



CDSS

JOHN A. WAGNER
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES

744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



ARNOLD SCHWARZENEGGER
GOVERNOR

September 29, 2009

ALL COUNTY LETTER NO. 09-51

TO: ALL COUNTY WELFARE DIRECTORS
ALL CDSS ADOPTIONS DISTRICT OFFICES
ALL COUNTY PLACEMENT SUPERVISORS
ALL ADMINISTRATIVE LAW JUDGES
ALL LICENSED ADOPTION AGENCIES

SUBJECT: CALIFORNIA'S ADOPTION ASSISTANCE PROGRAM AND
TITLE IV-E FEDERAL MANDATES

REFERENCE: Federal Law: Social Security Act, Title IV-E, Sections 471, 472, 473
and 475;
Deficit Reduction Act of 2005;
Administration on Children, Youth and Families, Children's Bureau:
ACYF-CB-PA-01-01 (1/23/01) (7/17/06); ACYF-CB-PIQ-98-02 (9/3/98);
ACYF-CB-PA094-02 (2/4/94);

State Law: Welfare and Institutions Code Sections 16119; 16120;
16120.1; 16121 and 16121.05

All County Letter 07-14, Dated April 27, 2007
All County Letter 03-29, Dated May 21, 2003
All County Letter 03-27, Dated January 20, 2003
All County Letter 99-104, Dated December 13, 1999
All County Letter 99-101, Dated December 1, 1999
All County Letter 98-03, Dated January 7, 1998

The purpose of this All County Letter (ACL) is to clarify federal Title IV-E Adoption Assistance Program (AAP) requirements to ensure California's compliance with federal law. The California Department of Social Services (CDSS) is in the process of amending California statutes and regulations specific to AAP. To comply with and meet Title IV-E federal mandates, this ACL provides interim direction in the following areas: AAP Eligibility; AAP Agreements and Payment Amounts; AAP Reassessments; and

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

Nonrecurring Adoption Expenses. This ACL supersedes the following AAP regulations: 35333 (c)(2); 35333 (c)(3); 35343 (b)(2)(E).

I. AAP ELIGIBILITY

A. Three Part Special Needs Determination

1. In assessing whether the child meets the special needs requirements, there must be evidence stated in the file that the child cannot or should not be returned to the home of his or her parents. Sufficient evidence includes a petition to terminate parental rights, a court order terminating parental rights or a signed relinquishment.
2. A specific factor or condition makes it reasonable to conclude that the child cannot be adopted without providing AAP payments. Examples include a child's ethnic background, age or membership in a minority or sibling group, the presence of a medical condition, or physical, mental or emotional disabilities.
3. An effort must be made to place the child for adoption with appropriate parents without providing adoption assistance unless it is against the best interest of the child. For example, when a child develops significant emotional ties with the prospective adoptive parents while in their care as a foster child or if a relative is adopting the child, then it would be in the child's best interest to remain with them and additional efforts to place the child are not required.

B. One of Four Paths to Eligibility

In addition to the special needs determination, the child must meet one of the following four paths to eligibility:

1. At the time a child was removed from the home of a specified relative, the child would have been Aid to Families with Dependent Children (AFDC)-eligible in the home of removal according to July 16, 1996, AFDC standards.

In an involuntary situation, when a child's removal from the home is the result of a court action, there must also be a judicial determination that to remain in the home would be contrary to the child's welfare. Since a child's removal from the home occurs as a result of such a judicial determination, the determination must be made in the first court ruling

(minute order) that sanctions (even temporarily) the removal. If the determination is not made in the first court ruling pertaining to removal from the home, the child will not be eligible for Title IV-E AAP. The “contrary to the welfare” finding must be explicit and made on a case-by-case basis. Items such as nunc pro tunc orders (retroactive order to correct a previous ruling), affidavits, “at risk of dependency” letters and bench notes are not acceptable substitutes for a court order. Only an official court order is sufficient evidence of the judicial determination.

For children voluntarily relinquished to a licensed public or private adoption agency, or another public agency operating a Title IV-E program on behalf of the state (Tribes), the following must be obtained within six months of the time the child lived with a specified relative: (1) a petition to the court to remove the child from the home of the specified relative within 6 months of the date the child lived with the relative and (2) subsequent judicial determination that remaining in the home would be contrary to the child’s welfare.

In the case of a voluntary placement agreement between the child’s parent/legal guardian and the county agency, at least one Title IV-E foster care maintenance payment must have been made on behalf of the child.

A child may be eligible for state only funding if the child was “at risk of dependency” at the time of relinquishment or removal from the home of the specified relative. (W&IC section 16120 (i) (2)). The “at risk of dependency” finding must be documented by the placing agency and certified by the responsible public child welfare agency.

2. At least one Title IV-E foster care maintenance payment was made on behalf of the child’s minor parent. The payment will have had to have covered the cost of the minor parent’s child while in the foster parent’s home or child care institution with the minor parent.
3. A child received AAP benefits with respect to a prior adoption, the prior adoption dissolved, and the child is again available for adoption. This child remains eligible for AAP if they meet the three part special needs determination and the citizenship requirements stated in this ACL. (Note: Children who are subsequently adopted by a birth parent(s) are not eligible for AAP).

4. Prior to the finalization of an agency adoption as defined in Section 8506 of the Family Code, or an independent adoption, as defined in Section 8524 of the Family Code, the child has met the requirements to receive federal Supplemental Security Income (SSI) benefits as determined and documented by the federal Social Security Administration (SSA). When eligibility is based on a special needs child meeting SSI requirements, how a child is removed from their home or whether the state has responsibility for the child's placement and care is irrelevant.

It is important to note that an SSI eligible child will always be federally eligible, as long as he/she also meets the three part special needs determination.

C. Additional Threshold Requirements for State or Federal Funding

To receive AAP, the child must be a United States citizen or a qualified alien as defined in Title 8 USC section 1641(b). If a child is placed with an unqualified alien the child must be a qualified alien or have lived in the U.S. for five years, if the child entered the United States on or after August 22, 1996.

The child is exempt from the five year residency requirement if the child is placed with a U.S. citizen or qualified alien, or the child is a member of one of the excepted groups pursuant to Title 8 USC section 1612(b): refugees, asylees, aliens whose deportation is withheld, veterans and those on active duty (as well as the spouse and unmarried dependent children of that person), Cuban or Haitian entrants and Amerasians from Vietnam.

If a child is an unqualified alien and placed outside the United States, the county may use county funds to cover the AAP costs for an otherwise AAP eligible child.

D. Interstate Adoption

When a child is relinquished to a California private adoption agency and placed with a prospective adoptive family in another state, the public child welfare agency in the adoptive parents' state of residence is responsible for determining the child's AAP eligibility, entering into the adoption assistance agreement and paying the subsidy. Accordingly, the prospective adoptive parents should apply for AAP with the public child welfare agency in their

state of residence, not with the county where the relinquishing birth parent resides.

Likewise, when an out of state child is relinquished to a private adoption agency in another state and placed with a prospective adoptive family in California, the responsible public agency in which the prospective adoptive parents reside is responsible for determining the child's AAP eligibility and entering into the adoption assistance agreement. The financially responsible county in California pays the subsidy. The prospective adoptive parents should apply for AAP with the responsible public agency representing their county of residence in California.

When a child is relinquished to a public adoption agency, that agency is responsible for determining the child's AAP eligibility and entering into the adoption assistance agreement. The financially responsible county pays the subsidy, even if the child is placed with a prospective adoptive family in another state.

II. AAP AGREEMENT AND PAYMENT AMOUNTS

When negotiating the amount of assistance, the responsible public agency and the adoptive parents should discuss the child's needs and circumstances of the family. The AAP benefit amount should never be determined through the use of a means test or reduced because of income from any source. For further explanation, please refer to ACL 99-101, Subject: Mark A., et al. v. Gray Davis, Rita Saenz, and California Department of Social Services, prohibiting the use of means testing when negotiating the AAP benefit amount.

The circumstances of the family pertain to the adoptive family's ability to integrate the child into their lifestyle, standard of living and future plans, as well as meeting the child's immediate and future needs. Families with comparable levels of income or similar circumstances may not necessarily agree on identical types or amounts of assistance.

The reduction of the AAP benefit amount based on any type of income the child receives from a birth parent/relative or adoptive parent is prohibited. The amount of AAP a child receives cannot be reduced to a formula and/or lessened dollar for dollar based upon any resources the child, adoptive parents or family receives from any source including SSI or survivor's benefits.

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 payment (45 CFR 1356.40 (c)). Once a child has been determined eligible for Title IV-E AAP, adoptive parents cannot be rejected for adoption assistance or have payments reduced without their concurrence because of their income, the child's unearned income or other resources.

If the adoptive parents decline the receipt of AAP, the responsible public agency should encourage the adoptive family to sign a deferred AAP Agreement prior to the adoption finalization. A deferred AAP Agreement will retain the child's eligibility if the adoptive parents choose to access and utilize AAP benefits at a later date. If a deferred AAP Agreement is not signed prior to the finalization of the adoption, the child will not be able to access the benefits in the future, should the need arise.

The AAP Agreement shall remain in effect regardless of the adoptive family's state of residence after the agreement has been signed. If a needed service specified on the AAP Agreement is not available in the adoptive parent's state of residence, the financially responsible county of origin remains financially responsible for the service.

III. REASSESSMENT INFORMATION

The Adoption Assistance Program form (AAP 3) reminds parents to keep the responsible public agency informed of circumstances which may affect the receipt of AAP benefits. The completed reassessment form is due every two years; however, if the family does not submit a reassessment form, AAP must continue at the same rate reflected on the last AAP agreement and Payment Instructions (AAP 2) form.

Once a child is determined eligible to receive AAP, he or she remains eligible and the subsidy continues unless one of the following occurs:

1. The child has attained the age of 18 or 21;
2. The adoptive parents are no longer legally responsible for the support of the child. This would apply if parental rights were terminated or the child becomes an emancipated minor, marries or enlists in the military;
3. The responsible public agency determines the adoptive parents are no longer providing support to the child. Support may include any type of financial contributions, maintaining a room for the child, covering the costs for clothing, personal incidentals, tuition, therapy or other expenses related to the child's care.

Unless one of the above occurs, AAP payments may not be adjusted without the concurrence of the adoptive parents (Social Security Act-sections 473(a)(3) and (4)). There may be circumstances in which adoptive parents may be eligible for payments

in a different amount. In these instances, the responsible public agency may renegotiate the agreement and reduce the payment, but only with the concurrence of the adoptive parent.

When a child is placed in an approved out-of-home placement such as a group home or residential treatment facility, the placement should be part of a plan for the child's return to the adoptive family's home. Accordingly, while the child is in the out-of-home placement, the adoptive family should actively participate in reunification. AAP may pay for an eligible out-of-home placement if the placement is justified by a specific episode or condition and does not exceed 18 months. After an initial authorized out-of-home placement, subsequent authorizations for payment for the out-of-home placement must be based on an eligible child's subsequent and specific episode or conditions.

The payment for the out-of-home placement should not exceed the maximum state-approved foster care facility rate for which the child is placed. Any changes in the amount of AAP require a new agreement and the concurrence of the adoptive parent(s). The AAP benefit increase to the state-approved foster care facility rate must be reflected in a new AAP agreement for the limited duration of the child's out-of-home placement. The adoptive parent(s) may request the financially responsible public agency to pay the facility directly using the child's eligible AAP funds, or the adoptive parents may request the AAP check continue to be sent to them to pay the facility. This should be discussed and mutually agreed upon with the adoptive parent(s).

Upon the child's return to the adoptive parents' home, a new AAP agreement must be signed reflecting the AAP benefit amount, not to exceed the state-approved foster family home rate, eligible Special Care Increment (SCI) rate or dual agency rate and any applicable supplemental rate. The inability of the family and the responsible public agency to agree on the amount of AAP may result in a Notice of Action and subsequent hearing on the matter. (Title 22 CCR section 35333 (g)).

When an entity such as a regional center, county welfare department, or other program pays for the child's out-of-home placement cost, the adoptive parents may continue to receive AAP at the state approved basic foster family home rate or their actual share of cost for their child's support, whichever is greater. The adoptive parents' maximum share of cost is the state approved foster family home rate, eligible SCI rate or dual agency rate, and any applicable supplemental rate the child would have received had they remained in foster care.

IV. NONRECURRING EXPENSES

Adoptive parents may be reimbursed for nonrecurring adoption expenses of up to \$400 per adoption of a special needs child. The only eligibility criterion to be applied for reimbursement of the nonrecurring expenses of adoption is that the responsible public agency determines the child meets the special needs determination and citizenship requirements. A child does not have to be eligible for Aid to Families with Dependent Children, Title IV-E foster care, or SSI in order for the adoptive parents to receive reimbursement for their nonrecurring adoption expenses. Adoptive parents may be reimbursed for nonrecurring adoption expenses even when the public agency does not have responsibility for placement and care of the child.

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.

V. INQUIRIES

Please direct all AAP questions to the Adoptions Services Bureau at (916) 651-8089. Revisions to the following forms will be forthcoming: Eligibility Certification Adoption Assistance Program (AAP 4); Income and Property Checklist for Federal Eligibility Determination-Adoption Assistance Program (FC 10); Reassessment Information Adoption Assistance Program (AAP 3); and Adoption Assistance Program (AAP) Agreement (AD 4320).

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division