

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

#### 920-1

Aid for Adoption of Children under state law shall be known as the Adoption Assistance Program. (Welfare and Institutions Code §16115)

#### 920-1A

It is the intent of the Legislature to benefit special needs children residing in foster homes by providing the stability and security of permanent homes, and in so doing, achieve a reduction in foster home care. It is not the intent to increase expenditures but to provide for payments to adoptive parents to enable them to meet the needs of special needs children. (Welfare and Institutions Code §16115.5)

This section was amended effective October 11, 1993 to change the term "special needs children" to "children who meet the criteria established in §§16116, 16120 and 16121."

#### 920-2

ADDED 11/10

A child shall be eligible for Adoption Assistance Program benefits if all of the conditions specified in subdivisions (a) to (l), inclusive, are met or if the conditions specified in subdivision (m) are met.

(a) It has been determined that the child cannot or should not be returned to the home of his or her parents as evidenced by a petition for termination of parental rights, a court order terminating parental rights, or a signed relinquishment, or, in the case of a tribal customary adoption, if the court has given full faith and credit to a tribal customary adoption order as provided for pursuant to paragraph (2) of subdivision (e) of Section 366.26.

(b) The child has at least one of the following characteristics that are barriers to his or her adoption:

(1) Adoptive placement without financial assistance is unlikely because of membership in a sibling group that should remain intact or by virtue of race, ethnicity, color, language, three years of age or older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child.

(2) Adoptive placement without financial assistance is unlikely because the child has a mental, physical, emotional, or medical disability that has been certified by a licensed professional competent to make an assessment and operating within the scope of his or her profession. This paragraph shall also apply to children with a developmental disability, as defined in subdivision (a) of Section 4512, including those determined to require out-of-home nonmedical care, as described in Section 11464.

(c) The need for adoption subsidy is evidenced by an unsuccessful search for an adoptive home to take the child without financial assistance, as documented in the case

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file of the prospective adoptive child. The requirement for this search shall be waived when it would be against the best interest of the child because of the existence of significant emotional ties with prospective adoptive parents while in the care of these persons as a foster child.

(d) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap that warrants the continuation of assistance.

(e) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and has signed an adoption assistance agreement.

(f) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent.

(g) The department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, and the prospective adoptive parent, prior to or at the time the adoption decree is issued by the court, have signed an adoption assistance agreement that stipulates the need for, and the amount of, Adoption Assistance Program benefits.

(h) The prospective adoptive parent or any adult living in the prospective adoptive home has completed the criminal background check requirements pursuant to Section 671(a)(20)(A) and (C) of Title 42 of the United States Code.

(o) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date. (Welf. & Inst. Code, §16120; amended Stats. 2009, c. 287 (A.B. 1325), §19, operative Jul. 1, 2010 until Jan. 1, 2014)

920-2A ADDED 11/10

(i) To be eligible for state funding, the child is the subject of an agency adoption, as defined in Section 8506 of the Family Code and was any of the following:

(1) Under the supervision of a county welfare department as the subject of a legal guardianship or juvenile court dependency.

(2) Relinquished for adoption to a licensed California private or public adoption agency, or another public agency operating a Title IV-E program on behalf of the state, and would have otherwise been at risk of dependency as certified by the responsible public child welfare agency.

(3) Committed to the care of the department pursuant to Section 8805 or 8918 of the Family Code.

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(4) The child is an Indian child and the subject of an order of adoption based on tribal customary adoption of an Indian child, as described in Section 366.24. Notwithstanding Section 8600.5 of the Family Code, for purposes of this subdivision a tribal customary adoption shall be considered an agency adoption.

(o) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date. (Welf. & Inst. Code, §16120; amended Stats. 2009, c. 287 (A.B. 1325), §19, operative Jul. 1, 2010 until Jan. 1, 2014)

920-2B ADDED 11/10

(j) To be eligible for federal funding, in the case of a child who is not an applicable child for the federal fiscal year as defined in subdivision (n), the child meets any of the following criteria:

(1) 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, is filed, the child has met the requirements to receive federal supplemental security income benefits pursuant to Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code, as determined and documented by the federal Social Security Administration.

(2) The child was removed from the home of a specified relative and the child would have been AFDC-eligible in the home of removal according to Section 606(a) or 607 of Title 42 of the United States Code, as those sections were in effect on July 16, 1996, in the month of the voluntary placement agreement or in the month court proceedings are initiated to remove the child, resulting in a judicial determination that continuation in the home would be contrary to the child's welfare. The child must have been living with the specified relative from whom he or she was removed within six months of the month the voluntary placement agreement was signed or the petition to remove was filed.

(3) The child was 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, and there is a petition to the court to remove the child from the home within six months of the time the child lived with a specified relative and a subsequent judicial determination that remaining in the home would be contrary to the child's welfare.

(4) Title IV-E foster care maintenance was paid on behalf of the child's minor parent and covered the cost of the minor parent's child while the child was in the foster family home or child care institution with the minor parent.

(5) The child is an Indian child and the subject of an order of adoption based on tribal customary adoption of an Indian child, as described in Section 366.24.

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(k) To be eligible for federal funding, in the case of a child who is an applicable child for the federal fiscal year, as defined in subdivision (n), the child meets any of the following criteria:

(1) At the time of initiation of adoptive proceedings was in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to either of the following:

(A) An involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child.

(B) A voluntary placement agreement or a voluntary relinquishment.

(2) He or she meets all medical or disability requirements of Title XVI with respect to eligibility for supplemental security income benefits.

(3) He or she was residing in a foster family home or a child care institution with the child's minor parent, and the child's minor parent was in the foster family home or child care institution pursuant to either of the following:

(A) An involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child.

(B) A voluntary placement agreement or voluntary relinquishment.

(4) The child is an Indian child and the subject of an order of adoption based on tribal customary adoption of an Indian child, as described in Section 366.24.

(l) The child is a citizen of the United States or a qualified alien as defined in Section 1641 of Title 8 of the United States Code. If the child is a qualified alien who entered the United States on or after August 22, 1996, and is placed with an unqualified alien, the child must meet the five-year residency requirement pursuant to Section 673(a)(2)(B) of Title 42 of the United States Code, unless the child is a member of one of the excepted groups pursuant to Section 1612(b) of Title 8 of the United States Code.

(m) A child shall be eligible for Adoption Assistance Program benefits if the following conditions are met:

(1) The child received Adoption Assistance Program benefits with respect to a prior adoption and the child is again available for adoption because the prior adoption was dissolved and the parental rights of the adoptive parents were terminated or because the child's adoptive parents died and the child meets the special needs criteria described in subdivisions (a) to (c), inclusive.

(2) To receive federal funding, the citizenship requirements in subdivision (l).

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(n) (1) Except as provided in this subdivision, “applicable child” means a child for whom an adoption assistance agreement is entered into under this section during any federal fiscal year described in this subdivision if the child attained the applicable age for that federal fiscal year before the end of that federal fiscal year.

(A) For federal fiscal year 2010, the applicable age is 16 years.

(B) For federal fiscal year 2011, the applicable age is 14 years.

(C) For federal fiscal year 2012, the applicable age is 12 years.

(D) For federal fiscal year 2013, the applicable age is 10 years.

(E) For federal fiscal year 2014, the applicable age is 8 years.

(F) For federal fiscal year 2015, the applicable age is 6 years.

(G) For federal fiscal year 2016, the applicable age is 4 years

(H) For federal fiscal year 2017, the applicable age is 2 years.

(I) For federal fiscal year 2018 and thereafter, any age.

(2) Beginning with the 2010 federal fiscal year, the term “applicable child” shall include a child of any age on the date on which an adoption assistance agreement is entered into on behalf of the child under this section if the child meets both of the following criteria:

(A) He or she has been in foster care under the responsibility of the state for at least 60 consecutive months.

(B) He or she meets the requirements of subdivision (k).

(3) Beginning with the 2010 federal fiscal year, an applicable child shall include a child of any age on the date that an adoption assistance agreement is entered into on behalf of the child under this section, without regard to whether the child is described in paragraph (2), if the child meets all of the following criteria:

(A) He or she is a sibling of a child who is an applicable child for the federal fiscal year, under subdivision (n) or paragraph (2).

(B) He or she is to be placed in the same adoption placement as an “applicable child” for the federal fiscal year who is their sibling.

(C) He or she meets the requirements of subdivision (k).

(o) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes

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or extends that date. (Welf. & Inst. Code, §16120; amended Stats. 2009, c. 287 (A.B. 1325), §19, operative Jul. 1, 2010 until Jan. 1, 2014.)

920-3 ADDED 11/10

Prior to the selection of adoptive parents requiring adoption assistance payments, the agency shall seek adoptive parents who do not require such assistance.

(1) This search for adoptive parents shall be documented in the adoption case record and shall include the following:

(A) Discussion of potential adoptive parents at a regional adoption agency exchange meeting, or

(B) Registration of the child with the department's photo-listing album.

(2) This search shall not be required when the current foster parents, or other persons with whom the child has been living and has established significant emotional ties, have both:

(A) Expressed interest in adopting the child, and

(B) Been determined by the agency to be suitable adoptive parents for the child.

(Title 22, CCR §35327(a); § 35327 was repealed Dec. 10, 2011.)

**920-3A ADDED 7/12** In order for a child to be eligible for Adoption Assistance Program (AAP) benefits, the child must be under the age of 18 and meet the three part special needs determination, citizenship requirements, and Title IV-E (federal) funding requirements or state funding requirements specified in Welfare and Institutions Code section 16120.

(a) The three-part special needs determination requires ALL of the following three conditions be met:

(1) Evidence in the file that the child cannot or should not be returned to the home of his or her parents.

(A) Sufficient evidence includes a petition to terminate parental rights, a court order terminating parental rights, a signed relinquishment or a tribal customary adoption order.

(2) A specific factor or condition makes it reasonable to conclude that the child cannot be adopted without providing AAP payments.

(A) Factors or conditions 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.

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(3) An effort to place the child for adoption with appropriate parents without providing adoption assistance unless it is against the best interest of the child.

(A) This search for adoptive parents shall be documented in the adoption case record and include the following:

1. A discussion of potential adoptive parents at a regional adoption agency exchange meeting, or
2. Registration of the child with the department's photo-listing album.

(B) A child who develops significant emotional ties with the prospective adoptive parents while in their care as a foster child or if a relative is adopting a 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.

1. This search shall not be required when the current foster parents, or other persons with whom the child has been living and has established significant emotional ties, have both:

- a. Expressed interest in adopting the child, and
- b. Been determined by the agency to be suitable adoptive parents for the child. (Title 22, Cal. Code Regs., §35326, subd. (a), eff. Dec. 10, 2011.)

**920-3B ADDED 7/12**(c) One of the following five paths to eligibility must be met (or the definition of an "applicable child" and one of the four corresponding eligibility paths must be met):

(1) At the time the 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.

(A) 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.

1. The determination must be made in the first court ruling (minute order) that sanctions (even temporarily) the removal.
- 2, The "contrary to the welfare" finding must be explicit in the first court order.

(B) 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:

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1. A petition to the court to remove the child from the home of a the specified relative within six 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.

(C) 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.

(2) At least one Title IV-E foster care maintenance payment has been made on behalf of the child's minor parent to cover 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. To remain eligible the child must meet the following:

(A) Three part special needs determination

(B) Citizenship requirements

(4) Prior to the finalization of an agency adoption or an independent adoption, 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).

(5) The child is an Indian child and the subject of an order of adoption based on tribal customary adoption of an Indian child, as described in Welfare and Institutions Code Section 366.24.

(d) An "applicable child" is a child who:

(1) Has been in foster care for at least 60 consecutive months, or

(2) Is a sibling of an "applicable child," if both are placed in the same prospective adoptive home, or

(3) Meets the applicable age requirement anytime before the end of the Federal Fiscal Year (FFY).

(A) FFY is October 1st through September 30th.

(B) A child who has or will attain the stated age or is older than the stated age in (d)(3)(B)(1) through (d)(3)(B)(8) by the end of the corresponding current FFY is considered to be an "applicable child":

(1) In FFY 2010, the applicable age is 16 years.



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- (2) In FFY 2011, the applicable age is 14 years.
- (3) In FFY 2012, the applicable age is 12 years.
- (4) In FFY 2013, the applicable age is 10 years.
- (5) In FFY 2014, the applicable age is 8 years.
- (6) In FFY 2015, the applicable age is 6 years.
- (7) In FFY 2016, the applicable age is 4 years.
- (8) In FFY 2017, the applicable age is 2 years or younger.

(e) The “applicable child” must meet one of the four eligibility paths:

(1) The child is in the care of a public or private child placement agency or Indian tribal organization and is the subject of either one of the following:

(A) An involuntary removal from the home in accordance with a judicial determination that continuation in the home would be contrary to the welfare of the child;

(B) A voluntary placement agreement or voluntary relinquishment.

1. A Title IV-E foster care maintenance payment does not have to be made on behalf of an “applicable child,” or

2. Judicial determination that continuation in the home would be contrary to the welfare of the child.

(2) The child has met all medical or disability eligibility requirements for federal supplemental security income (SSI) benefits.

(3) The child was residing in a foster family home or child care institution with the child's minor parent.

(4) The child received AAP with respect to a prior adoption that dissolved. (Tit. 22, Cal. Code Regs., §35326, subds. (c), (d), and (e), eff. Dec. 10, 2011.)

**920-3C ADDED 7/12**(f) To be eligible for State funding, the child is the subject of an agency adoption and at the time of adoptive placement, the child met one of the following requirements:

(1) Under the supervision of a county welfare department as the subject of a legal guardianship or juvenile court dependency.

(2) Relinquished to a licensed California private or public adoption agency, or another public agency operating a Title IV-E program on behalf of the state, and would have

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otherwise been at risk of dependency as certified by the responsible public child welfare agency.

(3) Committed to the care of the department or county adoption agency pursuant Family Code Sections 8805 or 8918. (Tit. 22, Cal. Code Regs., §35326, subd. (f), eff. Dec. 10, 2011.)

**920-3D ADDED 7/12**(g) There shall be no means test used to determine AAP eligibility.

(h) The prospective adoptive parent and any other adult living in the prospective adoptive home has completed the criminal background check requirements pursuant to Title 42 USC Section 671(a)(20)(A) and (C). (Tit. 22, Cal. Code Regs., §35326, subds. (g) and (h), eff. Dec. 10, 2011.)

**920-3E ADDED 7/12**(b) The child must be a United States citizen or a qualified alien as defined in Title 8 USC section 1641(b).

(1) 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.

(2) 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.

(3) 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. (Tit. 22, Cal. Code Regs., §35326, subd. (b), eff. Dec. 10, 2011.)

920-4 ADDED 11/10

The county AAP case record shall contain copies of the following:

.11 All Payment Instructions – state form AAP 2 forms received from the adoption agency;

.12 The Eligibility Certification – state form AAP 4;

.13 The Income and Property Checklist for Federal Eligibility Determination – state form FC 10 from the agency supporting the determination that the child meets federal AAP eligibility requirements (see §45-803);

.14 All Notices of Action sent to the adoptive parent(s) and the adoption agency;

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.15 The Health Insurance Questionnaire – state form DHS 6155.

(MPP§§45-807.1 - .15)

**920-5 ADDED 7/12** Adopted minors aged prior to 19 years as of January 1, 2013, receiving AAP benefits are subject to age extensions to 19, 20, and 21 years of age in consecutive years under the California Fostering Connections to Success Act (AB 12). However, the minor must have attained the age of 16 years prior to the adoptive parent entering into the AAP agreement. (Welf. & Inst. Code, §16120, subd. (d)(3), amended by the California Fostering Connections to Success Act, Stats. 2010, c. 559, §58 [A.B. 12], enacted Sept. 30, 2010, eff. Jan. 1, 2012.)

921-1 **REV**

**7/12**

**Prior to December 11, 2011, section 35337 provided:**

The adoption assistance agreement shall contain the following:

- (1) The child's adoptive name and the name(s) of the adoptive parent(s)
- (2) The amount and duration of financial assistance.
- (3) The specific needs and services for which payment is authorized.
- (4) That the existence of a characteristic which is a barrier to the child's adoption without subsidy has been confirmed by the agency.
- (5) That, until termination of financial assistance, the adoptive parents shall notify the child's agency immediately regarding the following:
  - (A) A change in their mailing address.
  - (B) The child begins to receive unearned income.
  - (C) They are no longer responsible for the support of the child.
  - (D) They are no longer supporting the child.
- (6) That a failure to report as specified in (5)(B), (C) and (D) may result in a collectible overpayment.

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(7) Continuation of payment depends upon continued legal responsibility of the adoptive parents for the support of the child and upon continued receipt by the child of that support.

(8) The AAP payment will be reduced if the AAP benefit amount exceeds the FC maintenance payment for the child if the child had remained in a foster family home.

(9) The AAP benefit may be reduced if the child receives other unearned income.

(10) The child is eligible for Medi-Cal services.

(11) The child is eligible for Title XX services, which are public social services as set forth in §§30-000 and 31-000.

(12) The procedure for recertification of the adoption assistance agreement, the AD 4320.

(13) The agreement remains effective regardless of the state in which the adoptive parents reside.

(14) Any additional services and assistance which are to be provided as part of the agreement.

(Title 22, California Code of Regulations (CCR) §35337(a) as revised effective September 2001)

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Effective December 11, 2011, section 35337 provides:

(a) The Adoption Assistance Program Agreement form (AD 4320) shall contain the following:

(1) The child's adoptive name and the name(s) of the adoptive parent(s).

(2) The amount and duration of financial assistance.

(A) The agreement is effective until terminated in accordance with its terms or a new amended agreement is signed.

(B) The AD 4320 shall be signed by the responsible public agency and the adopting parent(s) prior to the granting of the final decree of adoption.

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(C) In adoptive placements which involve more than one agency, all agencies shall sign the initial AD 4320.

1. Subsequent amendments to the AD 4320 shall be signed by the responsible public agency and adoptive parent(s).

(3) The AAP benefit will continue unless one of the following occurs:

(A) The child has attained the age of 18 unless the child has a mental or physical handicap which warrants continuation of AAP benefits to the age of 21 years.

(B) The adoptive parents are no longer legally responsible for the support of the child.

(C) The responsible public agency determines the adoptive parents are no longer providing any type of support to the child.

(4) It is the adoptive parent's responsibility to inform the responsible public agency immediately if any of the following occurs:

(A) Change in mailing address and/or state of residence.

(B) The child is no longer residing in the family home.

(C) The adoptive parents are no longer providing any type of support to the child.

(D) The adoptive parents are no longer legally responsible for the support of the child.

(5) If a needed service is not available in the state of residence, the financially responsible county of origin remains financially responsible for the needed services.

(A) The responsible public agency shall assist the adoptive parents by providing information and referral services offered in their state of residence.

(B) If the child is state-eligible and eligible for state-funded Medi-Cal benefits, the adoptive parents shall be informed that if they move or reside in another state, access to medical services is contingent on whether their state of residence extends COBRA-reciprocity for children receiving California state-funded Medi-Cal benefits.

(6) If the adoptive parents believe their child has a physical or mental disability that warrants the continuance of assistance beyond the age of 18, prior to their child's eighteenth birthday, the adoptive parents are to request the responsible public agency assess and evaluate their child's needs for continuation of benefits beyond the age of 18.

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(7) If the child is a current consumer of California Regional Center (CRC) services, the maximum available AAP benefit is \$3006. CRC consumers who have received an AAP benefit prior to July 2007, which exceeds the maximum \$3006 rate, may continue to receive the higher rate until the child is no longer eligible for AAP benefits or the adoption is dissolved.

(A) If the child is under the age of three and the CRC has determined the child to have a developmental disability as defined by the Lanterman Act, the maximum AAP benefit is \$2006.

(B) If the child is under the age of three and receiving services under the California Early Intervention Services Act, but not yet determined by the CRC to have a developmental disability as defined by the Lanterman Act, the maximum AAP benefit is \$898 or the foster family home rate and applicable SCI rate, whichever is greater.

1. After the adoption is finalized, it is the adoptive parents' responsibility to request the CRC to evaluate the child's eligibility for CRC services and notify the responsible public agency if the child is eligible and receiving CRC services.

(8) A child with an initial AAP agreement signed on or after January 1, 2010, will no longer be eligible to receive an AAP age-related increase.

(A) A child with an initial AAP agreement signed prior to January 1, 2010 will still be eligible to receive the AAP age-related increase upon request.

(B) A child with an initial Adoption Assistance Agreement signed prior to October 1, 1992, shall be governed by Welfare and Institutions Code Section 16121.05(b).

(9) That a failure to report the changes specified in Sections 35337(a)(5)(B) through (D) may result in an overpayment which would be recovered by a direct charge or a reduction in current and future AAP benefits.

(10) That continuation of payment depends upon continued legal responsibility of the adoptive parents for the support of the child and upon continued receipt by the child of that support.

(11) That the AAP benefit will be reduced if the AAP benefit amount exceeds the foster care maintenance payment that would have been made if the child had remained in a foster family home.

(12) The agreement shall specify the rate for a child receiving wraparound services or placed in an out-of-home placement which may not exceed the maximum eligible state-

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approved facility rate and is limited to 18 months per episode or condition. It is the adoptive parent's choice to request the AAP benefit be directed to the facility or to them and they pay the facility directly with the AAP funds received.

(13) That the child is eligible for Medi-Cal services.

(14) That the child is eligible for services provided pursuant to Title XX of the federal Social Security Act.

(A) Title XX services are public social services as described under MPP Sections 30-000 and 31-000.

(15) The procedure for reassessment of the AD 4320.

(16) That the agreement remains effective regardless of the state in which the adoptive parents reside.

(17) Any additional services and assistance which are to be provided as part of the agreement. Tit. 22, Cal. Code Regs., §35337, subd. (a), as revised effective Dec. 10, 2011.)

**921-1B ADDED 7/12** CDSS has modified the forms used in the Adoption Assistance Program (AAP). Of note is the emphasis for agencies to complete the Federal Eligibility Certification for AAP (state form FC 8), which establishes which children are eligible for federally-funded AAP and therefore provides for portable Medicaid rights when leaving California. The new AAP agreement (state form AD 4320) further provides agencies to identify whether AAP is state or federally-funded; if state funded, the agency must inform the adoptive parents of the potential limitations to Medicaid eligibility if the family leaves California. Also, the AAP Negotiated Benefit Amount and Approval Instructions and Form (state form AAP 6) now emphasizes the agencies and adoptive parent's negotiations to establish an eligible AAP payment amount. (ACL No. 12-18, issued May 18, 2012; referencing ACL Nos. 09-51 and 10-08.)

921-2

Under federal law, the amount of an AAP payment "may be readjusted periodically." (42 United States Code §673(a)(3)) Under state law, an adoption assistance agreement shall be reauthorized through a "reassessment" ("recertification" prior to January 1, 2000) process to occur no less frequently than every two years. (W&IC §16120.05 as amended effective January 1, 2000)

922-1

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State law, as amended effective January 1, 2000, requires the CDSS or licensed adoption agencies to inform the prospective adoptive family that they will continue to receive benefits in the agreed upon amount unless one of the following occurs:

- (1) The adoptive parents are no longer legally responsible for the support of the child.
- (2) The child is no longer receiving support from the adoptive family.
- (3) The adoption assistance payment exceeds the amount the child would have been eligible for in a licensed foster home.
- (4) The adoptive parents demonstrate a need for an increased payment.
- (5) The adoptive parents voluntarily agree to reduce or terminate payments.
- (6) The adopted child has an extraordinary need that was not anticipated at the time the amount of the adoption assistance was originally negotiated.

(Welfare & Institutions Code (W&IC) §16119(f); All-County Information Notice No. I-47-00, April 19, 2000)

922-3 ADDED 11/10

At the time application for adoption of a child who is potentially eligible for Adoption Assistance Program benefits is made, and at the time immediately prior to the finalization of the adoption decree, the department or the licensed adoption agency, whichever is appropriate, shall provide the prospective adoptive family with information, in writing, on the availability of Adoption Assistance Program benefits, with an explanation of the difference between these benefits and foster care payments. The department or the licensed adoption agency shall also provide the prospective adoptive family with information, in writing, on the availability of reimbursement for the nonrecurring expenses incurred in the adoption of the Adoption Assistance Program eligible child.

The department or licensed adoption agency shall also provide the prospective adoptive family with information on the availability of mental health services through the Medi-Cal program or other programs. The department or licensed adoption agency shall also provide information regarding the federal adoption tax credit for any individual who is adopting or considering adopting a child in foster care, in accordance with Section 403 of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351). (W&IC§16119(a); as amended Stats. 2009, c. 222 (A.B. 154), §2; and Stats. 2009, c.339 (S.B. 597), §7.5.)

922-3A ADDED 11/10



## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

The department or licensed adoption agency shall inform the prospective adoptive family of their potential eligibility for a federal tax credit under Section 23 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 23) and a state tax credit under Section 17052.25 of the Revenue and Taxation Code. (W&IC§16119(g); as amended Stats. 2009, c. 222 (A.B. 154), §2; and Stats. 2009, c.339 (S.B. 597), §7.5.)

#### 922-3B

Effective October 10, 1999, agencies are required to encourage families to sign a deferred adoption assistance agreement when those families choose not to sign an AAP agreement on behalf of their potentially eligible child(ren). (All-County Letter No. 99-104, December 13, 1999; Welfare & Institutions Code (W&IC) §16119(b))

#### 922-3C

The adoption assistance agreement shall specify the responsibility of the adopting family for reporting changes in circumstances. (Welfare and Institutions Code (W&IC) §16120.05, added effective October 11, 1993) The responsibility to report changes includes reporting changes in circumstances that might negatively affect the adopting family's ability to provide for the identified needs of the child. (W&IC §16120.05, effective January 1, 2000)

#### 922-4

By the time of adoptive placement of the child, the agency shall have given a written medical report on the medical background of the child and the child's birth parents to the prospective adoptive parents, in accord with Family Code §8706. (Title 22, California Code of Regulations §35209(a), revised to §35195(a) effective May 3, 1999)

The Family Code requires a written medical report on the child, containing all known diagnostic information, current medical reports, and psychological evaluations. Scholastic information and all known information regarding the child's developmental history and family life must also be provided.

The agency shall also provide the medical background of the child's biological parents so far as that is ascertainable.

The prospective adoptive parents shall acknowledge, in writing, receipt of the reports.

(Family Code §8706)

#### 922-5

State regulations require the counties to make certain regulations, laws, and other policy material available to the public. The counties must do the following:

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### 920 Adoption Assistance Program

.1 One set of the regulations and handbook materials (including All-County Letters) of the Department of Social Services, the Welfare and Institutions Code (W&IC), the Health and Safety Code, and other laws relating to any form of public social service must be made available to the public during regular office hours in each central or district county office administering public social services and in each local or regional office of the department. (W&IC §10608)

.2 These references shall be placed in the waiting or reception room or in a location available and convenient for public use.

.3 A sign shall be prominently posted in each waiting/room or reception room in appropriate languages as follows:

"Rules and regulations of the State Department of Social Services are available for your use. Please ask for the materials or manuals you wish to see."

.4 A signout book should be used to prevent loss of regulations or other materials for public use. The maintenance of the reference materials in a current and usable condition is a condition of compliance with the statute.

(Handbook §17-017)

922-6 ADDED 11/10

**REV**

**7/12**

The Adoption Assistance Program (AAP) provides benefits to facilitate the adoption of children who otherwise would not likely be adopted. The AAP benefit is a negotiated amount based upon the needs of the child and the circumstances of the adoptive family. The responsible public agency and the prospective adoptive parent(s) shall negotiate and agree on the amount of the AAP benefit according to the requirements of this section.

(a) The responsible public agency shall make a good faith effort to negotiate the AAP benefit with the adoptive parents.

(1) The agency shall encourage the adoptive parents to request the AAP benefit they require in order to meet the child's needs taking into account their family circumstances.

(2) The agency shall base the negotiated AAP benefit on the needs of the child and the circumstances of the family determined through discussion with the adoptive parents.

(A) The agency shall advise the adoptive parents that the amount of the AAP benefit determined for the child is limited to the age-related, state-approved foster family home

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

rate and any applicable state-approved specialized care increment for which the child is eligible.

(3) There shall be no use of a means test of the child or the adoptive parent when determining the AAP benefit amount.

(4) The amount of the negotiated AAP benefit shall be between zero and the maximum AAP benefit for which the child is eligible.

(5) The agency shall advise the adoptive parents that the AAP benefit does not include payment for any specific good or service, but is intended to assist the adoptive parents in meeting the child's needs. (Tit. 22, Cal. Code Regs., §35333, subd. (a), as revised Dec. 10, 2011.)

#### 922-7

The agency responsible for authorizing AAP payments shall notify the county responsible for payment regarding any of the following events, as these events require that the county send the adoptive parent a Notice of Action:

- (1) Denial of request for AAP benefits.
- (2) Completion of a deferred payment agreement.
- (3) Authorization of the initial grant.
- (4) Completion of the recertification process.
- (5) Payment termination.
- (6) An overpayment requiring collection.
- (7) Any change in grant amount.

(Title 22, CCR §35345(a), as modified without substantive change effective August 1, 1998)

#### 922-8 **REV**

**7/12**

(b) The responsible public agency, after consultation with the adoptive parents and the financially responsible county, if different from the agency, shall identify the child's care and supervision needs, including any special needs beyond basic care and supervision.

(1) The adoption caseworker shall base the assessment of the child's needs and required level of care and supervision on all of the following information:

## SHD Paraphrased Regulations - Other Programs

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(A) Direct observation of the child.

(B) Information contained in the child's case record, including birth history and psychological, medical and other relevant assessments completed by licensed professionals.

(C) Information about the child based on application of the county's foster care specialized care assessment instrument or any specialized foster care increment previously approved for the child.

(D) Information provided by the adoptive parents. (Tit. 22, Cal. Code Regs., §35333, subd. (b), as revised Dec. 10, 2011.)

#### 923-1

Under federal law, the amount of an AAP payment "may be readjusted periodically." (42 United States Code §673(a)(3)) Under state law, an adoption assistance agreement shall be reauthorized through a "reassessment" ("recertification" prior to January 1, 2000) process to occur no less frequently than every two years. (W&IC §16120.05 as amended effective January 1, 2000)

#### 923-2

"The documentation required for recertification, which includes completion of the Recertification Information--Adoption Assistance Program Form (AAP3), is usually readily accessible to the family. Agencies should strive to administer this requirement in a manner which will cause no undue hardship on families during the recertification process. Agencies should not impose more than minimally necessary documentation requirements on families unless facts have come to light which suggest a more thorough review of the child's and family's circumstances is warranted. For example, adequate documentation for unchanged payment reauthorization, in the case of a child with a chronic, stable medical condition, may be as little as a brief letter from a licensed clinician indicating no change from an earlier, more comprehensive diagnosis, accompanied by a copy of the family's most recent tax return verifying no substantial change in family financial circumstances." (All-County Letter No. 98-03, January 7, 1998, p. 5)

**923-2A** ADDED 7/12A reassessment process shall be completed by the responsible public agency which authorized the initial payment unless one of the following is met:

(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.

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### 920 Adoption Assistance Program

(3) The responsible public agency determines the adoptive parents are no longer providing support to the child. (Tit. 22, Cal. Code Regs., §35343, subd. (a), as amended Dec. 10, 2011.)

**923-2B ADDED 7/12**(g) A reassessment of the AAP benefit shall be required every two (2) years beginning from the date of a signed Adoption Assistance Program Agreement (AD 4320) between the agency and the adoptive parents.

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

(A) The child has attained the age of 18 or 21;

1. Payment of the AAP benefit shall terminate in the month in which the child becomes 18 years of age or if the agency has determined that the child has a mental or physical disability that warrants the continuance of assistance, in the month in which the child becomes 21 years of age.

a. Starting January 1, 2012, youth who have an initial AAP agreement signed on or after their 16th birthday and who meet the conditions stated in Welfare and Institutions Code Section 11403, may be eligible for the extension of AAP benefits to the age of 19, the age of 20 effective January 1, 2013, and the age of 21 effective January 1, 2014.

(B) The adoptive parents are no longer legally responsible for the support of the child.

(C) The responsible public agency determines the adoptive parents are no longer providing support to the child.

(Tit. 22, Cal. Code Regs., §35333, subd. (g), as amended Dec. 10, 2011.)

923-3 ADDED 11/10

**REV  
7/12**

The reassessment process provided below is only operative through December 9, 2011:

The reassessment process shall include the following steps:

(1) The county responsible for payment shall mail the adoptive parent(s) the Reassessment Information Adoption Assistance Program form (AAP 3) as specified in CDSS Manual of Policies and Procedures, Eligibility and Assistance Standards Section 45-805.1.

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

(B) The adoptive parent(s) shall return the AAP 3 to the agency which authorized the initial payment.

(2) After the public adoption agency receives the completed AAP 3 from the adoptive parents, the agency shall determine the procedure, as listed below, to follow in order to complete the reassessment process:

A) If the adoptive parents select box 1 on the AAP 3 indicating they no longer wish to receive an AAP benefit for their child, the agency shall follow the procedures as specified in Section 35339 for completing a deferred payment agreement.

(B) If the adoptive parents select box 2 on the AAP 3 indicating they request the AAP benefit to continue at the current level, the agency shall complete and send a Payment Instructions Adoption Assistance Program (AAP 2) form to the county within five working days of completing the reassessment process.

(C) If the adoptive parents select box 3 requesting an increase in the amount of the AAP benefit, the adoptive parents shall provide written documentation of the child's special needs justifying the increase. This documentation must be sufficient so as to assist the agency in determining whether or not the increase is warranted. The agency may require additional information as necessary.

1. The agency shall base the reassessment of the child's needs and required level of care and supervision on the following information:

a. Information provided by the adoptive parents.

b. Information about the child based on application of the county's foster care specialized care assessment instrument.

2. The responsible public agency shall follow the procedures in Section 35333(c) in determining the new maximum AAP benefit amount.

3. If the agency determines that a change in the amount of payment appears appropriate, the adoptive parents' concurrence shall be obtained prior to changing the amount of payment.

a. The adoptive parents' concurrence is not required by law if the payment amount is changed to prevent the payment from exceeding the maximum payment amount specified in Section 35333(c)(1).

4. The agency and the adoptive parents shall complete an AD 4320 which indicates that the agreement is an amendment to the initial AD 4320.

a. If the agency and the adoptive parents are unable to agree on the amount of the AAP benefit, the agency shall complete an AAP 2 instructing the county to send a Notice of Action to the adoptive parents

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

indicating that the request for additional AAP benefits is denied and that the AAP benefit will continue at the prior rate. The agency shall specify the reason for denial as "The agency and the family cannot agree on benefits."

5. The agency shall complete and send a Payment Instructions Adoption Assistance Program (AAP 2) form to the county within five working days of completing the reassessment process.

(D) If the adoptive parents select box 4, requesting a decrease in the amount of the AAP benefit, the agency and the adoptive parents shall complete an AD 4320 which indicates that the agreement is an amendment to the initial AD 4320.

1. The agency shall complete and send a Payment Instructions Adoption Assistance Program (AAP 2) form to the county within five working days of completing the reassessment process.

(E) If the adoptive family fails to return the AAP 3 within the 90 days before the end of the payment authorization period, the agency shall conclude that the family does not want to continue receiving assistance.

1. If the family returns the AAP 3 within 30 days after the expiration of the 90-day period, the effective date of renewal shall be the last day of the 90-day period.

2. If the family takes more than 30 days after the expiration of the 90-day period to return the AAP 3, the effective date of renewal shall be the date on which assistance was requested in writing.

(3) The agency shall complete and send a Health Insurance Questionnaire (DHS) 6155 if the child is Medi-Cal eligible and has private health coverage.

(Title.22,CCR§35343,(b), as amended Sep. 2001)

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After December 10, 2011, this process is amended as follows:

The reassessment process shall include the following steps:

(1) The county responsible for payment shall mail the adoptive parent(s) the Reassessment Information Adoption Assistance Program form (AAP 3) at least 60, and not more than 90, calendar days prior to the date the reassessment is due and shall document in the case record the date such form was mailed.

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### 920 Adoption Assistance Program

(A) The adoptive parent(s) shall return the AAP 3 to the responsible public agency which authorized the initial payment.

**1. If the family does not submit a completed AAP 3 from, AAP must continue at the same rate reflected on the last AAP agreement and Payment Instructions (AAP 2) form.**

(2) If the responsible public agency receives the completed AAP 3 from the adoptive parents, the agency shall complete the reassessment process as follows:

(A) If the adoptive parents select box 1 on the AAP 3 indicating they no longer wish to receive an AAP benefit for their child, the agency shall follow the procedures as specified in Section 35339 for completing a deferred payment agreement.

(B) If the adoptive parents select box 2 on the AAP 3 indicating they request the AAP benefit to continue the agency shall pay the same rate reflected on the last AAP agreement and Payment Instructions Adoption Assistance Program (AAP 2) form.

(C) If the adoptive parents select box 3 requesting an increase in the amount of the AAP benefit, the adoptive parents shall provide written documentation of the child's special needs justifying the increase. The agency may require additional information as necessary.

1. The agency shall base the reassessment of the child's needs and required level of care and supervision on the following information:

a. Information provided by the adoptive parents.

b. Information about the child based on application of the county's foster care specialized care assessment instrument.

c. Circumstances of the family.

2. The responsible public agency shall follow the procedures in Section 35333 in determining the new maximum AAP benefit amount.

3. If the agency determines that a change in the amount of payment appears appropriate, the adoptive parents' concurrence shall be obtained prior to changing the amount of payment.

a. The adoptive parents' concurrence is not required by law if the payment amount is changed to prevent the payment from exceeding the maximum foster care maintenance payment that would have been paid had the child remained in foster care.



## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

4. The responsible public agency and the adoptive parents shall complete an amended AD 4320 to reflect the change in the amount of AAP benefit.

a. If the agency and the adoptive parents are unable to agree on the amount of the AAP benefit, the agency shall complete an AAP 2 instructing the county to send a Notice of Action to the adoptive parents indicating that the request for additional AAP benefits is denied and that the AAP benefit will continue at the prior rate. The agency shall specify the reason for denial as "The agency and the family cannot agree on benefits."

5. The agency shall complete and send a Payment Instructions Adoption Assistance Program (AAP 2) form to the county within five working days of completing the reassessment process.

(D) If the adoptive parents select box 4 requesting a decrease in the amount of the AAP benefit, the agency and the adoptive parents shall complete an amended AD 4320 to reflect the change in benefit amount.

1. The agency shall complete and send a Payment Instructions Adoption Assistance Program (AAP 2) form to the county within five working days of completing the reassessment process.

(Tit. 22, Cal. Code Regs., §35343, subd. (b), as amended Dec. 10, 2011.)

924-1 **REV**

**7/12**

If all other conditions in Welfare and Institutions Code (W&IC) Sections (a) through (h) are met, a child shall be eligible for Adoption Assistance Program benefits if the child is under 18 years of age, or under 21 years of age and has a mental or physical condition which warrants the continuation of assistance, or the child's age is extended under AB 12 to 19, 20, or 21 in consecutive years starting in January 1, 2013 for minors entering AAP after reaching the age of 16 years. (Welfare and Institutions Code (W&IC) §16120, subd. d), as amended by the California Fostering Connections to Success Act, Stats. 2010, c. 559, §58 [A.B. 12], enacted Sept. 30, 2010, eff. Jan. 1, 2012.)

**924-1A** **ADDED 7/12** Adopted minors aged prior to 19 years as of January 1, 2013, receiving AAP benefits are subject to age extensions to 19, 20, and 21 years of age in consecutive years under the California Fostering Connections to Success Act. However, the minor must have attained the age of 16 years prior to the adoptive parent entering into the AAP agreement. (Welf. & Inst. Code, §16120, subd. (d)(3), amended by the California Fostering Connections to Success Act, Stats. 2010, c. 559, §58 [A.B. 12], enacted Sept. 30, 2010, eff. Jan. 1, 2012.)

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

#### 924-2 ADDED 11/10

A disability means a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, a mental illness, as defined in Section 10802(4) of Title 42 of the United States Code, a disability within the meaning of the Americans with Disabilities Act of 1990, or a disability within the meaning of the California Fair Employment and Housing Act (Gov. Code, §§12900, et. seq.), as defined in Government Code Section (i) or (k). (Welfare and Institutions Code (W&IC) §4900(d))

#### 924-2A ADDED 11/10

Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. (Cal. Gov. Code, §12926.1(c))

#### 924-2B ADDED 11/10

“Major life activities” shall be broadly construed and includes physical, mental and social activities, and working. (Cal. Govt. Code §§12926.1(k)(1)(B)(iii), (i)(1)(C).)

#### 924-2C ADDED 11/10

A "physical disability" includes having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; and, this condition or disorder limits a “major life activity” (i.e., physical, mental, and social activities and the ability to working). (Gov. Code, §12926(k)(1).)

A “physical disability” also exists when a health impairment requires special education or related services; or, the individual has a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss; or, the individual has a health impairment described above, which is known by those with a duty to know; or, in those instances when the individual is regarded as having a condition making achievement of a major life activity difficult, or that can do so in the future. (Gov. Code, §§12926(k)(2), (3), (4), (5).)

#### 924-2D ADDED 11/10

A "mental disability" includes, but is not limited to: Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. A mental or psychological disorder or condition limits a major life activity if it makes the achievement of that major life activity difficult. (Govt. Code §12926(i)(1).)

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

A mental disability also includes any other mental or psychological disorder or condition not described above that requires special education or related services; or, having a record or history of a mental or psychological disorder or condition known to other entities; or, being regarded or treated by entities as having, or having had, any mental condition that makes achievement of a major life activity difficult, or that could do so in the future. (Govt. Code §§12926(i)(2), (3), (4), (5).)

924-2E ADDED 11/10

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current unlawful use of controlled substances or other drugs. (Cal. Gov. Code, §12926(i)(5).)

926-1 ADDED 11/10

REV  
7/12

Prior to December 10, 2011, section 35333, subdivision (c) read:

The responsible public agency shall determine the maximum AAP benefit for which the child is eligible. (Title 22, CCR §35333(c).)

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After December 10, 2011, the agency's mandate to determine the maximum eligible benefit was stricken. Section 35333, subdivision (c), now reads:

(c) The responsible public agency in consultation with the financially responsible county, if different from the agency, shall determine the maximum state-approved foster care maintenance payment that the child would have received in a foster family home if the child had remained in foster care.

(1) No agency may use a Foster Family Agency (FFA) treatment rate or a payment made to a certified home by a FFA on behalf of the child for purposes of calculating the maximum AAP benefit for which the child is eligible.

(A) If a child continues to require the additional services provided by the FFA, the adoptive placement shall continue to be funded by foster care payments rather than by AAP benefits until the AAP agreement is executed.

(2) If the child is living in the adoptive family's home, the agency shall assume that, but for adoptive placement, the child would be living in a licensed foster family home.

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

(A) If the child is placed for adoption within the financially responsible county, the AAP benefit shall not exceed the age-related, state-approved foster family home care rate, for which the child would otherwise be eligible.

(B) If the child is placed for adoption in California but outside the financially responsible county, the AAP benefit shall not exceed the age-related, state-approved foster family home care rate of the financially responsible county or that of the host county, whichever is higher, for which the child would otherwise be eligible.

(C) If the child is placed for adoption outside California, the AAP benefit shall not exceed the applicable California age-related, state-approved foster family home care rate or the applicable rate in the host state, whichever is higher, for which the child would otherwise be eligible.

(D) If the child also has any special needs which would qualify him or her for a specialized care increment (SCI), the AAP benefit shall include the applicable state-approved SCI in addition to the age-related, state-approved foster family home rate.

1. If the child requires a benefit based on a special need in addition to age-related state-approved foster family home rate, the agency shall document each special need by describing the need including the underlying problem or condition.

2. Specialized care provides a supplemental payment to a caregiver, in addition to the state-approved foster family home care rate, for the cost of supervision (and the cost of providing that supervision) to meet the additional daily care needs of a child who has a health or behavior problem.

3. If the child is placed for adoption outside the financially responsible county, the agency shall use the specialized care rate of the host county or that of the financially responsible county, whichever is higher, or that of the financially responsible county when the host county has no specialized care system.

(3) If the child is a client of a California Regional Center (CRC) for the Developmentally Disabled, the maximum rate shall be pursuant to Welfare and Institutions Code Section 16121(c). Dual agency children who leave California shall be able to continue to receive AAP benefits reflected in the last AAP agreement signed prior to leaving California.

(4) If the child is temporarily living away from the adoptive home and the AAP benefit is not authorized under Section 35334(a) or Section 35334(c), the agency shall consider the child to be living in the adoptive home.

(5) The adoptive parents shall provide a written statement on the form AAP 1 explaining how they plan to incorporate the adoptive child into their family and the impact, if any, on their family's lifestyle and circumstances.

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

(6) "Circumstances of the Family" means circumstances of the family as defined in Welfare and Institutions Code Section 16119(d)(2).

(A) The agency should not control or participate in the adoptive family's choices regarding their lifestyle, standard of living, or future plans.

(Tit. 22, Cal. Code Regs., §35333, subd. (c), amended Dec. 10, 2011.)

#### 926-1A

For AAP agreements signed on or after October 1, 1992, the payment rate shall not exceed the age-related state-approved basic foster family home rate for a child placed in a licensed or approved family home pursuant to Welfare and Institutions Code (W&IC) §11461(a) through (d). (W&IC §16121(a))

Per All-County Information Notice (ACIN) No. I-50-92, September 23, 1992, the W&IC section cited above does not apply to any but initial AAP agreements signed on or after October 1, 1992. AAP agreements signed before October 1, 1992 are governed by W&IC §16121.05(b). (Title 22, California Code of Regulations §35326(b))

**926-1B ADDED 7/12** The agency shall complete the Adoption Assistance Program Negotiated Benefit Amount and Approval Form (AAP 6) and file in the child's AAP file.

(1) When only age-related care state-approved foster family home rate is requested by the family, the agency shall include a statement to that effect for retention in the child's AAP file. (Tit. 22, Cal. Code Regs., §35333, subd. (d), amended Dec. 10, 2011.)

**926-1C ADDED 7/12**(e) When agreement on the AAP benefit has been reached, the responsible public agency shall complete an Adoption Assistance Agreement (AD 4320) with the adoptive parents.

(1) The agency shall complete the AAP 2 instructing the county to send a Notice of Action to the adoptive parents indicating that the AAP benefit is approved.

(2) After completion of the Adoption Assistance Agreement (AD 4320), the adoptive parents shall have the right to use the AAP benefit to meet the child's needs as they deem appropriate without further agency approval.

(f) When the responsible public agency and the adoptive parents are unable to agree on an AAP benefit, the agency shall complete the AAP 2 instructing the county to send the adoptive parents a Notice of Action that the requested AAP benefit is denied. The agency shall specify the reason for denial.

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### 920 Adoption Assistance Program

(1) If the adoptive parent does not agree on the AAP benefit, the parent may request a state hearing as instructed in the Notice of Action pursuant to MPP Section 22-004. (Tit. 22, Cal. Code Regs., §35333, subds. (e) and (f), amended Dec. 10, 2011.)

#### 926-2

From October 11, 1993 to January 1, 2000, state law provided as follows:

The amount of any AAP benefit shall be a negotiated amount based upon the needs of the child and the ability of the family to meet the child's needs. There shall be no means test used to determine an adoptive family's eligibility for AAP. Statewide median income data shall be used as a guideline in the negotiation process. Actual living expenses, including any unusual expenses, shall be considered in evaluating the benefit level.

All non-cash AAP recipients may be eligible for Medi-Cal benefits.

(Welfare and Institutions Code §16119(c), as amended effective October 11, 1993, and revised and renumbered effective January 1, 2000)

#### 926-2A

Prior to state law changes and the *Mark A. v. Davis* settlement, state law provided:

In applying the statewide median income guideline, agencies shall be guided by the following assumptions:

(1) Families with income below the statewide median income may qualify for an amount up to the state-approved basic foster care rate and any state-approved specialized care increment for which the child would be eligible in foster care; and

(2) Families with income above the statewide median income, unless actual family living expenses mitigate the family's ability to meet the child's basic needs, shall be considered to be able to meet the normal child-rearing expenses encompassed in the state-approved basic foster family home care rate, but may qualify to receive benefits in an amount up to the state-approved specialized care increments the child would be eligible to receive if in foster care.

(Welfare & Institutions Code (W&IC) §16119(d), revised effective January 1, 2000 to delete references cited above to statewide median income; All-County Letter No. 99-101, December 1, 1999, setting forth the terms of the *Mark A. v. Davis* lawsuit)

An initial conclusion, based solely on a comparison of family income to statewide median income data, that no assistance is warranted often may change after the required consideration of the family's actual living expenses, including any documented, unusual expenditures necessary for the health, safety, care, or education of any family member

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

which are not reimbursed by other sources. Such expenses may include, but are not limited to, unusually high expenditures for housing, utilities, or transportation or the cost of health, safety, education and above normal care for any family member, including other adopted children. (Title 22, California Code of Regulations (CCR) §35333(a)(3)(D), revised and renumbered effective December 1, 2000)

Consideration of family income comes into play only in determining the family's need for financial assistance in meeting usual, basic child rearing costs encompassed in the state-approved basic foster care rate. Unless other community resources are available to meet a child's special needs which would be paid for by the state-approved foster care specialized care increments, AAP benefits should be authorized for any adopted child to pay for the adoptive family's costs associated with those special needs up to the amount of the specialized care increment.

However, even if it is determined no cash payment is required at the time of adoption in order for the adoptive family to meet the AAP eligible child's needs, a deferred payment AAP agreement should be signed prior to finalization of the adoption to ensure continued eligibility and the family's ability to receive benefits in the future should the child's needs or family circumstances change such that cash assistance is required to meet the child's needs. Similarly, if the family requires only Medi-Cal benefits for the child, a zero dollar grant AAP agreement should be completed.

(All-County Letter No. 98-03, January 7, 1998, p.3)

926-2B

State law provides:

The amount of an adoption assistance cash benefit, if any, shall be a negotiated amount based on the needs of the child and the circumstances of the family. "There shall be no means test used to determine an adoptive family's eligibility for the AAP. Where the eligible child does not require a cash benefit, Medi-Cal eligibility may be established for the child." (Welfare & Institutions Code (W&IC) §16119(d)(1), effective January 1, 2000)

The "circumstances of the family" include the family's ability to incorporate the child into the household in relation to the lifestyle, standard of living, and future plans and to the overall capacity to meet the immediate and future plans and needs, including education, of the child. (W&IC §16119(d)(2), effective January 1, 2000)

926-4

Prior to December 1, 2000, state regulations provided that:

## **SHD Paraphrased Regulations - Other Programs**

### **920 Adoption Assistance Program**

When the AAP child is living in the home of the adoptive family, and the child is not a client of a California Regional Center for the Developmentally Disabled, the maximum AAP payment shall be:

1. The age-related state-approved basic foster family home care rate if the child has no needs which would qualify the child for a specialized care increment in a foster family home; or
2. The age-related state-approved basic foster family home care rate plus a specialized care increment, if the child has such needs and those needs are being provided by the adoptive family.

(Title 22, California Code of Regulations, §35333(b)(1)(A)1.-3., revised and renumbered effective December 1, 2000)

#### **926-4B**

According to the terms of the settlement in Yarbrough v. Saenz, the Department of Social Services and counties will immediately:

1. Cease considering Supplemental Security Income (SSI) as unearned income for children who are receiving federal [emphasis added] Title IV-E AAP benefits

For federally eligible children who are currently receiving an AAP benefit that was adjusted by their SSI grant, at the time of the next scheduled reassessment the adoption agency must recalculate the maximum available AAP benefit without considering the SSI as unearned income. The adoption agency should advise families that they may apply to receive the new maximum AAP benefit available. The adoption agency should also advise families that the federal Social Security Administration (SSA) might deduct the AAP benefit from their child's SSI grant.

2. Inform families that they must report to the SSA any AAP benefits received on behalf of their federally eligible adopted child. The adoption agency should advise adoptive parents that the SSA might deduct the AAP benefit from their child's SSI grant.

(All-County Letter No. 02-56, July 25, 2002 implementing Yarbrough v. Saenz, Ventura County Superior Court, Case No. CIV 196979)

#### **926-4C ADDED 11/10**

Children who are Regional Center consumers and receiving SSI benefits are eligible to receive AAP benefits at the appropriate SB 84 dual agency rate, without deducting the SSI from AAP benefits. The adoptive parent(s) has the responsibility to report the amount of AAP benefits received to the Social Security Agency (SSA). The SSA will



## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

determine whether and how much of the SSI benefits will be reduced accordingly. (ACL No. 10-16, question 13, June 4, 2010)

#### 926-6

Prior to the enactment of SB 84 effective July 1, 2007, if an AAP child is a client of a California Regional Center (CRC) for the Developmentally Disabled, the maximum rate shall be the foster family home rate formally determined for the child by the Regional Center using the facility rates established by the California Department of Developmental Services. (Title 22, California Code of Regulations (CCR) §35333(b)(1)(A)4., renumbered to §35333(c)(1)(C) effective December 1, 2000 prior to SB 84)

CRC clients who leave California are eligible to receive AAP benefits based on the most recent level of need assessed by the CRC. (Title 22, CCR §35333(c)(1), as revised effective September 6, 2001)

#### 926-8A

Based on the settlement in the *Mark A. et al. v. Davis* lawsuit, all applications and recertifications for AAP benefits shall be processed as follows:

1. There shall be no means test used to determine an adoptive family's benefits under the AAP, including the use of the statewide median income to determine payment amounts.
2. The amount of an adoption assistance cash benefit, if any, shall be a negotiated amount based upon the needs of the child and the circumstances of the family.

"Circumstances of the family" means "the family's ability to incorporate the child into the household in relation to the lifestyle, standard of living, and future plans and to the overall capacity to meet the immediate and future needs, including education, of the child."

For purposes of negotiating the amount of AAP benefits, agencies and CDSS Adoptions district offices should be guided by the legislative intent expressed in statutes governing the program, including Welfare and Institutions Code §16115.5. Counties and district offices are encouraged to keep in mind the ultimate goal of facilitating the adoption of a child when they negotiate with families, as long as the negotiated amount of benefits does not exceed the amount of foster care maintenance that the child would receive in a foster family home. Similarly, at the point of periodic recertification, any renegotiations of AAP benefits should be based on the child's current needs.

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

3. After an AAP agreement has been signed, the adoptive parents will continue to receive benefits in the agreed upon amount unless one of the following occurs;
- The adoptive parents are no longer legally responsible for the support of the child.
  - The child is no longer receiving support from the adoptive family.
  - The adoption assistance payment exceeds the amount that the child would have been eligible for in a foster family home.
  - The adoptive parents demonstrate a need for an increased payment.
  - The adoptive parents voluntarily agree to reduce or terminate payments.
  - The adopted child has an extraordinary need that was not anticipated at the time the amount of the adoption assistance was originally negotiated.
4. Upon request, all families shall have their current AAP benefits reassessed consistent with the requirements set forth in Paragraphs 1, 2, and 3 above.

(All-County Letter No. 99-101, December 1, 1999)

926-9

Prior to September 6, 2001, state regulations required that the agency, as part of the negotiation involved in establishing the AAP payment, shall inform the adopting parents that the AAP benefit does not include payment for:

1. Respite care.
2. Educational services.
3. Capital improvements to real property, such as room additions.
4. Purchase or lease of vehicles.
5. Health care services, including medications.
6. Attorney's fees.

(Title 22, CCR §35333(e)(6)(C), revised as of September 6, 2001) The regulations were revised to provide that the agency was simply to advise the adoptive parents that the AAP benefit does not include payment for any specific good or service, but is intended to assist the adoptive parent in meeting the child's needs. (Title 22, CCR §35333(e)(6)(A))

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

926-10 ADDED 8/05

Pursuant to MPP Section 45-804.32, AAP payments are to be paid prospectively for the current month. They are to be delivered monthly and received by the first day of the calendar month with the exception of initial payments and late recertifications as specified in MPP Sections 45-804.322 and 45-805.31.

(All County Information Notice I-32-05, July 13, 2005)

926-11 ADDED 11/10

If the child is placed for adoption in California but outside the financially responsible county, the AAP benefit shall be based on the foster care maintenance payment, not to exceed the age-related, state-approved foster family home care rate of the financially responsible county or that of the host county, whichever is higher, for which the child would otherwise be eligible. (Title 22, CCR §35333(c)(1)1.(B)3.)

926-11A ADDED 11/10

If the child is placed for adoption outside California, the AAP benefit shall be based on the foster care maintenance payment, not to exceed the applicable California age-related, state-approved foster family home care rate or the applicable rate in the host state, whichever is higher, for which the child would otherwise be eligible. (Title 22, CCR §35333(c)(1)1.(B)2.)

926-12 ADDED 11/10

Effective January 1, 2008, the schedule of basic rates in subdivision (a), as adjusted pursuant to subparagraph (B), shall be increased by 5 percent, rounded to the nearest dollar. The increased rate shall not be used to compute the monthly amount that may be paid to licensed foster family agencies for the placement of children in certified foster family homes, and shall not be used to recompute the foster care maintenance payment that would have been paid based on the age-related, state-approved foster family home care rate and any applicable specialized care increment, for any adoption assistance agreement entered into prior to October 1, 1992, or in any subsequent reassessment for adoption assistance agreements executed before January 1, 2008. (W&IC §11461, (d)(1)(C); amended by Stats.2007, c. 177 (S.B.84), § 28, eff. Aug. 24, 2007.)

926-12A ADDED 11/10

In accordance with SB 84, notwithstanding any other provision of law, the amount of aid to be paid to an adoptive family for any adoption assistance agreement executed prior to October 1, 1992, or the foster care maintenance payment based on the age-related, state approved foster family home care rate and any applicable SCI that would have

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

been paid to an adoptive family for an adoption assistance agreement executed prior to January 1, 2008, shall not be adjusted pursuant to the FFH rate increase provided pursuant to SB 84 in any subsequent reassessment on or after January 1, 2008. (See W&IC Section 16121.01). Therefore, if a child is receiving AAP, with or without an SCI, and the adoption assistance agreement was executed prior to January 1, 2008, the rate shall not be adjusted to reflect the rate increase provided to a FFH pursuant to SB 84. The rate may only be changed in accordance with W&IC Section 16119. If an AAP agreement is signed after January 1, 2008, counties should include this increase in the child's AAP benefit. Therefore, counties need to keep track of two AAP rate structures – one for rates that are set prior to January 1, 2008 and another for AAP rates set post January 1, 2008. (All County Letter No. 08-01, issued Jan. 17, 2008; citing W&IC §16121.01.)

#### 926-12B ADDED 11/10

Notwithstanding any other provision of law, the amount of aid to be paid to an adoptive family for any adoption assistance agreement executed prior to October 1, 1992, or the foster care maintenance payment based on the age-related, state-approved foster family home care rate and any applicable specialized care increment that would have been paid to an adoptive family for an adoption assistance agreement executed prior to January 1, 2008, shall not be adjusted pursuant to the rate increase specified in subparagraph (C) of paragraph (1) of subdivision (d) of Section 11461 in any subsequent reassessment on or after January 1, 2008. (W&IC §16121.01; added by Stats.2007, c. 177 (S.B.84), § 37, eff. Aug. 24, 2007.)

#### 926-13 ADDED 11/10

Initial AAP agreements signed on or after January 1, 2010 will no longer be eligible to receive an AAP age-related increase. However, a family may request an AAP benefit increase at any time, based on the reassessment of the child's needs and the circumstances of the family. The negotiated AAP increase is not to exceed the state-approved foster family home rate and any applicable specialized care increment the child would have received in foster care, pursuant to Welfare and Institutions Code section 16121, subdivision (a). Initial AAP agreements signed prior to January 1, 2010 will still be eligible to receive the AAP age-related increase upon request. (ACL 10-08, issued Feb. 26, 2010; citing the 2009/10 Budget Act; Stats. 2009, c. 4, (AB X4 4).)

926-14

ADDED 7/12

**SHD Paraphrased Regulations - Other Programs**

**920 Adoption Assistance Program**

On June 29, 2011, Assembly Bill 106 was enacted to adjust the basic rates set forth under Welfare and Institutions Code section 11461, and in response to California State Foster Parent Association v. Lightbourne (U.S. Dist. Ct. No. C 07-08056 WHA), which changed the methodology in setting FFH basic rates. AB 106 ordered the rates to impact Foster Care, KinGAP, and the Adoption Assistance Program (AAP). The rates for KinGAP and Foster Care were discussed in All County Letter number 11-63, issued September 20, 2011. Due to the district court's decision, Welfare and Institutions Code, section 16121, subdivision (a), was amended to incorporate the new rate methodology under AB 106.

For initial AAP agreements entered into on or after October 1, 1992 through December 31, 2007, and the adoption was finalized before May 27, 2011, the age-related basic rates in effect December 31, 2007 are used. These rates are increase by 1.92 percent reflecting the California Necessities Index (CNI) for fiscal year 2011-2012. These children are eligible to receive the age-related increase. Effective July 1, 2007, these rates were:

County	Age 0-4	5-8	9-11	12-14	15-18
2007 FFH Rates	\$433	\$471	\$503	\$556	\$608
Los Angeles	\$433	\$471	\$510	\$556	\$608
Orange	\$433	\$471	\$503	\$640	\$640
Santa Clara	\$433	\$471	\$510	\$556	\$608
County	Age 0-5	6-12	13-18		

**SHD Paraphrased Regulations - Other Programs**

**920 Adoption Assistance Program**

	4				
Marin	\$443	\$471	\$541	\$617	
<p>For initial AAP agreements entered into on or after January 1, 2008 through December 31, 2009, and the adoption was finalized before May 27, 2011, the FFH rates in effect January 1, 2008 are used. These rates are increase by 1.92 percent reflecting the California Necessities Index (CNI) for fiscal year 2011-2012. These children are eligible to receive the age-related increase.</p> <p>For initial AAP agreements entered into on or after January 1, 2010 through May 27, 2011, and the adoption was finalized before May 27, 2011, the FFH rates in effect January 1, 2008 are used. These rates are increase by 1.92 percent reflecting the California Necessities Index (CNI) for fiscal year 2011-2012. These children are not eligible to receive the age-related increase; this may not exclude any increases based on the reassessment of the child's needs. Effective July 1, 2011, these rates are:</p>					
County	Age 0-4	5-8	9-11	12-14	15-18
2008 FFH Rates	\$455	\$494	\$529	\$584	\$639
Los Angeles	\$455	\$494	\$535	\$584	\$639
Orange	\$455	\$494	\$529	\$672	\$672
Santa Clara	\$455	\$494	\$535	\$584	\$639
County	Age 0-4	5-6	7-12	13-18	

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

Marin	\$466	\$494	\$569	\$647
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For initial AAP agreements entered into before January 1, 2010 and the adoption was finalized on or after May 27, 2011, the children remain eligible to receive the age-related increases. For initial AAP agreements entered on or after January 1, 2010 and the adoption was finalized on or after May 27, 2011, the children are not eligible to receive the age-related increase; this may not exclude any increases based on the reassessment of the child's needs. For both of these groups of children the rates from May 27, 2011 through June 30, 2011, are used. The children are also eligible for the 1.92 percent CNI increase for fiscal year 2011-2012. These rates are as follows:

5/27 – 6/30/2011	Age 0-4	5-8	9-11	12- 14	15- 18
FFH Rate	\$609	\$660	\$695	\$727	\$761
7/1/2011 -	Age 0-4	5-8	9-11	12- 14	15- 18
FFH Rate	\$621	\$673	\$708	\$741	\$776

For initial AAP agreements entered into on or after July 1, 2011, the FFH rates in effect July 1, 2011, reflecting the 1.92 percent CNI increase for fiscal year 2011-2011, is used, as shown in the table above. These children are not eligible to receive the age-related increase; this may not exclude any increases based on the reassessment of the child's needs. The children are however eligible to receive the CNI adjustment, not yet established, for fiscal year 2012-2013.

(ACL No. 11-74, issued Nov. 30, 2011; citing Stats. 2011, c. 32, [A.B. 106]; California State Foster Parent Association v. Lightbourne (U.S.

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

Dist. Ct. No. C 07-08056 WHA); and Welf. &  
Inst. Code, §16121, subd. (a).)

927-1 ADDED 11/10

The adoption assistance agreement shall, at a minimum, specify the amount and duration of assistance. The date for reassessment of the child's needs shall be set at the time of the initial negotiation of the adoption assistance agreement, and shall, thereafter be set at each subsequent reassessment. The interval between any reassessments may not exceed two years.

The adoption assistance agreement shall also specify the responsibility of the adopting family for reporting changes in circumstances that might negatively affect their ability to provide for the identified needs of the child. (W&IC §16120.05.)

927-1A ADDED 11/10

**REV**  
**7/12**

(a) The Adoption Assistance Program Agreement form (AD 4320) shall contain the following:

(1) The child's adoptive name and the name(s) of the adoptive parent(s).

(2) The amount and duration of financial assistance.

(A) The agreement is effective until terminated in accordance with its terms or a new amended agreement is signed.

(B) The AD 4320 shall be signed by the responsible public agency and the adopting parent(s) prior to the granting of the final decree of adoption.

(C) In adoptive placements which involve more than one agency, all agencies shall sign the initial AD 4320.

1. Subsequent amendments to the AD 4320 shall be signed by the responsible public agency and adoptive parent(s).

(3) The AAP benefit will continue unless one of the following occurs:

(A) The child has attained the age of 18 unless the child has a mental or physical handicap which warrants continuation of AAP benefits to the age of 21 years.

(B) The adoptive parents are no longer legally responsible for the support of the child.



## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

- (C) The responsible public agency determines the adoptive parents are no longer providing any type of support to the child.
- (4) It is the adoptive parent's responsibility to inform the responsible public agency immediately if any of the following occurs:
- (A) Change in mailing address and/or state of residence.
  - (B) The child is no longer residing in the family home.
  - (C) The adoptive parents are no longer providing any type of support to the child.
  - (D) The adoptive parents are no longer legally responsible for the support of the child.
- (5) If a needed service is not available in the state of residence, the financially responsible county of origin remains financially responsible for the needed services.
- (A) The responsible public agency shall assist the adoptive parents by providing information and referral services offered in their state of residence.
  - (B) If the child is state-eligible and eligible for state-funded Medi-Cal benefits, the adoptive parents shall be informed that if they move or reside in another state, access to medical services is contingent on whether their state of residence extends COBRA-reciprocity for children receiving California state-funded Medi-Cal benefits.
- (6) If the adoptive parents believe their child has a physical or mental disability that warrants the continuance of assistance beyond the age of 18, prior to their child's eighteenth birthday, the adoptive parents are to request the responsible public agency assess and evaluate their child's needs for continuation of benefits beyond the age of 18.
- (7) If the child is a current consumer of California Regional Center (CRC) services, the maximum available AAP benefit is \$3006. CRC consumers who have received an AAP benefit prior to July 2007, which exceeds the maximum \$3006 rate, may continue to receive the higher rate until the child is no longer eligible for AAP benefits or the adoption is dissolved.
- (A) If the child is under the age of three and the CRC has determined the child to have a developmental disability as defined by the Lanterman Act, the maximum AAP benefit is \$2006.
  - (B) If the child is under the age of three and receiving services under the California Early Intervention Services Act, but not yet determined by the CRC to have a developmental disability as defined by the Lanterman Act, the maximum AAP benefit is \$898 or the foster family home rate and applicable SCI rate, whichever is greater.

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

1. After the adoption is finalized, it is the adoptive parents' responsibility to request the CRC to evaluate the child's eligibility for CRC services and notify the responsible public agency if the child is eligible and receiving CRC services.

(8) A child with an initial AAP agreement signed on or after January 1, 2010, will no longer be eligible to receive an AAP age-related increase.

(A) A child with an initial AAP agreement signed prior to January 1, 2010 will still be eligible to receive the AAP age-related increase upon request.

(B) A child with an initial Adoption Assistance Agreement signed prior to October 1, 1992, shall be governed by Welfare and Institutions Code Section 16121.05(b).

(9) That a failure to report the changes specified in Sections 35337(a)(5)(B) through (D) may result in an overpayment which would be recovered by a direct charge or a reduction in current and future AAP benefits.

(10) That continuation of payment depends upon continued legal responsibility of the adoptive parents for the support of the child and upon continued receipt by the child of that support.

(11) That the AAP benefit will be reduced if the AAP benefit amount exceeds the foster care maintenance payment that would have been made if the child had remained in a foster family home.

(12) The agreement shall specify the rate for a child receiving wraparound services or placed in an out-of-home placement which may not exceed the maximum eligible state-approved facility rate and is limited to 18 months per episode or condition. It is the adoptive parent's choice to request the AAP benefit be directed to the facility or to them and they pay the facility directly with the AAP funds received.

(13) That the child is eligible for Medi-Cal services.

(14) That the child is eligible for services provided pursuant to Title XX of the federal Social Security Act.

(A) Title XX services are public social services as described under MPP Sections 30-000 and 31-000.

(15) The procedure for reassessment of the AD 4320.

(16) That the agreement remains effective regardless of the state in which the adoptive parents reside.

(17) Any additional services and assistance which are to be provided as part of the agreement.

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

(Title 22, CCR §35337(a), as amended Dec. 10, 2011.)

#### 927-2

State law provides that the department may recover any overpayments of financial assistance under the AAP, and shall develop regulations that establish the means to recoup them, when either of the following applies:

- (1) The adoptive parents are no longer legally responsible for the support of the child.
- (2) The child is no longer receiving support from the adoptive family.
- (3) The adoptive family has committed fraud in its application for, or reassessment of, the adoption assistance.

(W&IC §16121.05(a))

#### 927-2B

An AAP overpayment may occur when:

- (1) The adoptive parent receives aid for the child after the child becomes ineligible for assistance because:
  - (A) The child has become 18 years old; or when the agency has determined the child's condition warrants aid until 21, the child reaches that age.
  - (B) The adoptive parent is no longer supporting the child.
  - (C) The adoptive parent is no longer legally responsible for the support of the child.
- (2) The adoptive parent has committed fraud in the application for, or reassessment of, AAP benefits.
- (3) The AAP payment exceeds the FC payment which would have been paid on behalf of the child if the child had not been placed for adoption.

(Title 22, CCR §35344(a), as revised effective December 1, 2000)

**927-2C** **ADDED 7/12** The county shall not demand overpayment collection when the overpayment was due to county error. (Tit. 22, Cal. Code Regs., §35344, subd. (e), as amended Dec. 10, 2011.)

#### 927-3

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

The agency authorizing an AAP payment shall compute any overpayment by subtracting the correct AAP payment from the amount of assistance actually provided. The agency shall inform the county responsible for payment of the reason for the overpayment and the overpayment computation. (Title 22, CCR, §35344(b) and (c))

#### 927-3A ADDED 11/10

Overpayment recovery regulations were issued effective November 1, 1994 and are set forth in §45-808.

#### 927-3B ADDED 11/10

Recovery shall be made from the adoptive parent(s) who signed the Adoption Assistance Agreement form (AD 4320). If the overpayment resulted from a payment made to an out-of-home care provider upon request of the adoptive parent, as provided in Section 45-804.311, recovery of payments made for services not provided shall be made from the out-of-home care provider. (§45-808.12, .121.)

#### 927-3C ADDED 11/10

Recovery of overpayments from an adoptive parent no longer receiving assistance is not required when the cost of collection would exceed the amount of recovery. (§45-808.11.)

#### 927-3D ADDED 11/10

Recovery by grant adjustment: Subject to the limit in Section 45-808.212, the overpayment shall be subtracted from the current AAP payment. If the current AAP payment is insufficient to recover the entire overpayment, then the remaining amount of the overpayment shall be subtracted from the AAP payments to be received during the succeeding six months or less, or by the end of the child's eligibility for AAP benefits, whichever occurs first. (§45-808.21.)

#### 927-3E ADDED 11/10

The amount of the adjustment shall not exceed an amount which would cause the adoptive family's net income to be below the Aid to Families with Dependent

Children (AFDC) Minimum Basic Standard of Adequate Care (MBSAC) as specified in Section 44-315.311. (§45-808.212.)

#### 927-3F ADDED 11/10

The county shall demand repayment of any amount not recovered by grant adjustment, or otherwise repaid using the appropriate Notice of Action form. (§45-808.22.)

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

927-3G ADDED 11/10

If the adoptive parent no longer receiving aid refuses or is unable to repay the amount demanded, the county shall refer the case to the appropriate county official for action on a civil judgment. (§45-808.23.)

927-3H ADDED 11/10

Nothing in Sections 45-808.21, .22 or .23 shall preclude the county from arriving at a reasonable settlement of its demand for repayment with the adoptive parent. (§45-808.24.)

928-1 ADDED 11/10

If the child is placed for adoption in California but outside the financially responsible county, the AAP benefit shall be based on the foster care maintenance payment, not to exceed the age-related, state-approved foster family home care rate of the financially responsible county or that of the host county, whichever is higher, for which the child would otherwise be eligible. (Title 22, CCR §35333(c)(1)(B)2.)

928-1A ADDED 11/10

If the child is placed for adoption outside California, the AAP benefit shall be based on the foster care maintenance payment, not to exceed the applicable California age-related, state-approved foster family home care rate or the applicable rate in the host state, whichever is higher, for which the child would otherwise be eligible. (Title 22, CCR §35333(c)(1)(B)3.)

928-2 ADDED 11/10

The California Department of Developmental Services (DDS) is charged under the Lanterman Developmental Disabilities Services Act (the Lanterman Act) to provide services to persons with developmental disabilities, which does so through Regional Centers that are under the direct supervision and oversight of DDS. (W&IC §§4500 et seq., 4620.)

928-2A ADDED 11/10

Consumers who are dissatisfied with the level of services provided by Regional Center may file for a state hearing under the Lanterman Act through the Office of Administrative Hearings to dispute the care provided by DDS and its Regional Centers. (W&IC §§4710, et seq.)

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

#### 928-3 ADDED 11/10

In determining alternate residential model (ARM) rates, providers for service levels 1 through 3, and 4A through 4I, must possess a valid community care facility license (CCL), and shall be “vendorized” by a regional center. (Title 17, CCR §56004; W&IC §11464.)

#### 928-3A ADDED 11/10

Unlike adoptive parents, and prior to the implementation of Senate Bill 84, relative foster caregivers who are not “vendorized” through a Regional Center are not eligible to receive ARM rated federal Foster Care in caring for a dual agency child, because relative caregivers are exempt from Community Care Licensing (CCL) licensure mandates. (W&IC §§4684, 11464; All County Letter No. 98-28, issued May 4, 1998.)

#### 928-3B ADDED 11/10

ARM facilities that also serve as the residence for the facility licensee, or of a member of the corporate board of directors, is deemed to be “owner operated.” Those facilities that are not residences of the licensee or corporate board member, and licensees that employ personnel to provide direct care to consumers, are deemed to be “staff operated.” (Tit. 17, §56901, (27), and (38).)

#### 928-3C ADDED 11/10

“Alternative Residential Model” (ARM) rates are established to provide basic living needs to persons with developmental disabilities, for the purpose of assuring the availability of a continuum of community living facilities of good quality for such persons, and to insure that such persons placed out of home are in the most appropriate, least restrictive living arrangement. The management of ARM payments is assigned to the California Department of Developmental Services. (W&IC §4680.)

#### 928-3D ADDED 11/10

If the child is a client of a California Regional Center (CRC) for the Developmentally Disabled, the maximum rate shall be the foster family home rate formally determined for the child by the Regional Center using the facility rates established by the California Department of Developmental Services. CRC clients who leave California shall be able to continue to receive AAP benefits based on the most recent level of need assessed by the CRC. (Title 22, CCR §35333(c)(1)(C).)

#### 928-3E ADDED 11/10

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

In addition to ARM rated AAP benefits, Personal and incidental expense allowance (P&Is) shall be available to an SSI/SSP recipient child. P&Is are offered under Title XVI Supplemental Security Income and State Supplemental Payments (SSI/SSP), are to be made available to the Regional Center consumer child, when that child is a dual agency foster child, to serve as “nominal expenses for personal needs (e.g., personal hygiene items, snacks, etc.)” to improve the beneficiary’s condition. (All-County Letter (ACL) No. 03-60, issued Nov. 13, 2003; Title. 20, CFR §416.640(b).)

#### 928-3F ADDED 11/10

If a foster child was receiving an ARM rate set before July 1, 2007 in excess of the SB 84 dual agency rate of \$2,006, and the child is subsequently adoptively placed with the current foster caregiver(s), AAP benefits will be paid at the previously established ARM rate. The adoptive parent(s) may request an assessment from the child’s Regional Center and a supplement to the rate based upon the child’s needs. (ACL No. 10-16, question 11, June 4, 2010)

#### 928-3G

W&IC Section 16121 sets forth special provisions for dual agency children who were receiving AAP benefits or for whom execution of an AAP agreement and a request for an ARM rate determination had been made before July 1, 2007. Specifically, the statute provides that these children will receive the ARM rate determined by the regional center through an individualized assessment, or the \$2,006 rate, (and the supplement to the rate, if applicable); whichever is greater, provided the following conditions existed before July 1, 2007:

- 1) the child had been deemed eligible for, or sought an eligibility determination for, regional center services and an eligibility determination had been made, and
- 2) an ARM rate determination had been requested before July 1, 2007, and was pending.

(All County Letter 08-17, March 28, 2008)

#### 928-3H

If a county receives an ARM letter, the county must verify with the regional center that a rate determination request had been made and was pending before July 1, 2007, and establish the rate accordingly.

To confirm that a rate request was made either in writing or verbally prior to July 1, 2007, it is suggested that county social workers:

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

Review their files for a letter sent to the regional center requesting a facility rate determination (commonly referred to as “a request for an ARM rate letter”).

Contact the responsible regional center to request verification that a rate determination request was made.

Contact the foster care provider or adoptive parent to confirm that a request for a facility rate determination was made directly to the regional center prior to July 1, 2007.

Except for the circumstances described in this paragraph above, effective July 1, 2007, regional centers will no longer establish ARM rates for AAP purposes and counties may not accept such letters from regional centers for rate setting purposes.

(All County Letter 08-17, March 28, 2008)

928-5 ADDED 6/08

Welfare and Institutions Code (W&IC) Section 16121, as amended by SB 84, provides that rates for dual agency children who receive AAP benefits, and are consumers of regional center services, are based on the dual agency AFDC-FC rates for such children. Specifically:

\$2,006 (and the supplement to the rate, if applicable), per child, per month, for children three years of age and older; or

\$2,006 (**there is no supplement to the rate**), per child, per month, for children under three years of age determined by a regional center to have a developmental disability as determined by the Lanterman Act; or

\$898 per child, per month, for children under three years of age who are receiving services under the California Early Start Intervention Services Act, but not yet determined by their regional center to have a developmental disability as defined by the Lanterman Act.

These rates are subject to the requirements of W&IC Section 16119 (d)(1), which includes the requirement of a negotiated rate based upon the needs of the child and the circumstances of the family. (All County Letter 08-17, March 28, 2008)

928-5A ADDED 6/08

AAP agreements signed on or after July 1, 2007, must be negotiated between the county and the adoptive parent for a rate not to exceed \$2,006, (and the supplement to the rate, if applicable), with an effective date no earlier than July 1, 2007. A supplement to the rate may also be negotiated if the child is determined to be eligible.



## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

AAP agreements signed on or after July 1, 2007, must be negotiated between the county and the adoptive parent for a rate not to exceed \$898 for children under the age of three years who are receiving services under the California Early Start Intervention Services Act, but have not yet been determined by a regional center to have a developmental disability, as defined by the Lanterman Act.

If a regional center subsequently determines that a child under three years of age is an individual with a developmental disability, as defined by the Lanterman Act, the AAP rate to be paid from the date of the determination is \$2,006. **There is no supplement to this rate.** (All County Letter 08-17, March 28, 2008)

928-6 ADDED 6/08

If an AAP agreement was signed before July 1, 2007, and the rate is higher than \$2,006 (and the supplement to the rate, if applicable), the adoptive family will continue to receive the higher rate until such time as the child is no longer eligible for AAP benefits.

If an AAP agreement was signed before July 1, 2007, and the agreement provides for an amount of AAP benefits less than the \$2,006 rate, (and the supplement to the rate, if applicable), the benefit amount will be increased not to exceed \$2,006 (and the supplement to the rate, if applicable), effective July 1, 2007.

Counties may increase AAP benefits retroactive to July 1, 2007, by:

- 1) increasing all benefit amounts at the same time;
- 2) increasing benefit amounts upon reassessment of the individual AAP agreement;  
or
- 3) increasing benefit amounts immediately upon parental request before reassessment of the AAP agreement.

(All County Letter 08-17, March 28, 2008)

928-7 ADDED 11/10

If a child becomes a Regional Center child under the Lanterman Act after the adoptive placement, the adoptive parent(s) must request a change in the benefit amount and renegotiate the AAP benefits, even though the child was eligible for the SB 84 dual agency rate upon the Regional Center's eligibility determination. (ACL No. 10-16, question 15, June 4, 2010)

928-8 ADDED 11/10

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

When a child receiving AAP benefits at the SB 84 early start rate under CESISA reaches 3 years of age, the adoption agency may not automatically discontinue the early start rate, as the agency must have the concurrence of the adoptive parent(s); the AAP benefit must continue at the same rate as stated in the last AAP agreement. However, to avoid the potential of an AAP overpayment while waiting for the child's Regional Center to complete a consumer eligibility determination under the Lanterman Act, the adoptive parent(s) and the agency may complete and sign two Payment Instruction forms for the AAP (state form AAP 2); one agreement to establish the early start rate (\$898 monthly) through the month of the child's third birthday; and the second agreement establishing the discontinuance of the early start rate to the appropriate rate (basic or special care incremental rate) until the Regional Center completes its determination as to the child's consumer eligibility under the Lanterman Act.

The adoption agency should refer the child and family to the applicable Regional Center for an evaluation and determination of the child's consumer eligibility as early as possible in order to avoid the need for retroactive payments or the risk of overpayments. (ACL No. 10-16, question 18, June 4, 2010)

#### 928-10

Children who receive or request rates pursuant to Senate Bill 84 are afforded the same rights to due process as all children applying for Foster Care or AAP benefits. (Welfare and Institutions Code (W&IC) §11464(a)(4), ACL 08-54, December 1, 2008)

#### 928-20

Effective December 1, 2008, the county has 60 days to send out an information letter regarding the Supplement to the Dual Agency (SDA) Rate. The SDA Rate may be requested either directly by a dual agency child's foster caregiver or adoptive parent, or through a referral from a Regional Center. A referral from the Regional Center does not provide an automatic right to receive the SDA Rate. The county must determine the child's eligibility to receive the SDA Rate within 90 days of the receipt of the request for this rate. (ACL 08-54, December 1, 2008)

#### 928-20A

The Supplement to the Dual Agency Rate (SDA Rate) is structured in four levels of \$250.00, \$500.00, \$750.00, and a maximum of \$1,000.00, based upon the assessment of the severity of a dual agency child's condition. The SDA Rate, once determined, will remain in effect until the dual agency child is no longer eligible to receive Regional Center services, or is no longer eligible for Foster Care or AAP benefits. (ACL 08-54, December 1, 2008)

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

#### 928-20B

The counties must use objective criteria developed by the state to determine extraordinary care and supervision needs used to determine the SDA Rate, which are based upon: (1) Severe impairments in physical coordination and mobility; (2) severe deficits in self-help skills; (3) severely disruptive or self-injurious behavior; and/or, (4) a severe medical condition. A state form (SOC 837), the "Supplement to the Rate Questionnaire," must be used to assess the child's eligibility for the SDA Rate. The assessment must be performed by the county child welfare services worker or adoption worker, and the Regional Center (RC) service coordinator or other RC representative. The assessor and the person reviewing the document must sign and return the SOC 837 to the county or adoption district office within 10 days for processing. The county may also collect information from other professionals, such as MFTs, LCSWs, or other medical, developmental, educational, or mental health professions who have relevant information on the child's condition.

Once the assessment of the child is completed using the SOC 837 Questionnaire, the county child welfare services or adoption worker must complete the "Supplement to the Rate Eligibility Form" (state form SOC 836), to determine the dual agency child's SDA Rate. Foster caregivers and adoptive parents will receive the completed SOC 837 and 836 upon request. (ACL 08-54, December 1, 2008)

#### 928-20C

For dual agency children adoptively placed or placed in foster care on or after July 1, 2007, through December 1, 2008, the date ACL No. 08-58 was issued, the effective date of SDA Rate is either: July 1, 2007; the date of foster care or adoptive placement; or, the date the child becomes a Regional Center consumer, whichever is later.

For children entering foster care or are adoptively placed and are recipients of AFDC-FC or AAP benefits after December 1, 2008, the effective date of the SDA Rate is the date the request for the rate is made, or the date of the Regional Center referral to the county for determination of this rate, which date is earlier.

For dual agency children in foster care or who have been adoptively placed after December 1, 2008, but before the information letter from the county is received, the effective date of the SDA Rate is: December 1, 2008; the date of placement; or, the date of the child becomes a Regional Center consumer, whichever date is later. (ACL 08-54, December 1, 2008)

#### 928-21

The Supplement to the Dual Agency Rate (SDA Rate) is not available to children under the age of three years who are provided services by a Regional Center through the

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

California Early Start Intervention Services Act. Early start dual agency children (under the age of three years) in foster care or who are adoptively placed receive a special rate under Senate Bill 84 (currently \$898.00 each month as of July 1, 2007). (ACL 08-54, December 1, 2008)

#### 928-21A ADDED 11/10

Regardless of whether a dual agency child under three years of age receives the \$898 SB 84 early start rate, or is deemed a Regional Center consumer under the Lanterman Act receiving the \$2,006 SB 84 dual agency rate, the child is not eligible to receive a supplement to the dual agency (SDA) rate. (ACL No. 10-16, question 24, June 4, 2010)

#### 928-22 ADDED 11/10

If a Regional Center consumer child is adoptively placed into a new home other than the previous foster care home and was eligible to receive a supplement to the dual agency rate (SDA), the county will pay the SDA retroactive to the date of the adoptive placement. The AAP benefit, after the SDA has been determined and becomes part of the AAP benefit, is subject to negotiation with the adoptive parent(s). However, if the child was in foster care on or after July 1, 2007 through December 1, 2008 (the date established under ACL No. 08-54), and has been determined to be eligible to receive the SDA, the child is eligible for retroactive payments in foster care back to July 1, 2007, date of placement, or the date of Regional Center eligibility under the Lanterman Act, whichever date occurs last. (ACL No. 10-16, question 14, June 4, 2010; referencing ACL No. 08-54, Dec. 1, 2008)

#### 928-23 ADDED 11/10

A dual agency child eligible to receive an SB 84 dual agency rate, but is instead receiving a previously established higher ARM rate, may also be eligible for a supplement to the dual agency (SDA) rate, providing the total monthly AAP benefits do not exceed \$3,006. A dual agency child under three is not eligible for the supplement to the dual agency rate. (ACL No. 10-16, question 26, June 4, 2010)

#### 928-24 ADDED 11/10

A representative or service coordinator from the child's Regional Center must review and sign the Supplement to the Rate Questionnaire (state form SOC 837) prior to determining the child's eligibility to receive a supplement to the dual agency (SDA) rate. The Welfare and Institutions Code, section 11464, subdivision (c)(2)(C) states "When assessing a request for the supplement, the county shall seek information from the consumer's regional center to assist in the assessment." CDDS released a directive on December 16, 2008 to all Regional Center executive directors to assist counties in completing the questionnaire to assess the child's eligibility for the appropriate SDA rate.

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

If the Regional Center refuses to sign the SOC 837, the county should note on the SOC 837 the name of the Regional Center staff person consulted who provided information relating to the questionnaire. Also, the county is instructed to contact the CDSS Foster Care Rates Bureau, Rates Policy Unit, so that CDSS can inform CDDS of these concerns. (ACL No. 10-16, questions 28 and 29, June 4, 2010)

929-1 ADDED 11/10

REV

7/12

The responsible agency shall confirm the amount and duration of the AAP benefits when the child is placed, either on a voluntary basis or as a court dependent, in out-of-home care to treat a condition that the agency has determined to have existed before the adoptive placement.

(1) The agency shall conclude that the child would have been placed in the same out-of-home care facility if the child had not been placed for adoption if, after consultation with the adoptive parents, the agency has determined that:

(A) Out-of-home placement is necessary to meet the child's needs,

(B) The specific placement is able to meet the child's needs appropriately, and

(C) The facility's rate classification level is appropriate to the child's needs.

(2) The agency shall determine the maximum AAP benefit for which the child is eligible for out-of-home placement.

(A) If the adoptive parents are paying for the cost of the placement directly, the available AAP benefit is the state-approved foster care facility rate for which the child is eligible.

(B) If the placement cost is paid by another agency (e.g., county welfare department, probation office, regional center), the available AAP benefit shall be either the age-related, state-approved foster family home care rate or the adoptive parent's actual share of cost for support of the child, whichever is greater, but not to exceed the foster family home rate as determined under Section 35333(c).

1. The 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.

2. Under Title 2 California Code of Regulations Section 60020(c), the county financially responsible for making AAP payments is responsible for the provision of mental health assessments and mental health services.

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

(3) If the initial Adoption Assistance Program Agreement (AD 4320) for the child was signed on or after October 1, 1992, the duration of a child's placement in a group home or residential treatment facility shall be limited to an 18-month cumulative period of time for a specific episode or incident justifying that placement.

(Tit. 22, Cal. Code Res., §35334, subd. (a), as amended Dec. 10, 2011.)

929-1A ADDED 11/10

**REV**

**7/12**

The agency shall conclude that the child would have been placed in the same out-of-home care facility if the child had not been placed for adoption if, after consultation with the adoptive parents, the agency has determined that: Out-of-home placement is necessary to meet the child's needs; the specific placement is able to meet the child's needs appropriately; and, the facility's rate classification level (RCL) is appropriate for the child's needs. (Title 22, CCR §35334(a)(1), as amended Dec. 10, 2011.)

929-2 ADDED 11/10

**REV**

**7/12**

The agency shall determine the maximum AAP benefit for which the child is eligible for out-of-home placement.

(B) If the adoptive parents are paying for the cost of the placement directly, the available AAP benefit is the state-approved foster care facility rate for which the child is eligible. (Title 22 CCR §35334(a)(2), (a)(2)(A), as amended Dec. 10, 2011.)

929-2A ADDED 11/10

**REV**

**7/12**

(a)(2) The agency shall determine the maximum AAP benefit for which the child is eligible for out-of-home placement.

If the placement cost is paid by another agency (e.g., county welfare department, probation office, regional center) the available AAP benefits shall be either the age-related state-approved foster care family home care rate or the adoptive parent's actual share of cost for support for the child, whichever is greater, but not to exceed the foster family home rate as determined under section 35333(c).

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

1. The 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.

2. Under Title 2 California Code of Regulations Section 60020(c), the county financially responsible for making AAP payments is responsible for the provision of mental health assessments and mental health services. (Title 22, CCR §35334, (a)(2)(B), as amended Dec. 10, 2011.)

**929-2B ADDED 7/12** When the responsible public agency and the adoptive parents agree on the AAP benefit, the agency shall complete an Adoption Assistance Program Agreement (AD 4320) with the adoptive parents.

(1) The agency shall state in the agreement that the AAP benefit is intended for the child's out-of-home placement not to exceed 18 months. (Tit. 22, Cal. Code Regs., §35334, subd. (e), amended Dec. 10, 2011.)

**929-2C ADDED 7/12** 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. (Tit. 22, Cal. Code Regs., §35334, subd. (e)(1)(A), amended Dec. 10, 2011.)

**929-3 ADDED 11/10**

Under the federal Individuals with Disabilities Education Act (IDEA) and state law, students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C., §1400, et seq.; Ed. Code, §56000, et seq.)

**929-3A ADDED 11/10**

The term "free appropriate public education" (FAPE) means special education and related services that are available to the student at no cost to the parents, that meet the State educational standards, and that conform to the student's individualized education program (IEP). (20 U.S.C., §1401, subd. (9))

**929-3B ADDED 11/10**

"Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C., §1401, subd. (29))

**929-3C ADDED 11/10**

## SHD Paraphrased Regulations - Other Programs

### 920 Adoption Assistance Program

The term “related services” includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. (20 U.S.C., §1401, subd. (26))

#### 929-3D ADDED 11/10

The state provides designated instruction and services (DIS), the state’s interpretation of “related services,” when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. (Ed. Code, §56363(a))

#### 929-3E ADDED 11/10

A student’s IEP must be reasonably calculated to provide the student with some educational benefit, but the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student’s abilities. School districts are required to provide only a “basic floor of opportunity” that consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the student. (Board of Education of the Hendrick Hudson Central School District v. Rowley (1982) 458 U.S. 176, 198-200, 201.)

#### 929-4 ADDED 11/10

When a student is determined to be seriously emotionally disturbed and residential placement is recommended, the IEP team is expanded to include a representative of the county mental health agency. (Gov. Code, §7572.5(a))

#### 929-4A ADDED 11/10

If residential placement is agreed upon, then the county mental health agency becomes the lead case manager. (Gov. Code, §7572.5(c))

#### 929-4B ADDED 11/10

The residential and non-educational costs of a child placed in a medical or residential facility by a public agency, other than a local education agency, or independently placed in a facility by the parent of the child, shall not be the responsibility of the state or local education agency, but shall be the responsibility of the placing agency or parent. (Gov. Code, §7581)



## **SHD Paraphrased Regulations - Other Programs**

### **920 Adoption Assistance Program**

929-4C ADDED 11/10

Where the county mental health has taken responsibility as the lead case manager for an SED child that has been placed at agency funds through an IEP in an out-of-home facility, such as a residential treatment care (RTC) facility, the county mental health agency makes all payment eligibility determinations. (W&IC §§ 18350 through 18355; All County Letter (ACL) No. 86-48, issued Jun. 6, 1986)