Questions and Answers
Title IV-E Adoption Assistance and State Adoption Subsidy

Questions as of March 2005

Question 1: In regards to determining Adoption Assistance Eligibility, what exactly is the “adoption petition” that is often referenced? Does the attorney prepare this for the adoptive parents or the Adoptive Placement Agreement or 383c petition?

Answer 1: It is the petition filed by the prospective adoptive parent(s) pursuant to section 112 of the Domestic Relations Law in Family Court or Surrogate’s Court seeking an order granting such person(s) the adoption of such child or children.

The “adoption petition” is the petition prepared by the adoptive parent’s attorney and filed in court to finalize the child’s adoption.

Question 2: When entering a case into the system for the State Adoption Subsidy, prior to finalization, what eligibility code is used? The manual (page 1-49) provides two FNP codes, which are not different for foster care cases that aren’t eligible for federal funding; is that correct? If so, how does the system know to authorize a State Adoption Subsidy as opposed to a non-Title IV-E foster care payment.

Answer 2: There seems to be confusion between eligibility codes and direct and POS codes. The eligibility codes to be used while the child is still in foster care or after a finalized adoption are 02 (Title IV-E eligible); 06 or 07 SSI; 08 MA only; or 14 if none of the others apply. The system codes for direct and POS are: prior to finalization: 08 direct and 61 POS to pay the foster home. After finalization 01 direct and POS 52 to pay for the adoption subsidy. If subsidy begins prior to finalization use the eligibility codes as stated above and direct code of 01 and the POS code of 52. The combination of eligibility coding and POS coding will allow the system to appropriately claim the payments to the correct eligibility category.

Question 3: When is a child considered to be freed for adoption?

Answer 3: A child is considered freed for adoption when all persons whose consent to the child’s adoption has either had his or her parental rights terminated by a Termination of Parental Rights (TPR) proceeding or a surrender or are deceased.

Question 4: If a child is freed and not in an adoptive home, do we still need to change the MA coding on WMS?

Answer 4: No, other than being freed there is no change to any WMS information.
Question 5: Two siblings under the age of 18 years are adopted. One of the siblings is a handicapped child and the sister is a hard-to-place child due to the sister’s handicap condition.

a) Are both Title IV-E eligible?
b) Once the hard-to-place child reaches the age of 18 years, does she lose Title IV-E eligibility?
c) What about Medicaid?
d) Can that hard-to-place child receive regular Medicaid?

Answer 5:

a) All other eligibility criteria are met both children are eligible for Title IV-E. I would add that we do not have enough facts to make a definitive determination. A determination of eligibility for Title IV-E must completed for each child and documented by completion of the Adoption Eligibility Checklist (LDSS-3912).

b) Yes. All hard-to-place children lose Title IV-E eligibility upon reaching the age of 18 years. At that point, she should be considered for the State Adoption Subsidy.

If it is determined that the child is hard-to-place and eligible for Title IV-E Adoption Assistance, federal adoption assistance must end at age 18. State Adoption Subsidy (maintenance only) must be authorized until the child reaches the age of 21, providing the child remains dependent. (See page 1-42, section 2 of the Eligibility Manual.

c) Page 1-43 is not clear regarding the last two questions on Medicaid.

If the child is hard-to-place and eligible for Title IV-E Adoption Assistance, the child is eligible for Medical Assistance (MA). MA ends for this child at age 18 unless the provision for continues coverage applies. Once MA ends, this child could only be considered for State medical subsidy if at the time of the adoption the adoptive parent(s) was 62 or over or within five years of mandatory retirement.

d) A hard-to-place child who is Title IV-E eligible automatically receives MA until the age of 18; if that child is not Title IV-E eligible that child is ineligible for MA (unless the family is eligible for community MA).

Only a hard-to-place child who is eligible for Title IV-E Adoption Assistance is eligible for regular Medical Assistance (See page 1-42 “Medical Assistance” of Eligibility Manual).

Question 6: Does the adoptive parent receive a medical coverage card for a child who is eligible for the State Medical Subsidy? Currently, all we’ve seen is a flimsy copy of a coverage letter, which some providers are hesitant to accept.

Answer 6: No. There is no card associated with the State Medical Subsidy program.

Question 7: Do any or all types of medical coverage (Federal IV-E, Medical Assistance under COBRA and State Medical Subsidy) provided to adopted children
qualify for the continuous coverage provisions when a case is closed and the child is age 18 years or younger?

Answer 7: The continuous coverage provisions apply to adopted children who receive either Title IV-E MA or COBRA MA. The continuous coverage provisions do not apply to State Medical Subsidy.

Question 8: Family court once tried to give custody to an interested party of a legally freed child. I was told the prospective foster/adoptive parents couldn’t be given custody because if the LDSS lost custody, the “clock” would start all over again when the child re-entered care (when resource was certified) for subsidy purposes. Is that true or did we have the six month period like in kinship cases?

Answer 8: Who is considered a “child” for adoption subsidy purposes is set forth in section 451(1) of the Social Services Law. The general rule is that the child must be in the custody and guardianship of a social services district or a voluntary authorized agency. There are some exceptions. One is where the child is in the care and custody of a social services district pursuant to Article 10 of the Family Court Act or section 384-a of the Social Services Law and all persons whose consent to adopt are deceased. The other is where the child is in the custody and guardianship of the child’s foster parent. In the case cited above, the child would not be eligible for adoption subsidy unless the child was either in the custody and guardianship of the social services district, or the foster parent has custody and guardianship or if the deceased parent exception applied.

Question 9: Can an adopted special needs child receive both SSI and Title IV-E Adoption Assistance?

Answer 9: Yes. However, federal regulations provide that in cases where the special needs child is eligible for benefits from both SSI and Title IV-E Adoption Assistance, the child’s SSI payments will be reduced dollar for dollar thus decreasing the SSI benefit by the amount of the adoption assistance.

Questions as of September 2004

Question 1: Section IV of the Adoption Assistance Eligibility Checklist lacks instructions. Earlier on the form it indicates to go to section IV, but once you get to section IV, there are no instructions. Can instructions be added to this section?

Answer 1: There is a separate set of instructions in Chapter One of the Eligibility Manual for completing the Checklist. See Eligibility Manual pages 1-52 to 1-59 for these instructions.

Question 2: When making an eligibility determination for Title IV-E Adoption Assistance under the “financial need” factor, the child must have been
eligible for ADC at removal and on the date the adoption petition is filed. Does the worker have to look at the home from which the child was removed or only at the child to determine if s/he is ADC eligible?

Answer 2: The agency must make a full ADC determination, including age, financial need [using the child’s income and resources, including receipt of parental support by the child or the placement agency; must be insufficient to meet the monthly costs of foster care], and deprivation of parental support or care [always met for a child free for adoption] on the date the adoption petition is initiated. See below for detailed Chart entitled, “Establishing Title IV-E Eligibility for Adoption Assistance”. The chart has been added to the Eligibility Manual see page 1-40.

Question 3: The Eligibility Manual indicates that the Adoption Assistance Eligibility Checklist should be completed at the time that the adoption petition is filed and a determination made as to whether the child is eligible for assistance. However, realistically, the Adoption Subsidy Agreement is done first. Please clarify.

Answer 3: Current OCFS policy stipulates that the first step in an adoption case is to complete eligibility for Title IV-E adoption assistance. To establish such eligibility the worker is required to complete the Adoption Eligibility Checklist (LDSS – 3912). See page 1-41, third paragraph of the Eligibility Manual and page 1-44 on "Steps in Determining Eligibility" which indicates that the Checklist LDSS-3912 is to be used to determine eligibility for every child being considered for adoption assistance. Once eligibility is established, this information is used to complete an application for adoption subsidy LDSS-4623.

Note: To expedite the approval of adoption subsidies, State statute and regulations allow for an adoption subsidy agreement to be submitted prior to the filing of an adoption petition. This means that the agency is doing a “prospective” eligibility determination. However, to comply with federal requirements, at specified times, the authorized agency must assess and document in the child’s case record, the child’s eligibility for Title IV-E Adoption Assistance. (See detailed Adoption Assistance Eligibility chart below)

Question 4: Can additional information be provided regarding the district’s responsibility for medical care in out-of-county and out-of-state adoptive placements, including children adopted with subsidy who come into foster care?

Answer 4: See chart below on Adoption and Medicaid/Medical Subsidy Responsibility in inter-jurisdictional placements (cross-county and state-to-state). The chart has been added to the Eligibility Manual see page 1-46.
Question 5: When we process the State Medical Subsidy, how do we explain it to the adoptive parents? What services are covered? What do they present to the health care providers?

Answer 5: In accordance with OCFS regulations (section 421.24(e)), when a child is eligible to receive State Medical Subsidy, the responsible district must make payments for medical care, services and supplies subject to the following conditions:

- Payments must be made without regard to the financial need of the persons with whom the child has been placed for adoption, for the costs of all medical care, services and supplies to the child and only for such costs which the child or adoptive parents will not receive payment or reimbursement from insurance, medical assistance or other sources.
- Payments can be made only for costs, services and supplies as may be authorized under the State's program of Medical Assistance and cannot exceed the schedule of payment for such care and services.
- Payments will remain in effect until the child's 21st birthday, provided the child continues to reside in the home of the adoptive parent or remains financially dependent on the adoptive parents.
- Claims are submitted to the district, and at the discretion of the district, payment may be made either to the provider or to the adoptive parents. **Note:** It is the responsibility of the district to provide the adoptive parents with the procedures for reimbursement of such costs either by including such provisions as part of the Subsidy Agreement or as separate written instructions.
- There is no requirement for a review or change to the agreement for medical subsidy. However, the district must request, either annually and/or at the submission of any claim, information about medical insurance or other coverage from the adoptive parents to determine compliance with State regulations.

Question 6: Can the language on the forms (Adoption Agreement and the Adoption Checklist) be made to match, particularly for the criteria “when the Agency makes reasonable, unsuccessful effort to place the child with appropriate adoptive parents without providing adoption or medical assistance”?

Answer 6: The forms have different purposes and reflect language necessary for their use. Example: The purpose of the Checklist is to document eligibility for federal and State adoption assistance and it provides detailed federal language. The Adoption Subsidy Agreement is a contract document and combines State statutory and regulatory language and other contract provisions binding on the parties who sign the Agreement.

Question 7: When exactly should the “Adoption Assistance Eligibility Checklist” be completed, before or after the child’s adoption is final? If completed before
finalization, can a second form be completed after finalization to place in the child's adoption record? What name should be entered for the child on the Checklist (the current name or the adopted name)?

Answer 7: The Checklist must be completed prior to filing of the adoption petition and must use the pre-adoptive name of the child. **Note:** If a district wants to complete a **second copy** of the form after finalization with the child’s adoptive name to place in a separate subsidy record, current policy does not preclude it, but it is not needed for audit or any other purpose. No further determination is needed or required after the adoption is final. For audit purposes, any checklist completed after the adoption is final cannot be used as the "original" documentation for determining eligibility for federal adoption assistance.

**Question 8:** Where does the Adoption Assistance Checklist get filed? Does it get filed in the pre-adoption or the post-adoption record?

**Answer 8:** It is recommended that the Checklist with the attached documentation be kept in a separate identified section of the case record that is maintained for categorical eligibility purposes. (See note on page 1-52 of the Eligibility Manual).

**Question 9:** Can we use the documentation from the Title IV-E foster care case to document common eligibility factors for adoption?

**Answer 9:** The documentation that supports the initial Title IV-E determination should always be retained, as you don’t know if the foster child will at some point become free for adoption. A second full ADC determination must be made as of the date the adoption petition is filed.

**Question 10:** Does a child’s alcoholism qualify as a “special need?”

**Answer 10:** In order for a child’s alcoholism to satisfy the definition of “special needs”, the facts surrounding the child’s condition and treatment would have to satisfy the definition of a handicapped child a set forth in 18 NYCRR 421.24(a)(2).

**Question 11:** Can “Dale P cases” be found eligible for Title IV-E Adoption Assistance?

**Answer 11:** By “Dale P” cases, we mean cases where the child is placed in the direct custody of a non-relative who now seeks to adopt the child. Under the decision in **Dale P**, the social service district may be directed by the court to proceed with a termination of parental rights proceeding against the child’s biological parent.
The legal issue with these cases is that the child would not satisfy the definition of a “child” for adoption subsidy purposes, as set forth in section 451(1) of the Social Services Law. If the child is not in the custody and guardianship of an authorized agency or a certified or approved foster parent or is in the custody of an authorized agency when such child’s parent(s) are deceased, the child would not be eligible for an adoption subsidy. In this situation, because the child is in the direct legal custody of the non-relative who is not functioning as a certified or approved foster parent, the placement not eligible for an adoption subsidy.

Question 12: Does the surrender document or the TPR court order in of itself verify the ADC financial need or does it only verify the fact that the child is now freed for adoption?

Answer 12: The surrender and/or TPR court order verifies that the child meets the Title IV-E deprivation factor and verifies that the child is freed for adoption. See below for detailed chart entitled, “Establishing Title IV-E Eligibility for Adoption Assistance”.

Question 13: The definition of “special needs” (level of difficulty) for the Title IV-E foster care rate is different than that for Title IV-E Adoption Assistance. Please explain.

Answer 13: There are no requirements that a child be determined to have "special needs" to be eligible for Title IV-E foster care payments. Level of difficulty (special or exceptional rate) is used in determining level of payments made on behalf of a foster child to address the different needs of individual children in foster care. See 18 NYCRR 427.6(c). For children to be eligible for Title IV-E Adoption Assistance, one of the elements of that standard is that the child must satisfy the standard for a special needs child.

Question 14: What is an Adoption Petition?

Answer 14: It is a formal written request filed with the court by the prospective adoptive parent(s)' attorney to the Family or Surrogate's Court asking the court to consider and approve the adoption of a freed child placed with the petitioning parents. The standards for the content of an adoption petition in an agency adoption are set forth in section 112 of the Domestic Relations Law.

Question 15: The rules in the Eligibility Manual indicate that you do not need to re-determine eligibility for Title IV-E Adoption Assistance so how does a worker know when to review a case for children who reach milestone birthdays? Is there a systems report that alerts the Worker?
Answer 15: If Title IV-E adoption assistance is being paid on behalf of a hard-to-place child, the eligibility code must be changed from 02 to another code (14 or 08) when the child reaches his/her 18th birthday. There is the WMS Anticipated Future Action (AFA) report that can serve as a reminder. These cases are identified on the report by AFA code 105 (Individual turns 18). In addition, there should be someone in the district who is responsible for the finalized adoption subsidy cases who makes appropriate changes to the system.

Question 16: When a child is in receipt of Title IV-E Adoption Assistance and the adoptive parent dies, doesn’t the rule indicate that the child is still eligible for Title IV-E due to prior Title IV-E eligibility?

Answer 16: ADC eligibility would carry over to a subsequent adoption from the first, but the child would have to otherwise meet the other eligibility standards of a special needs child. In the case where a court appointed guardian assumes responsibility for the adopted child, there is no subsequent adoption and the court appointed guardian would receive a State Adoption Subsidy. Reminder: When either of these happens, you must remember to make the necessary system adjustments for both the services case and the medical assistance case as funding changes are made.

Question 17: What if the adoptive parent of a child in receipt of a State Adoption Subsidy dies, what happens then?

Answer 17: In these instances, the State Adoption Subsidy must cease and may only continue if and when a person has been appointed by a court as legal guardian of the child. If a legal guardian is appointed, subsidy may continue until the child reaches age 21 years.

Question 18: We do not use the Adoption Assistance Eligibility Checklist (LDSS-3912); we use another form; we’ve never seen this form before today. Is this a mandatory form?

Answer 18: You may be thinking about the Adoption Agreement form, which is still used, but not in place of the Checklist. The Adoption Assistance Eligibility Checklist has been in existence since 1985 and was revised on August 2002 and again in July 2004. The rule is that all counties must use the Adoption Assistance Eligibility Checklist. There is no local equivalent approved by OCFS.

Question 19: In my county, we provide Non-recurring Adoption Expenses funding to all children who are adopted. We’ve never heard that it is only for children with special needs.

Answer 19: Federal rules indicate that Non-recurring Adoption Expenses funding may only be provided to children with special needs. See section 473(a)(1)(B)(i) of the Social Security Act. State law also limits the availability of non-recurring
adoption expense reimbursement to person who are adopting children with special needs. See section 453-a of the Social Services Law. Please see the Eligibility Manual, Appendix B for a clear definition of special needs.
Establishing Title IV-E Eligibility for Adoption Assistance

Important Note: There are four ways a child can be eligible for Title IV-E adoption assistance. Depending on the eligibility criteria, below are the specified time(s) when a determination must be made.

<table>
<thead>
<tr>
<th>Initial Entry into Foster Care</th>
<th>At the time the Adoption Petition is filed or prior to finalization of the adoption</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Child must be determined ADC eligible at the time of removal (the child does not have to be determined special needs at the time of removal by court order or voluntary placement agreement - that may happen later).</td>
<td>1. Child must be ADC eligible also on the date the adoption proceedings is initiated, and is determined special needs prior to finalization of the adoption.</td>
</tr>
<tr>
<td><strong>Note:</strong> At the initial Title IV-E Foster Care determination, if the child is Title IV-E Foster Care eligible, the child is determined, as part of this process, ADC eligible. If the child is determined ineligible for Title IV-E Foster Care, the child must have met all of the following ADC criteria for Title IV-E Adoption Assistance:</td>
<td><strong>Note:</strong> The agency must make a full ADC determination, including financial need and deprivation of parental support or care. It requires a determination of:</td>
</tr>
<tr>
<td>• <strong>Best Interest</strong> (in the initial removal court order)</td>
<td>• <strong>Deprivation:</strong> TPR, surrender, or death of parent(s) (A freed child always meets this criteria.)</td>
</tr>
<tr>
<td>• <strong>Deprivation</strong></td>
<td>• <strong>Age:</strong> 18 or under</td>
</tr>
<tr>
<td>• <strong>Age:</strong> 18 or under</td>
<td>• <strong>Financial Need:</strong> The child's income and resources, including receipt of parental support by the child or the placement agency, must be insufficient to meet the monthly costs of foster care;</td>
</tr>
<tr>
<td>• <strong>Financial Need:</strong> based on parent's income and resources</td>
<td><strong>OR</strong></td>
</tr>
<tr>
<td>2. At the time the adoption petition is filed, the child meets the requirements for SSI benefits, and prior to finalization of the adoption, is determined to be a child with special needs. (Note: No ADC or any additional criteria is required.);</td>
<td><strong>OR</strong></td>
</tr>
<tr>
<td>3. At the time the adoption petition is filed, the minor parent is in foster care and is receiving Title IV-E foster care payments that cover both the minor parent and the minor parent’s child, and prior to finalization of the adoption is determined to be special needs;*</td>
<td><strong>OR</strong></td>
</tr>
<tr>
<td>4. Prior to finalization of a subsequent adoption, a child who was Title IV-E eligible in a previous adoption is determined to be special needs.</td>
<td></td>
</tr>
</tbody>
</table>
Adoption and Medicaid/Medical Subsidy
Title IV-E Adoption Assistance

**Note:** This chart describes the inter-jurisdictional (cross-county and across state) responsibility for the provision of adoption subsidy payments, Medicaid and Medical Subsidy.

<table>
<thead>
<tr>
<th>Situation</th>
<th>Medical Implications</th>
<th>WMS Implications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption Assistance Maintenance*</td>
<td>County of origin maintains subsidy Medicaid.</td>
<td>Medicaid Non-Services Case Type 20</td>
</tr>
<tr>
<td>Adoption Assistance Maintenance*</td>
<td>Family moves out of county of origin</td>
<td>Medicaid Non-Services Case Type 20</td>
</tr>
<tr>
<td>Family moves out of NYS</td>
<td>New state is responsible for Medicaid.</td>
<td>Close case</td>
</tr>
<tr>
<td>Family moves into NYS</td>
<td>NYS county of residence is responsible for Medicaid.</td>
<td>Medicaid Non-Services Case Type 20</td>
</tr>
<tr>
<td>Adopted child comes into foster care</td>
<td>Child placed in foster care in same county that pays the subsidy</td>
<td>Medicaid Non-Services Case Type 13 or 20</td>
</tr>
<tr>
<td>Adopted child comes into foster care</td>
<td>Child placed in foster care in a different county from the one that pays the subsidy</td>
<td>Medicaid Non-Services Case Type 13 or 20</td>
</tr>
<tr>
<td>Adopted child comes into foster care</td>
<td>Adopted child comes from out of state</td>
<td>Medicaid Non-Services Case Type 13 or 20</td>
</tr>
</tbody>
</table>

* County of origin continues to be responsible for the maintenance subsidy in all scenarios above.
## Non-Title IV-E Subsidy

<table>
<thead>
<tr>
<th>Situation</th>
<th>Medical Implications</th>
<th>WMS Implications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption Subsidy Maintenance*</td>
<td>Handicapped child</td>
<td>Medicaid Non-Services Case Type 20 OR Services POS Line 77</td>
</tr>
<tr>
<td></td>
<td>Do Medicaid eligibility determination per instruction on pages manual 4-4 through 4-5. If child does not qualify, then child may be eligible for Medical subsidy.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hard-to-Place child</td>
<td>Medicaid Non-Services Case Type 20 OR Services POS Line 77</td>
</tr>
<tr>
<td></td>
<td>Does not qualify for categorical Medicaid but may receive Medical subsidy if an adopted parents is age 62 or older or subject to mandatory retirement within 5 years of adoptive placement.</td>
<td></td>
</tr>
<tr>
<td>Adoption Subsidy Maintenance*</td>
<td>Family has moved out of county of origin</td>
<td>Medicaid Non-Services Case Type 20 OR Services POS Line 77</td>
</tr>
<tr>
<td></td>
<td>County of origin continues to be responsible for Medicaid or medical subsidy (depending on medical coverage provided in subsidy agreement).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Family has moved out of NYS</td>
<td>Medicaid Non-Services Case Type 20 OR Services POS Line 77</td>
</tr>
<tr>
<td></td>
<td>County of origin remains responsible for Medicaid or medical subsidy (depending on medical coverage provided in subsidy agreement).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Family moves into NYS</td>
<td>Medicaid Non-Services Case Type 20 OR Services POS Line 77</td>
</tr>
<tr>
<td></td>
<td>State of origin is responsible for health care.</td>
<td></td>
</tr>
<tr>
<td>Adopted child comes into foster care</td>
<td>Child placed in foster care in same county that pays the subsidy</td>
<td>Medicaid Non-Services Case Type 13 OR 20</td>
</tr>
<tr>
<td></td>
<td>Close Medicaid for Adoption subsidy case or suspend Medical subsidy &amp; conduct Title IV-E foster Care eligibility determination and opens Medicaid/Foster Care case.</td>
<td></td>
</tr>
<tr>
<td>Adopted child comes into foster care</td>
<td>Child placed in foster care in a different county from the one that pays the subsidy</td>
<td>Medicaid Non-Services Case Type 13 OR 20</td>
</tr>
<tr>
<td></td>
<td>County of origin closes Medicaid for Adoption subsidy case or suspends Medical subsidy &amp; New county conducts Title IV-E foster Care eligibility determination and opens Medicaid/Foster Care case.</td>
<td></td>
</tr>
<tr>
<td>Adopted child comes into foster care</td>
<td>Adopted child comes from out of state</td>
<td>Medicaid Non-Services Case Type 13 OR 20</td>
</tr>
<tr>
<td></td>
<td>NYS county where placed conducts a Title IV-E foster care eligibility determination and opens Medicaid/Foster Care case.</td>
<td></td>
</tr>
</tbody>
</table>

* County of origin continues to be responsible for the maintenance subsidy in all scenarios above.