assistance agreement, the Department must provide coverage and benefits to the extent required by the agreement if the other state is not providing coverage.

There will be no reimbursement for medical services or benefits that are covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. Additional coverage and benefits will be for services for which there is no federal financial contribution or, if they are federally aided, are not provided by the residence state. Va. Code Ann. § 63.2-1404.

However, this program applies only to children under adoption assistance agreements from states that have entered into a compact with Virginia under which that state provides similar services to children living in their state who are subject to Virginia adoption assistance agreements. Such regulations shall include procedures to be followed in obtaining prior approvals for services when such approval is required for the assistance. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by Virginia shall be eligible to receive it in accordance with the laws and procedures applicable thereto. Va. Code Ann. § 63.2-1404.

### ***The Subsidy Fair Hearing and Appeals Process***

Any applicant for or recipient of adoption assistance aggrieved by any decision of a local board or licensed child-placing agency that grants, denies, changes or discontinues adoption assistance, may, within 30 days after receiving written notice of such decision,

appeal to the Commissioner. The Commissioner may delegate the duty and authority to duly qualified hearing officers to consider and make appeal and review determinations. Va. Code Ann. § 63.2-1304.

Adoptive applicants must be informed in writing of their right to appeal all eligibility and payment amount determinations and this right includes decisions related to:

- 1) The lack or shortage of adoption assistance payments because the agency failed to inform the adoptive parents of relevant facts known by the agency regarding the child's special needs before adoption finalization.
- 2) Failure of the agency to inform the parents of the child's eligibility for adoption assistance.
- 3) Agency decisions related to the child's eligibility for adoption assistance, subsidy payments and services, and changing or terminating a subsidy agreement.
- 4) Failure of the agency to comply with state laws, policies and procedures for approving adoptive homes. 22 VAC 40-260-20(I).

<http://www.nacac.org/stateprofiles/virginia.html>, May 25, 2005

Appeals shall be processed in accordance with procedures established by the Virginia Board of Social Services and procedures proceed in three steps. First there is a conference with local agency, then a review by state hearings officer and finally, a review by the State Board of Social Services.

The adoptive parent must request a conference. At the conference, the local agency gives a complete explanation of its decision or action and then, adoptive parent is given time to present their side. The agency will listen and then render a decision. If the adoptive parent is not satisfied with the outcome of the conference, they may then request a hearing.

A hearing may be requested by using a special form that can be found at <http://www.dss.virginia.gov/form/pdf/032-03-024.pdf> or at the local agency or the request may be written in the form of a letter and sent to: Hearing and Legal Services Manager, Virginia Department of Social Services, 7 N. Eighth St., Richmond, VA 23219.

The Department for Social Services has compiled helpful information on the process and how to be prepared for the hearing at:

[www.dss.virginia.gov/appeals/bp\\_facts.html](http://www.dss.virginia.gov/appeals/bp_facts.html)

The Commissioner must provide an opportunity for a hearing, which may be by telephone or in person, and give reasonable, written notice to the applicant or recipient and the proper local board. The Commissioner must also provide a fair and impartial consideration of witness testimony and other evidence produced at the hearing, investigation reports by the local board, local director or licensed child-placing agency or

of investigations made or caused to be made by the Commissioner, and any facts that the Commissioner may deem proper to enable him to fairly decide the appeal or review.

The Commissioner's decision will be binding and considered a final agency action for purposes of judicial review pursuant to the provisions of the Administrative Process Act. If the adoptive parent is not satisfied with the outcome of the hearing, they may file for a judicial review. Va. Code Ann. § 63.2-1304.

## **CONTACT INFORMATION**

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### ***State Agencies***

#### ***State Subsidy Contact***

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#### ***Adoption Subsidy Specialist for Interstate Compacts***

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### ***County Information***

### ***Additional Groups***