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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 18. DEPARTMENT OF SOCIAL SERVICES

CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES

SUBCHAPTER C. SOCIAL SERVICES

ARTICLE 2. FAMILY AND CHILDREN'S SERVICES

PART 421. STANDARDS OF PRACTICE FOR ADOPTION SERVICES

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(Statutory authority: Social Services Law, §§ 20, 22, 34, 101, 111-b, 111-i, 358-a, 372-b, 372-d, 372-e, 373-a, 374-a, 378-a, 378[a][2], [5], 383[3], 383-c, 384, 384-a, 384-b, 390, 398, 398-a, 398-b, 409-e, 409-f, 424-a, 450-458, 460-d; Family Court Act, art. 10-A, § 1017; Executive Law, § 501[5]; L. 1986, ch. 451; L. 1997, ch. 436; L. 1999, ch. 7, §§ 7, 55, 58; L. 2000, ch. 145; L. 2006, ch. 668; L. 2008, ch. 623, § 5; L. 2012, ch. 501)

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CROSS REFERENCES:

Adoption services; purchase by department, Social Services Law § 372-d.

Adoption applicants, Social Services Law § 372-e.

Statewide adoption service, Social Services Law § 372-f.

Care and custody of children, Social Services Law § 383.

Guardianship and custody of children in foster care, Social Services Law § 383-c.

RESEARCH REFERENCES AND PRACTICE AIDS:

48 NY Jur 2d, Domestic Relations § 1572.

46 NY Jur 2d, Domestic Relations §§ 455, 458, 466, 472.

60 NY Jur 2d, Fraud and Deceit § 232.

67 NY Jur 2d, Infants § 156.

66 NY Jur 2d, Infants §§ 115, 144, 149.

88 NY Jur 2d, Public Welfare and Old Age Assistance §§ 55, 148, 200, 205, 213, 229, 230, 253, 255, 259, 262, 267---271, 286, 384.

26 C-W2d, Guardians and Custodians § 155:2.

25 C-W2d, Fundamentals of Practice in the Surrogate's Court § 149:168.
18 C-W2d, Adoption Proceedings §§ 111:6, 111:16, 111:23, 111:24.
2 Am Jur 2d, Adoption §§ 48 et seq., 63, 64.
42 Am Jur 2d, Infants § 29.
59 Am Jur 2d, Parent and Child §§ 30---36.
13A Am Jur Legal Forms 2d, Parent and Child §§ 191:55---191:59.
1 Am Jur Legal Forms 2d, Adoption §§ 9:15, 9:55.
1 Am Jur PI & Pr Forms (Rev Ed), Adoption, Forms 174---178, 183.
14 Am Jur PI & Pr Forms (Rev Ed), Infants, Forms 2, 3.
19 Am Jur PI & Pr Forms (Rev Ed), Parent and Child, Form 34.
22 Am Jur Trials 347, Child Custody Litigation.
14 Am Jur Trials 619, Juvenile Court Proceedings.
34 Am Jur Proof of Facts 2d 407, Child Custody Determination on Termination of Marriage.
14 Am Jur Proof of Facts 2d 727, Legitimation of Child by Father Seeking Custody of Child.
6 Am Jur Proof of Facts 2d 499, Change in Circumstances Justifying Modification of Child Custody Order.
3 Am Jur Proof of Facts 2d 265, Child Neglect.
2 Am Jur Proof of Facts 2d 365, Child Abuse---The Battered Child Syndrome.
15 Am Jur Proof of Facts 1, Child Custody.
1 Am Jur Proof of Facts 199, Adoption.

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421.1 Definitions.

For the purpose of this Part, the following definitions shall apply:

(a) *Adoptive applicant* means a married couple, an adult unmarried person, an adult married person living separate and apart from his or her spouse pursuant to a legally recognizable separation agreement or a decree of separation, or an adult married person living separate and a part from his or her spouse for a period of three years or more prior to the commencement of the adoption proceeding who has applied to adopt or who has received agency approval for the placement of a child in his or her home for the purpose of adoption.

(b) *Adoption services* means assisting a child to secure an adoptive home through: counseling with biological parent or legal guardian concerning surrender of, or legal termination of parental rights with regard to a child; the evaluation of child's placement

needs; preplacement planning; the recruitment, study and evaluation of interested prospective adoptive parents; counseling for families after placement; supervision of children in adoptive homes until legal adoption; and counseling of adoptive families after legal adoption.

(c) *Adoptive parent* means a person with whom a child has been placed for adoption or who has adopted a child with agency approval.

(d) *Adoptive placement* means the child has been placed into a home for the purposes of adoption and the agency and adoptive parent or the child's foster parent have signed an adoption agreement and the facts of such placement have been recorded in accordance with paragraph (e) of subdivision (5) of section 383-c or subdivision (5) of section 384 of the Social Services Law.

(e) *Authorized agency* means an organization covered by section 371.10(a) and (b) of the Social Services Law.

(f) *Biological parent* means a parent who has conceived or given birth to the child, or from whom the child was conceived, either in or out of wedlock.

(g) *Foster parent* means any person certified or approved pursuant to section 375 of the Social Services Law, and Part 443 of this Title with whom a child, in the care, custody or guardianship of an authorized agency, is placed for temporary or long-term care.

(h) *Legal guardian* means a person to whom or an agency to which the guardianship of a child has been committed by surrender in accordance with the terms of a surrender instrument or pursuant to a court order under section 383-c, 384 or 384-b of the Social Services Law. A *legal guardian* may also be a person appointed as a guardian of the person of a child pursuant to a duly executed will or deed as provided by section 81 of the Domestic Relations Law.

(i) *Legally free child* means a person under the age of 18 years:

(1) whose custody and guardianship have been transferred to an authorized agency as a result of either a surrender instrument executed pursuant to section 383-c or 384 of the Social Services Law or an order of the Family Court or Surrogate's Court made pursuant to section 384-b of the Social Services Law; or

(2) whose care and custody have been transferred to an authorized agency pursuant to section 1055 of the Family Court Act or section 384-a of the Social Services Law and where such child's parents are both deceased, or where one parent is deceased and the other parent is not a person entitled to notice pursuant to sections 111 and 111-a of the Domestic Relations Law.

(j) *Photo-listed* means having placed a legally freedchild's picture and description in *New York State's Waiting Children* books which are organized, prepared, and distributed to authorized agencies and to appropriate citizen groups by the department.

(k) *Prospective adoptive parent* means an individual who meets criteria as defined in section 421.16 of this Title, and who has indicated an interest in adopting a particular child, and for whom the authorized agency has begun the placement process in accordance with section 421.18 of this Title.

(l) *Registered child* means a child who has been included in the listing of legally freed children maintained by the Statewide Adoption Service (State Photo Listing Service) pursuant to the requirements of section 420.2 of this Title.

RESEARCH REFERENCES AND PRACTICE AIDS:

18 C-W2d, Adoption Proceedings §§ 111:257, 111:278.

2 Am Jur 2d, Adoption §§ 111 et seq.
18 Am Jur POF2d 531, Equitable Adoption.
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421.2 Principles of adoption services.

(a) For each child deprived of a permanent family, an adoptive family shall be sought in which he may have the opportunity for growth and development through loving care, parental guidance and the security of a permanent home.

(b) Efforts to remove a child from the care and custody of his biological parent, adoptive parent, or legal guardian shall be undertaken only when it is clearly established that such action is in such child's best interest.

(c) The rights of children, biological parents, legal guardians, foster parents and adoptive families shall be respected and protected through responsible agency administration.

(d) In accordance with section 373-a of the Social Services Law and section 357.3(b) of this Title, disclosure of the child's comprehensive health history is required to be made to prospective adoptive parents. This includes information related to a diagnosis of AIDS, HIV-related illness or HIV infection or an HIV-related test. The terms AIDS, HIV-related illness, HIV infection and HIV-related test are defined in section 360-8.1 of this Title. A prospective adoptive parent may redisclose confidential HIV-related information concerning the child placed with such parent for adoption.

(e) Minor siblings or half-siblings who are free for adoption must be placed together in a prospective adoptive family home unless the social services district or the voluntary authorized agency with guardianship and custody determines that such placement would be detrimental to the best interests of one or more of the children. Such determination can be made only after a careful assessment, in accordance with section 421.18(d) of this Part, establishes that the placement would be contrary to the health, safety or welfare of one or more of the children. The placement decision must be fully documented in the case record.

(f) Each child under care in need of adoption but not legally free for placement, shall be identified as early as possible, and the pursuit of voluntary surrender or the legal process to sever those parental or guardianship rights of custody and guardianship to the child impeding his or her speedy placement in an adoptive family shall be initiated.

RESEARCH REFERENCES AND PRACTICE AIDS:

18 C-W2d, Adoption Proceedings §§ 111:257, 111:278.

2 Am Jur 2d, Adoption §§ 111 et seq.

18 Am Jur POF2d 531, Equitable Adoption.

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421.3 General requirements.

Authorized agencies providing adoption services shall:

(a) have written policies and procedures governing adoption services to:

(1) biological parents and legal guardians;

(2) children who are free for adoption, or who are not free but in need of adoptive planning;

(3) prospective adoptive parents, adoptive applicants and adoptive parents; and

(4) persons who have been adopted;

(b) make provisions for such written policies to be available to any interested party, and to be provided to biological parents, adoptive applicants, legal guardians and foster parents; and

(c) maintain appropriate records demonstrating compliance with agency policies and applicable department regulations; maintain a written record for each child and adoptive applicant containing information which documents decisions and plans of action;

(d) prohibit discrimination and harassment against applicants for adoption services on

the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability, and, shall take reasonable

steps to prevent such discrimination or harassment by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and

appropriate corrective or disciplinary action when such incidents occur. For the

purposes of this section, *gender identity or expression* shall mean having or being

perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is

different from that traditionally associated with the sex assigned to that person at birth.

Gender identity refers to a person's internal sense of self as male, female, no gender, or

another gender, and *gender expression* refers to the manner in which a person

expresses his or her gender through clothing, appearance, behavior, speech, and other means.

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421.4 Services to biological parent or legal guardian.

Authorized agencies shall:

(a) take diligent steps to provide immediate services, either directly or by referral, to any biological parent or legal guardian coming to the agency including medical, social and casework services. Such medical, social and casework services shall include discussion of alternatives to adoption in making the best plan for the child and parent such as day care, job training and housing resources. There shall be referral to other agencies when indicated;

(b) offer services with the recognition of each person's inherent dignity, integrity and right to privacy, and with the assurance that records will be kept confidential pursuant to the provisions of sections 136 and 409-f of the Social Services Law;

(c) respect the right and responsibility of the biological parent or legal guardian to establish a plan for the child. The biological parent and legal guardian must be advised of the guardianship and custody provisions of section 383-c or 384 of the Social Services Law, as applicable, of the provisions for periodic family court review under article 3, 7 or 10-A of the Family Court Act, as applicable, and of the provisions for permanent neglect proceedings under part 1 of article 6 of the Family Court Act and section 384-b of the Social Services Law;

(d) give definite regular appointments to biological parent or legal guardian at reasonably frequent intervals. If an appointment is not kept, the caseworker shall endeavor to contact the biological parent or legal guardian immediately, making a home visit when appropriate, and recording as a permanent part of the record the reason why the appointment was not kept, when known;

(e) if a biological parent or legal guardian is referred to another community resource for service, ascertain the outcome of the referral as soon as practicable. When a report from a medical or psychiatric resource indicates the biological parent or legal guardian failed to keep the appointment or failed to contact the community resource, the agency shall make a diligent effort to reach the biological parent or legal guardian to determine the current situation, the reason for failing to contact the resource and the need for further agency service; and

(f) take diligent steps to identify the biological father of a child, whether born in or out of wedlock and determine as early as possible whether he seeks and can play a role in planning for the child, and explore the position of any putative father in accordance with section 111(1)(d) and (e) of the Domestic Relations Law and section 421.5 of this Part.

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421.5 Services to fathers of out-of-wedlock children.

With regard to the rights and interests of the biological father of an out-of-wedlock child, an agency shall comply with the following procedures:

(a) In all cases:

- (1) take steps to identify the father and determine the extent of relationship between father and mother and between father and child;
- (2) make efforts to involve the father in planning for the child;
- (3) give the alleged father an opportunity to recognize or deny paternity;
- (4) if father admits paternity but is unwilling or unable to plan for the child, attempt to obtain a voluntary surrender of father's rights in child when such action would be in the best interests of the child; and
- (5) if the father is unwilling or unable to plan, and is also unwilling to voluntarily surrender rights, take such steps to obtain termination of the father's parental rights as are appropriate to the best interests of the child.

(b) The child shall not be placed for adoption without the father's consent or the surrender or termination of his parental rights in cases where the child being placed is not yet six months old and the unwed mother's parental rights have been surrendered or terminated, and the father has:

- (1) paid or offered to pay, a fair and reasonable sum, according to his means, for medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child;
- (2) openly lived with the child or child's mother for a continuous period of six months immediately prior to the placement of the child for adoption; and
- (3) openly held himself out to be the father of the child during a continuous period of six months prior to the placement of the child for adoption.

(c) The child shall not be placed for adoption without the father's consent or the surrender or termination of his parental rights in cases where the child is over six months old and the unwed mother's parental rights have been surrendered or terminated, and the father has maintained substantial and continuous or repeated contact with the child as manifested by paragraphs (1) and (2) of this subdivision:

- (1) by payment of a fair and reasonable sum toward support for the child, according to the father's means, and either:

(i) monthly visitations to the child when financially and physically able to do so and not prevented from doing so by actions of the agency having custody of the child;

(ii) by regular communication with the child or the person or agency having care or custody of the child, when visitation is either not financially or physically possible or has been prevented by the agency having custody of the child; or

(2) a father who has openly lived with the child for a period of six months in the one-year period immediately preceding the child's placement for adoption and who had openly held himself out to be the father of the child during such period shall be deemed to have maintained substantial and continuous contact with the child for the purpose of this subdivision.

(d) A written instrument executed by the biological father denying paternity or consenting to the mother's surrender of the child for adoption or consenting to the adoption of the child shall be completed in accordance with section 111 of the Domestic Relations Law.

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421.6 Surrender.

Authorized agencies must comply with the following surrender procedures:

(a) Children in foster care.

When requested by the parent(s) or guardian(s) of a child in the care and custody of an authorized agency, a social services official must determine, after appropriate consultation, if in such social services official's judgment, without regard to the likelihood of placing the child in an adoptive home, the best interests of the child will be served by a surrender. The social services official must make arrangements for either the judicial or extra-judicial surrender of the custody and guardianship of the child to the authorized agency pursuant to section 383-c of the Social Services Law.

(b) When such a surrender is made by the mother of a child born out of wedlock, the authorized agency must ensure that the procedures relating to the rights and interests of the father of the out of wedlock child, as outlined in section 421.5 of this Part, are appropriately followed.

(c) Authorized agencies must advise applicants of the obligation of social services districts to evaluate the obligation of parents of a child born in wedlock, to contribute to the support of the child as long as the child remains a public charge. In determining

whether to require financial contribution, the districts must consider the best interests of the child in addition to the ability of the parent to contribute.

(d) Judicial surrenders.

When the social services official determines that a judicial surrender would be in the best interests of the child, the judicial surrender must be executed and acknowledged before a judge of the family court or a surrogate in this state. When a parent who is also in foster care is surrendering the child, the judicial surrender must be executed and acknowledged before a judge of the family court.

(1) A judicial surrender of a child in foster care executed by a parent or guardian before a court in another state must meet the requirements of section 383-c(1)(a) and (b) of the Social Services Law. A certified copy of the transcript of the surrender proceeding, showing compliance with section 383-c(1)(b) of the Social Services Law must be filed as part of the adoption proceeding in this State.

(2) The authorized agency must inform the parent or guardian surrendering a child in foster care to the authorized agency that a judicial surrender becomes final and irrevocable immediately upon its execution and acknowledgement before a judge of the family court or a surrogate.

(e) Extra-judicial surrenders.

The surrender of a child in foster care not executed and acknowledged before a judge of the family court or a surrogate must be executed and acknowledged by the parent or guardian in the presence of at least two witnesses, at least one of whom has been trained in accordance with subparagraph (2)(i) of this subdivision, before a notary public or other officer authorized to take proof of deeds.

(1) Terms. Terms.

The terms of an extra-judicial surrender agreed upon by the parent or guardian and the authorized agency, including the name of any person the parent may specifically designate to adopt the child, and the execution of such surrender, must meet the requirements of section 383-c of the Social Services Law.

(2) Required witnesses. Required witnesses.

An extra-judicial surrender must be witnessed by two persons. At least one witness must be an employee of the authorized agency trained to accept surrenders. The second witness must be either a certified social worker or an attorney duly admitted to the practice of law before the courts of the state in which the surrender is executed who is not an employee, volunteer, consultant, agent of or attorney for the authorized agency taking the surrender. A required witness may serve as the notary public at the surrender if the witness is licensed as a notary public.

(i) Employee witness. The authorized agency must provide in-service training and instruction on the taking of extra-judicial surrenders to employees who will serve as the witnesses for the authorized agency. At a minimum, such in-service training and instruction must cover the following:

(a) the responsibilities of the employee witness to ensure that the surrender instrument is read in full to the parent(s) or guardian(s) in their principal languages; provide an opportunity for the parent(s) or guardian(s) to ask questions concerning the surrender or its execution and to have these questions answered; ensure that the parent(s) or guardian(s) understand their rights and the consequences of signing the surrender which must be specified in bold print on the first page of the instrument; ensure that the

required supportive counseling is offered to the parent(s) or guardian(s); ensure that the required affidavits are completed by the witnesses; ensure that the parent(s) or guardian(s) understand the procedures for revocation of the surrender; and ensure that the parent(s) or guardian(s) sign and receive copies of the surrender instrument; and (b) the requirements of section 383-c of the Social Services Law for taking an extra-judicial surrender; the contents of the required surrender forms; the form for the required affidavits and their contents; the requirements for revoking the surrender; and the requirements for submitting the signed surrender to the court.

(ii) Responsibilities of nonemployee witness:

(a) The nonemployee witness must be either a certified social worker or an attorney duly admitted to the practice of law before the courts of the state in which the surrender is executed and cannot be an employee, volunteer, consultant, agent of or an attorney for the authorized agency to which the child is being surrendered. Neither the nonemployee witness nor the nonemployee witness's employer may receive payment or any type of compensation for the services provided by the witness other than actual and reasonable transportation expenses incurred in order to witness the surrender.

(b) The following conditions must be met to ensure the impartial selection and independence of nonemployee witnesses:

(1) any certified social worker or attorney duly admitted to the practice of law before the courts of the state in which the surrender is executed may serve as a witness to an extra-judicial surrender;

(2) the same person may not serve exclusively as the only nonemployee witness for an authorized agency;

(3) any person serving as a nonemployee witness for a surrender cannot be an employee of an agency or organization contractually or financially responsible for or involved with the delivery of services to the child or his or her family; and

(4) any person serving as a nonemployee witness may not be related within the second degree to an employee witness to the same surrender.

(f) Contents of affidavits.

Both the employee witness and the nonemployee witness before whom a surrender is executed and acknowledged must complete affidavits attesting to the facts and circumstances surrounding the execution of the surrender.

(1) The affidavits of the employee and nonemployee witness must recite:

(i) the date, time and place where the surrender was executed;

(ii) that a copy of the executed surrender was provided to the parent(s) or guardian(s);

(iii) that the surrender was read in full to the parent(s) or guardian(s) in their principal languages and the parent(s) or guardian(s) were given an opportunity to ask questions and obtain answers regarding the nature and consequences of the surrender; and

(iv) that the parent(s) or guardian(s) executed and acknowledged the surrender.

(2) The employee-witness affidavit must also recite:

(i) when supportive counseling was offered to the parent(s) or guardian(s) and whether the parent(s) or guardian(s) accepted the counseling; and

(ii) if accepted, when the supportive counseling was provided and the nature of such counseling.

(3) If supportive counseling is provided, an affidavit from the individual who provided the supportive counseling must be attached to the surrender attesting to when supportive

counseling was offered, when it was provided, and the nature of such counseling. A person other than an employee-witness must provide the counseling.

(g) Voluntary agencies may accept a surrender of a child at their discretion. Acceptance of such surrender without the explicit advance approval of the social services district, in and of itself will not obligate the social services district to provide support, care or services.

(h) Before accepting a surrender, the authorized agency must ascertain that the biological parent or guardian has a full understanding of the meaning thereof and of the religious faith requirements of section 373 of the Social Services Law.

(i) Obtain from the surrendering person, including an out-of-wedlock father whose consent is required pursuant to section 421.5 of this Part, a separate signed statement of the religious wishes of the surrendering person as to the placement of the child, on the State prescribed form.

(1) This statement must advise the parent or guardian of the right to express the wish that the child be placed in a family of the same religion as the parent, or of a different religion from the parent, or without regard to religion or with religion as a subordinate consideration.

(2) In addition, the statement must make explicit to the surrendering person that if he or she wishes to do so, he or she may express the wish that if no home has been found for the child within the number of months to be specified by that person, then the placement of the child will be made without reference to these expressed religious wishes which may be impeding placement.

(3) The statement must advise the parents that their religious wishes will be complied with so far as they are consistent with the best interests of the child and where practicable.

(4) When the father and mother of a child born in or out of wedlock have signed statements of religious wishes as to the placement of the child and these wishes conflict, they must be advised that the social services official or authorized agency may place the child according to either religious preference, based on the best interests of the child and where practicable.

(j) Children who are not in foster care.

When requested by the parent(s) or guardian(s), a social services official must determine, after appropriate consultation, if in such official's judgment, without regard to the likelihood of placing the child in an adoptive home, whether the best interests of the child will be served by a surrender. The care, custody and guardianship of a child not in foster care may be committed to an authorized agency by a surrender executed either before a judge of the family court or a surrogate, or in the presence of one or more witnesses before a notary public or other officer authorized to take proof of deeds, pursuant to section 384 of the Social Services Law.

(k) Where an agency has occasion to believe that, because of a language problem, the person surrendering the child may not fully understand the surrender instrument or the right to express a religious preference as specified in subdivision (f) of this section or the provision relating to prohibition against proceeding for custody of the child or to revoke or annul the surrender when 30 days have elapsed after the execution of the surrender and the child has been placed in the home of adoptive parents, then the agency shall obtain a separate signed statement (to be included as part of the

permanent records of the agency), in a language understood by the person, which shall establish that the agency has fully explained these matters to the surrendering person.

(l) Conditional surrender.

A surrender executed pursuant to either section 383-c or 384 of the Social Services Law may be conditioned upon the adoption of the child by a particular designated person or persons and/or provide for post surrender and post adoption communication or contact between the child and the child's biological parents and/or biological siblings or half siblings. Where the surrender is conditioned upon the adoption of the child by a particular person or persons, such person or persons must be either a certified or approved foster parent in accordance with Part 443 of this Title or an approved adoptive parent in accordance with this Part and the permanency plan for the child must be for such child to be adopted by the person or persons. The authorized agency must comply with the requirements set forth in sections 383-c and 384 of the Social Services Law, section 1055-a of the Family Court Act and section 112-b of the Domestic Relations Law regarding conditional surrenders.

RESEARCH REFERENCES AND PRACTICE AIDS:

18 C-W2d, Adoption Proceedings §§ 111:257, 111:278.

2 Am Jur 2d, Adoption §§ 111 et seq.

18 Am Jur POF2d 531, Equitable Adoption.

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421.7 Termination of parental rights.

When adoption would be in the best interests of a child and a surrendering instrument has not been executed, an authorized agency shall petition the court to terminate parental rights under the provisions of section 384-b of the Social Services Law, including the parental rights of the biological father of an out-of-wedlock child when his consent to an adoption would be required pursuant to section 111(1)(d) of the Domestic Relations Law.

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421.8 Services to children.

Authorized agencies shall:

- (a) recognize that any child who is legally free, is adoptable;
- (b) register each legally freed child with the State Adoption Service, in accordance with Part 420 of this Chapter;
- (c) consider each legally freed child's eligibility for adoption subsidy, in accordance with section 421.24 of this Part;
- (d) keep the length of interim foster care placements of children free for adoption to a minimum, placing such children in adoptive homes as early as practicable;
- (e) arrange a medical examination for each child for whom adoption is planned in order to determine the state of the child's health, significant factors that may interfere with normal development, and the implications of any medical problems. The medical report shall be filed with the child's record;
- (f) provide casework services to each legally free child, obtain a current understanding of his or her needs and encourage his or her participation in planning, according to his or her age and capacity; and
- (g) provide or arrange for all services necessary to ensure that siblings and/or half-siblings are placed together, unless contraindicated, in accordance with sections 421.2(e) and 421.18(d) of this Part; and
- (h) provide each legally free child with adoption services, directly or through purchase of service. The following services are to be provided:
 - (1) In the case of a child who has not been placed in an adoptive home, evaluation of placement needs, preplacement planning and preparation with reports thereon at intervals as required by the department, and recruitment, adoption study, training and placement planning for prospective adoptive parents.
 - (i) *Parent training* is activity designed to increase parents' understanding of the dynamics of parent-child relationships, including providing such parents with the information, skills and attitudes needed to integrate an adopted child into the family by responding constructively to the patterns of behavior the child brings from previous homes and uses to test parent commitment, or to ward off closeness and emotional dependency.
 - (ii) These training activities may be carried out by the family's adoption worker, other agency personnel or through subcontract. This may be carried out in a group process involving and training other applicants or families with whom a child has been placed.
 - (2) In the case of a child who is already placed in an adoptive home, parent training, for the parents with whom the child has been placed, supervision and post-adoption services, with reports thereon as required by the department.

(i) *Supervision* is a process involving individual and group interviews to support the mutual adjustment of the child and family, to enable the agency to keep informed on the progress and well-being of the child in the adoptive home, and to help the family and child to obtain services that may be needed. Supervision begins on the date a child is placed in a home and concludes on the date of the adoption decree.

(ii) *Post-adoption services* means counseling, training parents on how to care for children with special needs, providing clinical and consultative services, and coordinating access to community supportive services for the purpose of ensuring permanence of the placement. Such services may be designed to treat problems which developed after the date of the adoption decree. Post-adoption services may extend for three years from the date of the adoption decree.

(3) In the case of a child who is not photo listed because the child is age 14 or older and refuses adoption, or the child is placed with a relative within the third degree of consanguinity of the parents of the child and does not have a goal of adoption, evaluation of placement needs, with reports thereon at intervals as required by the department.

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421.9 Purchase-of-service contracts.

(a) All purchase-of-service contracts between social services districts and an authorized agency caring for children which ordinarily does not provide adoption services, must provide for counseling the biological parent or legal guardian concerning surrender of, or termination of parental rights with regard to a child, and the evaluation of a child's placement needs. Adoption services not contracted to be provided by such authorized agency itself, nor through a district-approved agreement with another agency, shall be the responsibility of the district to provide directly or through separate contract.

(b) All purchase-of-service contracts between social services districts and an authorized agency, which provides adoption as well as foster care services, must set forth the adoption services to be performed by the authorized agency. The social services district shall be responsible for providing all adoption services not contracted to be provided by such authorized agency.

(c) All purchase-of-service contracts for adoption services executed by a social services district shall require authorized agencies to maintain records and submit reports as required by the department, and such records and reports shall be in whatever form

required by the department. Such records shall be available at all reasonable times for inspection by representatives of the department, and photocopies of such records shall be forwarded to the department upon request.

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421.10 Community relations and recruiting.

Authorized agencies operating an adoption program shall:

(a) carry out recruiting efforts specifically directed at communities of populations which have ethnic, racial, religious or cultural characteristics similar to those of the children identified annually by the department as composing the largest number of waiting children pursuant to section 421.13 of this Part;

(b) keep the community informed about the development and progress of the program and the needs of the children who require adoption;

(c) offer information about the program, the need for adoptive homes and the availability of adoption subsidy, to organizations, agencies, media representatives and other persons who may be a referral source in the community; and

(d) seek to recruit persons with the ability and motivation to serve children in need of permanent substitute family life.

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421.11 First contact with prospective adoptive parents.

Authorized agencies operating an adoption program shall:

- (a) have an adoption or home finding unit which will accept public inquiries. Inquiries regarding adoption received elsewhere in the agency shall be referred immediately to such unit;
- (b) respond to inquiries regarding adoption within five business days of receipt of the inquiry and offer an invitation to an individual or group orientation session, which shall take place within 30 days of receipt of the inquiry;
- (c) conduct such orientation sessions during evening and other hours convenient to those invited;
- (d) discuss the characteristics of the children available for adoption, show *New York State's Waiting Children* and explain its use at each such orientation session;
- (e) discuss the procedures for application and adoption study and the availability of adoption subsidies;
- (f) offer an adoption application form approved by the department at the conclusion of such session;
- (g) inform possible adoptive parents of the following additional information at the orientation session:
 - (1) that married persons can adopt only as a couple with each partner participating, and that a married person who is living separate and apart from his or her spouse pursuant to a legally recognizable separation agreement or decree of separation or who has been living separate and apart from his or her spouse for a period of three years or more prior to the commencement of the adoption proceeding may also adopt a child;
 - (2)
 - (i) that pursuant to section 424-a of the Social Services Law, an agency will inquire of the Office of Children and Family Services whether the applicant and any other person over the age of 18 who resides in the home of the applicant is the subject of an indicated child abuse or maltreatment report and that pursuant to Federal law, where the applicant or other person over the age of 18 who resides in the home of the applicant resided in another state at any time during the five years preceding the application for approval as an adoptive parent made in accordance with this Part, the agency will request child abuse and maltreatment information maintained by the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence; and
 - (ii) that pursuant to section 495 of the Social Services Law, an agency will inquire of the Justice Center for the Protection of People with Special Needs whether the applicant and any other person over the age of 18 who resides in the home of the applicant is listed on the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of People with Special Needs.
 - (3) that as part of the application process, each applicant to be an adoptive parent will be required to submit a sworn statement indicating whether such applicant, to the best of the applicant's knowledge, has ever been convicted of a crime in New York State or any other jurisdiction and that the applicant and any other person over the age of 18 who resides in the home of the applicant will be required to be fingerprinted for the purpose of a criminal history record check performed by the Division of Criminal Justice Services and the Federal Bureau of Investigation and subject to the criminal history record check requirements set forth in section 378-a(2) of the Social Services Law and section 421.27 of this Part;

(4) that if the application for approval is made to a voluntary authorized agency, as defined in section 371(10)(a) or (c) of the Social Services Law, the applicant and any other person over the age of 18 currently residing in the home of the applicant will be asked to sign a consent to the disclosure to the voluntary authorized agency of criminal history information provided by the Federal Bureau of Investigation to the Office of Children and Family Services and that the refusal to cooperate with the agency and consent to the release of such information is a basis, in and of itself, for the voluntary authorized agency to deny the application for approval as an adoptive parent; and

(5) that pursuant to section 372-e of the Social Services Law, an applicant may apply for a fair hearing if an application is not acted upon by the completion of an adoption study within six months or if an application is rejected;

(h) within five days of an orientation session, contact persons who have inquired about adoption, been invited to such session, but failed to attend, invite them to another orientation session or, if they are unable to attend a scheduled orientation session, offer an individual orientation interview;

(i) develop a record for each person inquiring about adoption which contains:

- (1) a dated record of the inquiry, whether received by mail, telephone or in person;
- (2) a dated copy of the invitation to an orientation session;
- (3) a dated copy of the written acknowledgment of the inquiry; and
- (4) a dated record of all further communication, whether by letter, telephone or in person; and

(j) retain such record, if no completed application is filed, for 12 months after the last communication.

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421.12 Application.

(a) Authorized agencies operating an adoption program shall use an application form approved by the department to elicit the following information from adoptive applicants:

- (1) name, address and other necessary identifying information;
- (2) age, race and religion of members of the household;
- (3) whether applicant is a certified or licensed foster parent; and
- (4) characteristics of child(ren) sought to be adopted.

(b) Authorized agencies shall develop a record for each adoptive applicant which shall include, but not necessarily be limited to:

- (1) record of inquiry maintained in accordance with section 421.11(i) of this Part;
- (2) the application, medical report and references;
- (3) summary of interviews with applicant and of visit to applicant's home;
- (4) summary of agency conference which clarifies the basis for each decision that affects the applicant's status with the agency; and
- (5) copies of all correspondence with the applicant.

(c) Authorized agencies shall register each adoptive applicant who expresses a willingness to adopt a handicapped or hard-to-place child with the adoptive parent registry as required in section 424.2 of this Title.

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421.13 Application acceptance.

(a) Authorized agencies operating an adoption program shall accept for adoption study, all persons who have completed applications on a priority basis, as follows:

(1) On or about April 1st of each year the department will determine the age, race, handicap and other significant characteristics of the largest proportion of waiting children. Applicants seeking children having these characteristics, foster parents seeking to adopt a child who has resided in their home 12 continuous months and Indians seeking to adopt Indian children shall receive first priority for adoption studies.

(2) Second priority shall be given other applicants seeking to adopt photo-listed children who do not have the characteristics of the largest proportion of waiting children as determined by the department, or children currently available for adoption in the care of the agency to which application was made for whom there is not a waiting list of approved families.

(3) Third priority shall be given all other applicants, *i.e.*, those expressing an interest in adopting children such as healthy young children who are not photo-listed, if such children are not immediately available for adoption in the care of the agency where the application was made.

(b) Authorized agencies shall acknowledge in writing, within 10 working days of receipt, each completed application. Each applicant shall be informed that his/her application will be acted upon as follows:

(1) acceptance of first priority applications for immediate study, including a date for first appointment to be not more than 30 days from receipt of completed application and the name and telephone number of an agency staff person he can contact during the interval;

(2) acceptance of second priority applications for action in accordance with paragraph (a)(2) of this section, giving an estimate of when a study may start and the name and telephone number of an agency staff person he can contact during the interval; and (3) remaining applications for action in accordance with paragraph (a)(3) of this section, and stating whether there is any likelihood of an adoption study being granted. (c) Third priority applicants shall be rejected on the basis of "no need" unless the agency is able to initiate the study promptly so that it will be able to complete it within six months of receipt of a completed application. Any such rejection shall be accompanied by:

(1) a statement of the fair hearing rights which are set forth in sections 22 and 372-e of the Social Services Law; and

(2) a statement that the applicant has the option of remaining on a waiting list with a description of the procedures for exercising this option.

(d) Authorized agencies may refer an adoption applicant to another agency prior to the initiation of the adoption study when:

(1) the applicant has expressed interest in a specific photo-listed child determined to be in the care of that agency; and

(2) the applicant has indicated willingness to be so referred.

(d) If such referral is not accepted by the applicant, completion of the adoption study shall not be delayed beyond the periods required under section 421.14 of this Part.

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421.14 Waiting lists.

(a) Authorized agencies operating an adoption program shall maintain separate lists of first, second and third priority applicants waiting for adoption study.

(b) Each such waiting list shall contain the name of each such applicant, the date the completed application was received by the agency and the characteristics of the child the applicant seeks to adopt. Authorized agencies shall:

(1) offer first priority applicants an adoption study to start within 30 days of receipt of a completed application and be completed within six months of receipt of the completed application;

(2) offer second priority applicants an adoption study to be completed within six months of receipt of completed application; and

(3) give priority to first priority applicants in the initiation of adoption studies, the assignment of staff, the scheduling of individual and group appointments, and of conferences to review studies and make decisions.

(c) Authorized agencies shall contact applicants on the third priority waiting list at least once a year, invite them to a meeting to discuss the characteristics of waiting children, and ascertain continued interest in remaining on the waiting list.

(d) Authorized agencies shall maintain separate waiting lists for each priority group of families whose studies have been completed and approved.

(e) Authorized agencies shall invite all approved families on waiting lists to an orientation meeting at least every six months at which the kinds of children waiting, the kinds of families given priority and these families' preferences shall be discussed.

(f) Authorized agencies shall permit families to change the information on their expression of interest at any time and adjust their priority group using the date of the change as the date of new application.

(g) Notwithstanding the standards set forth in subdivisions (a) and (b) of this section, the following standards apply when the Office of Children and Family Services, through the Interstate Compact on the Placement of Children, receives a request to conduct a home study for the approval of a person or persons in New York as adoptive parent(s) for the placement of a child or children from another state:

(1) Upon the receipt of such request, the Office of Children and Family Services will forthwith forward the request to the social services district in which the prospective adoptive parent(s) reside for the purpose of conducting a home study and approving the prospective adoptive parent(s) in accordance with the standards of this Part.

(2) The social services district must conduct and complete a home study of the prospective adoptive parent(s) in accordance with the standards set forth in sections 421.15 and 421.16 of this Part and as defined in paragraph (5) of this subdivision. The social services district may conduct the study directly or may use a voluntary authorized agency under contract with the social services district or a voluntary authorized agency under contract with the Office of Children and Family Services to conduct the home study. If the social services district uses a voluntary authorized agency under contract with the Office of Children and Family Services to conduct the home study, the costs of the home study will be charged back to the social services district in which the prospective adoptive parent(s) reside and such costs are subject to State reimbursement as an adoption service.

(3) The social services district or the voluntary authorized agency must complete the home study and simultaneously return such home study to the Office of Children and Family Services and to the State or local agency that submitted the request within 60 days of the receipt of the request by the Office of Children and Family Services. Provided, however, for requests made on or before September 30, 2008, if the social services district or voluntary authorized agency is not able to complete the home study within 60 days of the receipt of the request because of circumstances beyond its control, including, but not limited to, the failure to receive documentation of background checks or to receive medical forms and if the social services district or voluntary authorized agency requested such documentation at least 45 days before the end of the above referenced 60-day period, the social services district or voluntary authorized

agency will have 75 days from the date of the receipt of the request to complete and forward the home study as noted above.

(4) Nothing herein requires that the prospective adoptive parent(s) complete the education or training requirements of this Part for the completion of the home study. Nothing herein requires that the complete approval process otherwise required by this Part be concluded within the timeframes set forth in paragraph (3) of this subdivision.

(5) The term *home study* means an assessment of the safety and suitability of placing the child in the home of the prospective adoptive parent(s) based on an evaluation of a home environment conducted in accordance with applicable requirements of this Part to determine whether the proposed placement would meet the individual needs of the child, including the child's safety; permanency; health; well-being; and mental, emotional, and physical development.

(h) Where a social services district proposes to place a foster child or children with prospective adoptive parent(s) in another state, the social services district must treat a home study received from the other state, an Indian tribe or a private agency under contract with the other state as meeting the requirements imposed by New York for the completion of a home study before placing the child or children in the home, unless within 14 days of the receipt of the home study, the social services district determines, based on the content of the home study, that making a decision in reliance on the home study would be contrary to the welfare of the child or children.

(i)

(1) Where a social services district proposes to place a foster child with prospective adoptive parent(s) who reside in another social services district, the prospective adoptive parent(s) may apply to the social services district in which the prospective adoptive parent(s) reside for approval as adoptive parent(s) in accordance with this Part. The social services district in which the prospective adoptive parent(s) reside is responsible for processing the application and performing the home study in accordance with sections 421.15 and 421.16 of this Part. The social services district may conduct the home study directly or may use a voluntary authorized agency under contract with the Social Services district or a voluntary authorized agency under contract with the Office of Children and Family Services to conduct the home study. If the social services district uses a voluntary authorized agency under contract with the Office of Children and Family Services to conduct the home study, the costs of the home study will be charged back to the social services district in which the prospective adoptive parent(s) reside and such costs are subject to State reimbursement as an adoption service.

(2) The social services district in which the prospective adoptive parent(s) reside or voluntary authorized agency must complete the home study within 60 days of the receipt of the application for approval to be adoptive parent(s). Provided, however, for requests made on or before September 30, 2008, if the social services district or voluntary authorized agency is not able to complete the home study within 60 days of the receipt of the request because of circumstances beyond its control, including, but not limited to, the failure to receive documentation of background checks or to receive medical forms and if the social services district or voluntary authorized agency requested such documentation at least 45 days before the end of the above referenced 60-day period, the social services district or voluntary authorized agency will have 75

days from the date of the receipt of the request to complete and forward the home study as noted above.

(3) A social services district or a voluntary authorized agency may not refuse to provide an application or delay or deny a home study to a person seeking approval as an adoptive parent on the basis that the child such person is seeking to adopt is in the custody of another authorized agency.

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421.15 Adoption study process.

Authorized agencies operating an adoption program shall:

(a) Conduct an adoption study process in groups, individually, or in any combination thereof. Such adoption study shall include at least one visit to the applicant's home.

(b) In at least one session in any study process containing two or more group sessions, include the participation of parents who have adopted a child.

(c) Inform applicants at the first appointment or meeting that the following will be required prior to the conclusion of the adoption study:

(1) report from a physician about the health of each member of the household;

(2) references from at least three persons, only one of which may be related to the applicant(s) who can attest to the character, habits, reputation and personal qualifications of the applicant(s) and their suitability for caring for a child;

(3) if married, proof of marriage;

(4) if married and living separate and apart from their spouse:

(i) proof that the separation is based upon a legally recognizable separation agreement or decree of separation; or

(ii) an affidavit executed by the prospective adoptive parent attesting that he or she has been or will be living separate and apart from his or her spouse for a period of three years or more prior to the commencement of the adoption proceeding;

(5) if previously married, proof of dissolution of marriage by death or divorce;

(6) evidence of employment and salary, such as W-2 form or pay stub for each employed applicant;

(7)

(i) a response to an agency inquiry to the Statewide Central Register of Child Abuse and Maltreatment indicating whether the applicant(s) and/or any other person over the age of 18 who resides in the home of the applicant(s) are the subject(s) of an indicated child abuse or maltreatment report and, if the applicant(s) or any other person over the age of 18 who resides in the home of the applicant(s) resided in another state at any

time during the five years preceding the application for approval as adoptive parent(s) made in accordance with this Part, the response from the child abuse and maltreatment registry of the applicable child welfare agency in each such state of previous residence; and

(ii) a response to an agency inquiry to the Justice Center for the Protection of People with Special Needs whether the applicant(s) and/or any other person over the age of 18 who resides in the home of the applicant(s) are listed on the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of People with Special Needs.

(8) a response from the Office of Children and Family Services to the Federal and State criminal history record checks of the applicant and any other person over the age of 18 currently residing in the home of such applicant in accordance with section 421.27 of this Part. If a prospective adoptive parent is approved or if the approval of an approved adoptive parent is not revoked, notwithstanding that the agency is notified by the Office of Children and Family Services that the prospective or approved adoptive parent or any other person over the age of 18 who is currently residing in the home of the prospective or approved adoptive parent has a criminal history record, a record of the reasons why the prospective or approved adoptive parent was determined to be appropriate and acceptable to be approved as an adoptive parent; and

(9) a sworn statement from each applicant, indicating whether to the best of such applicant's knowledge, such applicant or any person over the age of 18 currently residing in the home has ever been convicted of a crime in New York State or any other jurisdiction. If an applicant discloses in the sworn statement furnished in accordance with this paragraph that he/she or any other person over the age of 18 currently residing in the home has been convicted of a crime, the agency must determine, in accordance with guidelines developed and disseminated by the Office of Children and Family Services to the extent consistent with section 421.27 of this Part, whether to approve the applicant to be an adoptive parent. If the agency determines it will approve the applicant, the agency must maintain a written record, as part of the application file or home study, of the reason(s) why the applicant was determined to be appropriate and acceptable to receive an adoptive placement.

(d) Determine compliance with all of the criteria set forth in section 421.16 of this Part, explore each applicant's ability to be an adoptive parent, and discuss the following topics:

- (1) characteristics and needs of children available for adoption;
- (2) the principles and requirements for adopting a child who is a member of a sibling group in accordance with sections 421.2(e) and 421.18(b) of this Part;
- (3) principles related to the development of children;
- (4) reasons a person seeks to become an adoptive parent;
- (5) the understanding of the adoptive parent role;
- (6) the person's concerns and questions about adoption;
- (7) the person's psychological readiness to assume responsibility for a child;
- (8) the attitudes that each person in the applicant's home has about adoption and their concept of an adopted child's role in the family;
- (9) the awareness of the impact that adoptive responsibilities have upon family life, relationships and current life style;

- (10) a person's self-assessment of his/her capacity to provide a child with a stable and meaningful relationship; and
 - (11) the role of the agency in supervising and supporting the adoptive placement.
- (e) When an adoption study has been completed and an authorized agency intends to approve an applicant, it shall:
- (1) prepare a written summary of the study findings and activities, including significant characteristics of their family members, the family interaction, the family's relationship to other persons and the community, the family's child rearing practices and experiences, and any other material needed to describe the family for adoption purposes, to be submitted to workers in the agency or other agencies responsible for making placement decisions about children;
 - (2) arrange for the applicant(s) to review this written summary with the exception of any comments by references which have sought confidentiality;
 - (3) encourage the applicant(s) to express their views on the substance of any significant aspect of the written summary;
 - (4) give applicant(s) the opportunity to enter their reaction as an addendum to the written summary;
 - (5) arrange for the applicant(s) and the caseworker to sign the summary after it has been reviewed and any addendum has been attached; and
 - (6) provide a dated written notice of approval to applicant.
- (f) Discontinue a study process and by mutual consent:
- (1) the applicant's record shall reflect the discussion leading to such mutual agreement to discontinue; and
 - (2) the applicant shall be informed in writing of the discontinuation of the adoption study.
- (g) Reject an applicant:
- (1) during a study if his lack of cooperation does not permit the study to be carried out; or
 - (2) if it is determined after a thorough adoption study based on casework principles that he is:
 - (i) physically incapable of caring for an adopted child;
 - (ii) emotionally incapable of caring for an adopted child; or
 - (iii) that his approval would not be in the best interests of children awaiting adoptions.
- (3) A decision to reject an applicant shall be made by at least two staff members in conference, one of whom shall be at a supervisory level.
 - (4) The record shall reflect the names of the participants in the decision and the reason for the decision.
 - (5) The agency must inform the applicant in writing that he has not been accepted, stating its reason(s) for rejection. If the rejection is based in whole or in part on the existence of an indicated report of child abuse or maltreatment, that fact and the reasons therefor must be included in the notice.
 - (6) The notification shall offer the applicant the opportunity to discuss this decision in person with the worker's supervisor.
 - (7) The notification must inform the applicant that he may apply for a hearing before the department pursuant to section 372-e of the Social Services Law regarding the rejection of the application and must state the procedure to be used for this purpose.

(8) If the reason for the rejection is based in whole or in part on the existence of an indicated report of child abuse or maltreatment, the agency must comply with the provisions of section 421.16(o) of this Part pertaining to notice of right to a hearing pursuant to section 424-a of the Social Services Law.

(h) Conclude an adoption study process in either discontinuation, rejection, or approval within four months of initiation:

(1) except where illness or geographic absence of the applicant makes him/her unavailable for a substantial part of said four-month period. In such a case, the record shall clearly show such unavailability and what efforts were made to contact the applicant; or

(2) provided, however, where an adoption study has been interrupted by unavailability of agency staff, the period of four months may be extended, but to not more than six months, if the applicant agrees to such extension in writing. If the applicant agrees to delay in order to avoid caseworker change, the record must show when this agreement was obtained. If the applicant does not accept such delay, the study must be concluded within the four months through the utilization of substitute staff or purchase of service.

(i) At the conclusion of the adoption study process, the registering agency shall update the adoptive parent registry required by section 424.3(a) of this Title, either by noting that an applicant has had the study approved or, in the case of a study resulting in either discontinuation or rejection, removing the applicant from the registry.

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TITLE 18. DEPARTMENT OF SOCIAL SERVICES

CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES

SUBCHAPTER C. SOCIAL SERVICES

ARTICLE 2. FAMILY AND CHILDREN'S SERVICES

PART 421. STANDARDS OF PRACTICE FOR ADOPTION SERVICES

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421.16 Adoption study criteria.

(a) An adoption study shall explore the following characteristics of applicants:

(1) capacity to give and receive affection;

(2) ability to provide for a child's physical and emotional needs;

(3) ability to accept the intrinsic worth of a child, to respect and share his past, to understand the meaning of separation he has experienced, and to have realistic expectations and goals;

(4) flexibility and ability to change;

(5) ability to cope with problems, stress and frustration;

(6) feelings about parenting an adopted child and the ability to make a commitment to a child placed in the home; and

(7) ability to use community resources to strengthen and enrich family functioning.

(b) Age.

Applicants accepted for adoption study shall be at least 18 years old. The agency shall not establish any other minimum or maximum age for study or acceptance.

(c) Health.

(1) An approved applicant shall be in such physical condition that it is reasonable to expect him/her to live to the child's majority and to have the energy and other abilities needed to fulfill the parental responsibilities.

(2) A report of a physical examination conducted not more than one year preceding the date of the adoption application and a written statement from a physician, physician assistant, nurse practitioner or other licensed and qualified health care practitioner as appropriate, regarding the family's general health, the absence of communicable disease, infection, or illness or any physical condition(s) which might affect the proper care of an adopted child, must be filed with the agency. This examination must include a tuberculosis screening and additional related tests as deemed necessary within the last 12 months; an additional report of chest X-rays is required where a physician determines that such X-rays are necessary to rule out the presence of current diseases. If the adoptive applicant is or has been a foster parent, and the agency which certified, licensed or approved the foster parent has a completed medical report on the foster family in its records, the foster family medical report will satisfy this requirement, if the medical report was completed within the past year.

(3) Upon a finding of physical condition(s) which are likely to have negative effects upon an applicant's ability to carry out the parental role, an adoption study may be discontinued with the agreement of the applicant. If the applicant does not agree about the likelihood of such negative effects, he shall be given the opportunity to seek another medical opinion, and file another medical report, before a final decision is made.

(4) The record of a study discontinued or resulting in rejection because of present or expected effects of a medical condition, must identify the condition found and effects found or expected.

(d) Marital status.

Agencies must not consider marital status in their acceptance or rejection of applicants. However, one married partner may not adopt without the other unless one partner is living separate and apart from his or her spouse pursuant to a legally recognizable separation agreement or decree of separation, or one partner has been or will be living separate and apart from his or her spouse for a period of three years or more prior to the commencement of the adoption proceeding. Agencies must not establish policies which place single or divorced applicants, applicants who are separated from their spouses pursuant to a legally recognizable separation agreement or decree of separation, applicants who have been or will be living separate and apart from their spouses for a period of three or more years, or widowed applicants, at a disadvantage.

(e) Fertility.

An adoptive applicant may not be rejected for adoption because of his, her or their fertility (capacity to have biological children). The significance of fertility and/or infertility as it relates to the desire to adopt shall always be explored in the adoption process, but applicants shall not be required to provide proof of infertility.

(f) Family composition.

(1) The agency may study family size as it relates to the ability of a family to care for another child and the quality of life which will be offered to an adoptive child. Policies shall not be established which require rejection of an applicant based on family composition without determining its effect on the ability to care for a child and the quality of life which will be offered.

(2) Presence or absence of children in applicant's home regardless of their age and sex shall not be a basis for rejecting applicants.

(3) Adoptive placement which will result in there being more than two infants under the age of two in the home at the same time shall be made only after a study specifically focusing on the family's ability to care successfully for such a number of infants.

(4) If any children in an approved home are there as foster children, placement of an adoptive child shall be delayed if it would result in a family composition which violates section 378.4 of the Social Services Law.

(5) An adoptive placement shall not be made where a child previously placed for adoption has not yet been adopted, except:

(i) where the child to be placed is a sibling of one already in the home;

(ii) where the delay in adoption is due primarily to court delays; or

(iii) where the child to be placed is unusually hard to place and other placement resources are not available.

(6) Any exceptions pursuant to paragraph (5) of this subdivision shall be fully documented in the records.

(g) Sex preference and matching.

(1) Single applicants shall not be rejected because they seek children of only the same sex (or only the opposite sex).

(2) Exploration of a preference to adopt a child of a particular gender, where found necessary and appropriate, shall be carried out openly with a clear explanation to the applicant of the basis for, and relevance of, the inquiry.

(h) Employment and education of parents.

Employment, education, or volunteer activities of applicants may not be a basis for rejection.

(i) Religion and race.

Race, ethnic group, and religion shall not be a basis for rejecting an adoption applicant.

(j) Income.

No applicant shall be rejected on the basis of low income, or because of receipt of income maintenance payments. The adoption study process shall evaluate an applicant's ability to budget his resources in such a way that a child placed with him can be reasonably assured of minimum standards of nutrition, health, shelter, clothing and other essentials. An applicant whose budgeting and money management skills appear deficient to assure such minimum standards shall be referred to any available resources which might help improve these skills.

(k) Employment and geographical stability.

Changes in employment and residences may be examined to determine the significance of such changes for the functioning and well-being of the family and any child to be placed in the home. Frequent changes in employment and residences shall not be a basis for rejection unless it is determined that such changes reflect an inability to provide for the well-being of any child to be placed in the home.

(l) Child care experience.

An adoption study shall inquire into an applicant's experience with children and offer him and/or her, if feasible, the opportunity to increase his/her experience, knowledge and skills in this area. However, no applicant should be rejected solely on the basis of a lack of such experience.

(m) Socialization and community support.

The adoption study process shall include inquiry into the applicant's ability to locate and take advantage of human and organizational resources to strengthen their own capacity as parents. There shall not be any requirement for particular levels of educational achievement or kinds of organizational involvement or community recognition.

(n) Inquiry of State Central Register of Child Abuse and Maltreatment.

An adoption study must include an inquiry of the department regarding whether the applicant is the subject of an indicated child abuse and maltreatment report on file with the State Central Register of Child Abuse and Maltreatment.

(1) If the applicant is the subject of such a report, the agency must determine on the basis of the information it has available and in accordance with guidelines developed and disseminated by the department whether to approve the application, except that any agency operated by a local social services district which had guidelines for the review of persons who are the subjects of indicated reports of child abuse or maltreatment in use prior to January 1, 1986 may continue to use such agency guidelines in making the required determination.

(2) If the application is approved, the agency must indicate in writing in the adoption study record the specific reason(s) why the person who is the subject of an indicated report was determined to be appropriate to receive an adoption placement.

(3) If the agency rejects the applicant, giving the indicated report as a reason, the applicant must be informed in writing of the reasons for such decision and that:

(i) he/she has a right to a hearing under section 424-a of the Social Services Law, regarding the record maintained in the State Central Register of Child Abuse and Maltreatment;

(ii) a request for such a hearing must be made within 90 days of the receipt of the written notice of rejection which indicates that the rejection is based in whole or in part on the existence of the indicated report; and

(iii) the sole issue at any such hearing will be whether the applicant has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

(4) If in a hearing under section 424-a of the Social Services Law the department fails to show by a preponderance of the evidence that the applicant committed the act or acts upon which the indicated report is based, the department will notify the agency which made the inquiry that, pursuant to the hearing decision, any decision to deny the applicant based on the indicated report should be reconsidered, upon receiving such notification from the department, the agency should reopen the adoption study and review its decision without considering the indicated report.

(5) Notwithstanding any other provision of this Part, the requirements of this section relating to an inquiry to the Statewide Central Register of Child Abuse and Maltreatment apply to a person applying to be an approved adoptive parent to an authorized agency as defined by section 371(10)(a), (b) or (c) of the Social Services Law or an agency

approved by the Office of Children and Family Services to place out children for the purpose of adoption in accordance with article 13 of the Not-for-Profit Corporation Law.

(o) Inquiry of Out-of-State Child Abuse and Maltreatment Registry.

(1) This subdivision applies where an applicant or other person over the age of 18 who resides in the home of the applicant resided in another state at any time during the five years preceding the application for approval as an adoptive parent made in accordance with this Part.

(2) If the applicant or other person who resides in the home of the applicant has a history of child abuse or maltreatment in another state, the agency must determine on the basis of the information provided by the applicable child welfare agency in the other state and by the applicant and the guidelines developed by the Office of Children and Family Services, as referenced in subdivision (o) of this section, whether to approve or deny the application.

(3) If the application is approved, the agency must indicate in the adoption study record the specific reason(s) why the application was approved where an applicant or other person who resides in the home of the applicant has a history of child abuse or maltreatment.

(4) The agency must safeguard the confidentiality of the information received from the applicable child welfare agency in the other state to prevent unauthorized disclosure and such agency is prohibited from using such information for any purpose other than conducting background checks pursuant to this Part.

(p) Additional factors.

(1) Current abuse of alcohol or other drugs requires the rejection of an application. The record must clearly show how the finding of such abuse was made.

(2) An applicant may not be rejected for past drug or alcohol abuse, or past psychiatric illness or treatment, unless the record shows how these factors would contribute to the applicant's inability to care for an adopted child.

(q) Inquiry of Vulnerable Persons' Central Register.

An adoption study must include inquiry of the Justice Center for the Protection of People with Special Needs regarding whether the applicant or other person over the age of 18 who resides in the home of the applicant is listed on the Vulnerable Person's Central Register.

(1) If the applicant or other person over the age of 18 who resides in the home of the applicant is listed on the Vulnerable Persons' Central Register, the agency must determine on the basis of the information it has available and in accordance with guidelines developed and disseminated by the Office of Children and Family Services whether to approve the application.

(2) If the application is approved, the agency must indicate in writing in the adoption study record the specific reason(s) why the person who was listed in the above referenced register was determined to be appropriate to receive an adoption placement.

(r) Inquiry of Vulnerable Persons' Central Register.

An adoption study must include inquiry of the Justice Center for the Protection of People with Special Needs regarding whether the applicant or other person over the age of 18 who resides in the home of the applicant is listed on the Vulnerable Persons' Central Register.

(1) If the applicant or other person over the age of 18 who resides in the home of the applicant is listed on the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of People with Special Needs, the agency must determine on the basis of the information it has available and in accordance with guidelines developed and disseminated by the Office of Children and Family Services whether to approve the application.

(2) If the application is approved, the agency must indicate in writing in the adoption study record the specific reason(s) why the person who was listed in the above referenced register was determined to be appropriate to receive an adoption placement.

RESEARCH REFERENCES AND PRACTICE AIDS:

18 C-W2d, Adoption Proceedings §§ 111:26, 111:29, 111:35.

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421.17 Finding a child.

(a) Authorized agencies shall:

(1) have available at least one current set of *New York State's Waiting Children* in every facility where adoptive inquirers or applicants are served;

(2) keep such books up-to-date;

(3) show these books to all adoption inquirers and applicants at orientation meetings and subsequent contacts; and

(4) make these books available to inquirers and applicants at all times during regular business hours.

(b) Authorized agencies shall establish written procedures for the use of *New York State's Waiting Children*. Such procedures shall set forth agency policies on:

(1) whether the applicant or agency staff will inquire of the adoption service about photo-listed children;

(2) under which circumstances the applicant will be encouraged to inquire of the agency caring for a photo-listed child about that child's continued availability; and

(3) whether the responsibility for continued worker/family contact about the availability of photo-listed children, the exchange of information between agencies, and placement planning, shall be the worker's or the family's.

(c) Authorized agencies operating an adoption program shall inform applicants of the procedure for use of *New York State's Waiting Children* by:

(1) giving a copy of the procedure to applicants at the first adoption study meeting or interview;

(2) explaining the procedure during the study process; and

(3) including a copy of the written procedure with the letter of approval for adoption.
(d) The procedure required pursuant to subdivision (b) of this section shall contain time limits of not more than 10 days for each communication step to be carried out by the agency.

(e) Receipt of a form SDSS 2705, *New York State Adoption Service Report of Inquiry Received*, by an authorized agency for a child in their care shall initiate a process of exchanging summaries describing the child identified on the form and the adoption study of the approved adoptive applicant between the receiving agency and the agency making the inquiry.

(f) Authorized agencies receiving a form SDSS 2705, *New York State Adoption Service Report of Inquiry Received*, for a child in their care shall respond in writing to the agency making the inquiry within 10 days of receipt of the form by either sending a summary describing the child identified on the form to the inquiring agency or by responding that a summary describing the child is not sent because:

- (1) the child has been placed;
- (2) the child's placement is currently being planned;
- (3) a number of summaries are currently under consideration for this child; or
- (4) another reason why this family will not be considered for this child.

(g) Authorized agencies receiving a summary of an adoption study of an approved adoption applicant from another New York authorized agency shall respond in writing to the agency which sent the summary within 10 days, unless a response to the agency for the same applicant has been made pursuant to subdivision (f) of this section. Such response shall include a summary of the child or a response that a summary of the child has not been sent because:

- (1) the child has been placed;
- (2) the child's placement is currently being planned;
- (3) a number of summaries are currently under consideration for this child; or
- (4) another reason why this family will not be considered for this child.

(h) The authorized agency must inform any person who is expressing an interest in the adoption of a particular child whether there is a surrender agreement in place relating to such child that provides for the placement of the child with a designated person or persons and/or contains a communication or contact agreement, as set forth in section 383-c or 384 of the Social Services Law.

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421.18 Special provisions for adoptive placement.

Each authorized agency shall:

(a) Prior to placement of a child for adoption, inform prospective adoptive parents of the procedures necessary for finalizing an adoption in accordance with section 421.19(i)(5) of this Part.

(b)

(1) At the time prospective adoptive parents indicate a desire to adopt a particular child, inform such parents if the child has minor siblings or half-siblings, and, if so, whether the minor siblings or half-siblings are free for adoption. Such parents must be asked if they would also be willing to adopt the child's minor siblings or half-siblings who are free for adoption.

(2) Discuss with the adoptive parents their willingness to facilitate contact between the adopted child and any siblings or half-siblings of such child, and inform the adoptive parents of the availability of services, if any, to assist in establishing and maintaining sibling contact.

(c) Make an effort to place each child in a home as similar to and compatible with his or her religious background as possible with particular recognition that section 373(3) of the Social Services Law requires a court, when practicable, to give custody through adoption only to persons of the same religious faith as that of the child.

(d) Make placement decisions on the basis of the best interests of the child, including but not limited to:

(1) consideration of the appropriateness of placement in terms of the age of the child and of the adoptive parent(s);

(2) consideration of the physical and emotional needs of the child in relation to the characteristics, capacities, strengths and weaknesses of the adoptive parent(s). When making placement decisions, an authorized agency may consider the cultural, ethnic or racial background of the child and the capacity of the adoptive parent to meet the needs of the child with such a background as one of a number of factors used to determine best interests. Race, color or national origin of the child or the adoptive parent may be considered only where it can be demonstrated to relate to the specific needs of an individual child; and

(3) the requirement of authorized agencies to place minor siblings or half-siblings together in accordance with section 421.2(e) of this Part, unless the social services district, or the voluntary authorized agency with the guardianship and custody, has determined such placement to be detrimental to the best interests of one or more of the children. Such determination must establish that the placement would be contrary to the health, safety or welfare of one or more of the children. The determination must be made after consultation with, or an evaluation by, other professional staff, such as a licensed psychologist, psychiatrist, other physician, or certified social worker. Factors to be considered in making a determination of whether siblings or half-siblings may be placed separately must include, but are not limited to:

(i) the age differences among the siblings;

(ii) the health and developmental differences among the siblings;

(iii) the emotional relationship of the siblings to each other;

(iv) the individual service needs of the siblings; and

(v) the attachment of the individual siblings to separate families/locations.

The factors used by the social services district to determine whether siblings or half-siblings are to be placed separately must be documented in the children's uniform case records in accordance with section 428.6 of this Title. In the case of a child in the guardianship and custody of a voluntary authorized agency, the factors used to determine whether the child and the child's siblings or half-siblings are to be placed separately must be documented in the children's case records.

(e) Prior to the initial visit, ensure that the potential adoptive parent(s) have the opportunity to discuss and be fully informed about the child and that information specified in subdivision (b) of this section is provided.

(f) Arrange the initial visit of the child with the prospective adoptive parent(s) at a time and place convenient for all.

(g) Insure that placement occurs when child and parents are ready.

(h) At the time a child is placed in a prospective adoptive home, notify the prospective adoptive parent(s) in writing of his or her right to a fair hearing when a social services official fails to provide adoption services or assistance on behalf of a child freed for adoption when such services or assistance are authorized to be provided pursuant to section 372-b of the Social Services Law or the State Consolidated Services Plan.

(i) Arrange for contact between the adoptive parents and the caseworker within five working days after placement.

(j) Offer a personal interview to a family who has refused a child in order to identify their reasons for refusal and to clarify their adoption plans.

(k) At the time of placement require the adoptive parents and a duly appointed agency representative to sign an adoptive placement agreement that shall contain a statement of rights and responsibilities of the parents and the agency.

(l) At the time of placement, enter the following information about the placement in a bound book in accordance with subdivision 5 of section 384 of the Social Services Law:

(1) the date of placement;

(2) the date of the placement agreement;

(3) the name and address of the adoptive parents; and

(4) the first name of the child.

(m) To the extent available, provide to prospective adoptive parent(s) the psychological and medical histories, as described in section 373-a of the Social Services Law, of a child legally freed for adoption as well as that of his or her biological parents. In the case of finalized adoptions, such information shall be provided, upon request, to the child's adoptive parents. In all cases, information identifying biological parents shall be eliminated from all such psychological and medical histories. Agencies shall provide assistance to prospective adoptive parent(s) and adoptive parent(s) to understand the psychological and medical reports and the implications of such reports for the child's health.

(n)

(1) Where the person whose application to become an adoptive parent has been approved, but whose request to adopt a particular child who is eligible for adoption has been denied or not acted upon within 60 days of the request, and where such person is a foster parent seeking to adopt a child in his or her care or where a person seeking to adopt a child who is related within the second degree to the applicant or where the denial or delay is based in whole or in part upon the location of such person outside of

the social services district or State of the authorized agency with custody of the particular child, inform such person that he or she has a right to a hearing to review such denial or failure to act if the request is made within 60 days of the denial or failure to act. Such hearing shall be conducted in accordance with section 372-e(4) of the Social Services Law.

(2) For purposes of this subdivision, a child who is related within the second degree to the applicant shall be the applicant's grandchild, nephew, niece, sibling, half-brother or half-sister.

(o) Where a person has been approved as the adoptive parent for a child in residential care, comply with the requirements of section 421.19(i) of this Part.

RESEARCH REFERENCES AND PRACTICE AIDS:

18 C-W2d § 111:34.

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421.19 Foster parents.

(a) Authorized agencies must:

(1) inform foster parents that a child in their care who is free or to be freed for adoption and inform foster parents who have not completed an application to become adoptive parents of the procedure for applying to adopt the child;

(2) inform foster parents if the child in their care who is free for adoption has minor siblings or half-siblings who are also free for adoption;

(3) inform foster parents that children in a sibling group must be placed together in a prospective adoptive home unless a documented assessment in accordance with section 421.18(d) of this Part determines that such placement would be contrary to the health, safety or welfare of one or more of the children;

(4) inform foster parents that if they apply to a voluntary authorized agency, as defined in section 371(10) of the Social Services Law, for approval as adoptive parents, the foster parents and any other person over the age of 18 currently residing in the home of the foster parents will be asked to sign a consent to the disclosure to the voluntary authorized agency of criminal history record information provided by the Federal Bureau of Investigation to the Office of Children and Family Services and that the refusal to cooperate with the agency and consent to the release of such information is a basis, in and of itself, to deny the application for approval as an adoptive parent; and

- (5) conduct group and/or individual meetings with foster parents to review legal difference between foster care and adoption and the availability of adoption subsidies.
- (b) Authorized agencies shall offer an adoption application to foster parents or refer them to an authorized agency which operates an adoption program when:
- (1) a child in their care for 12 continuous months is surrendered or parental rights are terminated; or
 - (2) a plan to free a child is made for a child who has been in their home for 12 continuous months.
- (c) Authorized agencies operating an adoption program shall accept an adoption application from a foster parent seeking to adopt a child who has been in his home for less than 12 continuous months. Such applicants shall be studied according to the priority system specified in subdivision (a) of section 421.13 of this Part.
- (d) Authorized agencies operating an adoption program shall acknowledge in writing a completed application from a certified, licensed or approved foster parent within 10 days of receipt.
- (e) Authorized agencies operating an adoption program must assess and prepare foster parent adoptive applicants as rapidly as possible, as follows:
- (1) review the information about the family:
 - (i) obtained in the original foster home study;
 - (ii) obtained in annual recertification; and
 - (iii) available to agency caseworkers supervising the home and the child at issue;
 - (2) identify those items of information needed in an adoption study which are lacking or insufficiently current;
 - (3) identify those areas of family functioning which may need further exploration or strengthening; and
 - (4) conduct an adoption study process which:
 - (i) does not repeat information gathering activities with regard to information already available;
 - (ii) obtains additional or updated information as rapidly as possible, including obtaining the results of any criminal history record check completed on the foster parent and each person over the age of 18 currently residing in the home of the foster parent in accordance with section 443.8 of this Title and conducting a State criminal history record check through the Division of Criminal Justice Services on any person over the age of 18 in the home who has not previously had such a State criminal history check and conducting a national criminal history record check through the Federal Bureau of Investigation on the foster parent and each person over the age of 18 currently residing in the home of the foster parent;
 - (iii) focuses on areas identified as needing further exploration or strengthening;
 - (iv) clarifies for the applicant the difference between foster care and adoption and the issues involved in obtaining an adoption subsidy;
 - (v) includes inquiring of the Office of Children and Family Services whether an applicant or other person over the age of 18 who resides in the home of the applicant is the subject of an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment, in accordance with the provisions of section 421.16(o) of this Part and, if the applicant or other person over the age of 18 who resides in the home of the applicant resided in another state at any time during the

five years preceding the application made pursuant to this section, includes inquiring of the applicable child welfare agency in each such state for child abuse and maltreatment information maintained by that state's child abuse and maltreatment registry, in accordance with the provisions of section 421.16(p) of this Part; and

(vi) includes inquiring of the Justice Center for the Protection of People with Special Needs whether an applicant or other person over the age of 18 who resides in the home of the applicant is listed on the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of People with Special Needs, in accordance with section 421.16(r) of this Part.

(f) Authorized agencies operating an adoption program shall complete the adoption study process of foster parents whose studies have been initiated in accordance with the priority scheme specified in subdivision (a) of section 421.13 of this Part, in approval, discontinuation, or rejection within the following time limits:

(1) within two months of receipt of the completed application for a child who is legally free; or

(2) within four months of receipt of the completed application where the child is not yet legally free, but in no event more than two months after the date the child becomes legally free.

(g) Authorized agencies must:

(1) reject an applicant foster parent during or at the conclusion of the study only in accordance with sections 421.15(g) and 421.27 of this Part;

(2) in its letter of rejection indicate that the child is available for adoption by other persons and will immediately be photo-listed;

(3) if the removal of the child from the foster home is not initiated within three months of rejection, document in the child's record the specific reasons why the family continues to be acceptable as a foster family for this child although not acceptable as an adoptive family for the same child; and

(4) document in the foster family record, if recertification or reapproval is granted, why the home continues to be suitable for foster care and not for adoption.

(h) Authorized agencies:

(1) shall discontinue the study of a foster parent applicant only by mutual consent as specified in section 421.15(f) of this Part; and

(2) shall state in the letter indicating discontinuation that the child is available for adoption by other persons and will immediately be photo-listed.

(i) Authorized agencies approving a foster parent for adoption of the child in their home shall:

(1) give approval in writing;

(2) if the child is legally free at the time of approval:

(i) accompany the approval letter with an adoption agreement;

(ii) notify the approved adoptive parent in writing of his or her fair hearing rights under section 421.18(h) of this Part;

(iii) inform the parent that if the adoption agreement is not signed and returned within one month of the date of the approval letter their application shall be considered withdrawn and the child will be photo-listed;

(iv) inform the parents in writing that if they fail to petition the court to adopt the child within three months of the date of the approval letter their application will be considered

to be withdrawn, their agreement abrogated and another home will be sought for the child by photo-listing and other means; and

(v) inform the parents in the approval letter of the procedures necessary to adopt the child in accordance with paragraph (5) of this subdivision;

(3) if the child is not legally free at the time of approval:

(i) inform the foster parents of that fact in the approval letter;

(ii) provide for the agency's attorney to serve written notice promptly on foster parents who have been approved by the agency to adopt a child in their care:

(a) of the entry of a court order approving the surrender of the child or committing the custody and guardianship of the child to the authorized agency; and

(b) that an adoption proceeding may be commenced upon the entry of the order;

(iii) send with the written notice required by subparagraph (ii) of this paragraph:

(a) an adoption agreement;

(b) a statement that:

(1) the adoption agreement must be signed and returned within one month of the date of the written notice that the child is free for adoption; and

(2) if the adoption agreement is not signed and returned within that time, the adoption application will be considered to be withdrawn and another home will be sought for the child by photo-listing and other means;

(c) where appropriate, an adoption subsidy agreement;

(d) a written notice informing the foster parents of the right of an adoptive parent to a fair hearing under section 421.18(n) of this Part where the adoptive parent's request to adopt a child in his or her care has been denied or has not been acted upon within 60 days of the request; and

(e) a statement that if the petition to the court to adopt the child is not filed within three months of the date of the notification letter, the adoption application will be considered withdrawn, the adoption agreement abrogated and another home will be sought for the child by photo-listing and other means;

(4) document compliance with section 421.24(b) of this Part;

(5) inform the foster parents in writing of the following procedures necessary to adopt the child:

(i) An adoption petition must be filed by the parents or their attorney as soon as possible but in no event later than three months after receiving notice that the child is legally free for adoption, subject to the provisions of this subparagraph. Where the child was freed through an extra-judicial surrender, the petition may not be filed until at least 45 days after the surrender was executed. Where the child was freed through an order of a court committing custody and guardianship of the child to the authorized agency under article six of the Family Court Act, the petition may not be filed until at least 30 days after service of the order of commitment on the parent. If the order committing custody and guardianship is appealed, the petition may not be filed until after the appeal is finally resolved and then only if the order of commitment remains in place. The petition must be filed in a court of competent jurisdiction and must comply with the requirements of section 112 of the Domestic Relations Law.

(ii) The adoption petition must be accompanied by an affidavit of readiness from the petitioners' attorney attesting that the petitioners have prepared the petition for the adoption of the child and have collected the documentation required in section 112 of

the Domestic Relations Law. The petition and required documentation must be complete before the court may consider the petition to be filed. After the petition is filed, the court must review the petition and documents.

(iii) The authorized agency must present to the court a schedule which has been verified by an official of the agency providing information on the child and the child's birth parents as required by section 112(3) of the Domestic Relations Law. This verified schedule must be annexed to the petition.

(iv) The adoption petition must be verified, as required by section 112(5) of the Domestic Relations Law.

(v) If the child being adopted is less than 18 years of age, the child must have resided with the adoptive parents for at least three months. This requirement is met when foster parents are adopting a child who has been in their home for a period in excess of three months.

(vi) The court must inquire of the department and the department must inform the court whether the adoptive parents are the subjects of an indicated report of child abuse or maltreatment maintained in the Statewide Central Register of Child Abuse and Maltreatment, pursuant to section 112(7) of the Domestic Relations Law.

(vii) The court must cause an investigation to be made by a disinterested person or authorized agency to examine the allegations set forth in the petition and to ascertain such other facts about the adoptive child and adoptive parents as will enable the court to determine the propriety of approving the adoption, pursuant to section 112(7) of the Domestic Relations Law. A written report of the investigation must be made before the order of adoption may be made.

(viii) Upon the filing of the documents required by section 112(2), (2-a), (3), (5) and (7) of the Domestic Relations Law and the court rules, the court will calendar the adoption proceeding for review to determine if there is adequate basis to approve the adoption.

(a) If the court finds that there is adequate basis to approve the adoption, the court will calendar the appearance of the adoptive parents and the child before the court for approval of the adoption.

(b) If the court finds there is not adequate basis for approval of the adoption, the proceeding will be adjourned and the court may require further hearings, submissions or appearances as may be required to make a decision on the case.

(ix) When the court is satisfied that adoption is in the best interests of the child, the court will issue an order of adoption, pursuant to section 114 of the Domestic Relations Law.

(x) None of the papers in the proceeding may state the surname of the child in the title and no document to be signed by the adoptive parents may contain the surname of the child, pursuant to section 112(4) of the Domestic Relations Law.

(j) Removal of a child from foster family care must comply with section 443.5 of this Title.

18 CRR-NY 421.19

Current through April 30, 2015

18 CRR-NY 421.20NY-CRR

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PART 421. STANDARDS OF PRACTICE FOR ADOPTION SERVICES

18 CRR-NY 421.20

18 CRR-NY 421.20

421.20 Records and reports.

(a) Adoption service shall include documentation of all services provided in a case record, including but not limited to reports of inquiries, applications, and all subsequent contacts.

(b) When a social services district provides adoption services directly, it shall maintain records and submit reports as required by the department, and such records shall be in whatever form required by the department. Such records shall be available at all reasonable times for inspection by representatives of the department, and photocopies of such records shall be forwarded to the department upon request.

18 CRR-NY 421.20

Current through April 30, 2015

18 CRR-NY 421.21NY-CRR

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18 CRR-NY 421.21

18 CRR-NY 421.21

421.21 Reimbursement for adoption expenditures.

Expenditures made by a social services district for adoption services and their administration will be subject to reimbursement in accordance with the provisions of section 153-i of the Social Services Law:

(a) the amount of Federal funds, if any, properly received or to be received on account of such expenditures; and

(b) subject to the availability of State funds, 75 percent of its expenditures for adoption services and their administration, after first deducting therefrom any Federal funds received or to be received on account thereof, and any expenditures defrayed by private contributions.

18 CRR-NY 421.21

Current through April 30, 2015

18 CRR-NY 421.22NY-CRR

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18 CRR-NY 421.22

18 CRR-NY 421.22

421.22 Apportioning reimbursement.

Where more than one authorized agency provides services needed to achieve the adoptive placement of a registered child, the cost thereof shall be apportioned as follows:

- (a) Each local social services district shall bear the cost of services provided directly, whether to a child or family, and whether the services result in an adoption or not; and
- (b) Adoption services provided by voluntary authorized agencies shall be charged to the district bearing financial responsibility for the child who is adopted as follows:
 - (1) the cost of evaluating the child's placement needs and preparing the child for adoption shall be charged to the district bearing financial responsibility for that child;
 - (2) the cost of recruiting, evaluating and training prospective adoptive parents shall be charged to the district bearing financial responsibility for the child who is adopted by these parents;
 - (3) the cost of placement planning, supervision and post-adoption services shall be charged to the district bearing financial responsibility for the child who is adopted; and
 - (4) the cost of services which do not result in adoption, including recruitment, home study and training services to prospective parents, as well as of placement planning and supervision, shall be charged to the districts in the same proportion as the cost of such services which do result in adoption.

18 CRR-NY 421.22

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18 CRR-NY 421.23NY-CRR

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18 CRR-NY 421.23

18 CRR-NY 421.23

421.23 Claiming.

Claims should be processed in the normal manner.

18 CRR-NY 421.23

Current through April 30, 2015

18 CRR-NY 421.24NY-CRR

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18 CRR-NY 421.24

18 CRR-NY 421.24

421.24 Adoption with subsidy.

(a) Definitions.

(1) *Child* means a person under the age of 21 years whose guardianship and custody have been committed to a social services official or a voluntary authorized agency, or whose guardianship and custody have been committed to a certified or approved foster parent pursuant to a court order prior to such person's 18th birthday, except as provided in section 384-b(3)(g) of the Social Services Law and section 631 of the Family Court Act, or a person under the age of 21 whose care and custody have been transferred prior to such person's 18th birthday to a social services official or a voluntary authorized agency pursuant to section 1055 of the Family Court Act or section 384-a of the Social Services Law, whose parents are deceased or where one parent is deceased and the other parent is not a person entitled to notice of an adoption pursuant to sections 111 and 111-a of the Domestic Relations Law, and where such official or agency consents to the adoption of such person in accordance with section 113 of the Domestic Relations Law.

(2) *Handicapped child* means a child who possesses a specific physical, mental or emotional condition or disability of such severity or kind which, in the opinion of the department, would constitute a significant obstacle to the child's adoption. Such conditions include, but are not limited to:

(i) any medical or dental condition which will require repeated or frequent hospitalization, treatment or follow-up care;

(ii) any physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for remunerative occupation, as described in sections 1002 and 4001 of the Education Law; or makes or may be expected to make a child handicapped, as described in section 2581 of the Public Health Law;

(iii) any substantial disfigurement, such as the loss or deformation of facial features, torso or extremities; or

(iv) a diagnosed personality or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his peers and/or authority figures, including mental retardation or developmental disability.

(3) *Hard-to-place child* means a child, other than a handicapped child:

(i) who has not been placed for adoption within six months from the date his or her guardianship and custody were committed to the social services official or the voluntary authorized agency; or

(ii) who has not been placed for adoption within six months from the date a previous adoption placement terminated and the child was returned to the care of the social services official or the voluntary authorized agency; or

(iii) who meets any of the conditions listed in clauses (a) through (f) of this subparagraph, which the Office of Children and Family Services has identified as constituting a significant obstacle to a child's adoption, notwithstanding that the child has been in the guardianship and custody of the social services official or the voluntary authorized agency for less than six months:

(a) the child is one of a group of two siblings (including half-siblings) who are free for adoption and it is considered necessary that the group be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; and

(1) at least one of the children is five years old or older; or

(2) at least one of the children is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or

(3) at least one of the children is otherwise eligible for subsidy in accordance with the provisions of this subdivision;

(b) the child is the sibling or half-sibling of a child already adopted and it is considered necessary that such children be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; and

(1) the child to be adopted is five years old or older; or

(2) the child is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or

(3) the sibling or half-sibling already adopted is eligible for subsidy or would have been eligible for subsidy if application had been made at the time of or prior to the adoption;

(c) the child is one of a group of three or more siblings (including half-siblings) who are free for adoption and it is considered necessary that the group be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; or

(d) the child is eight years old or older and is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or

(e) the child is 10 years old or older; or

(f) the child is hard to place with parent(s) other than his/her present foster parent(s) because he/she has been in care with the same foster parent(s) for 12 months or more prior to the signing of the adoption placement agreement by such foster parent(s) and has developed a strong attachment to his/her foster parent(s) while in such care and separation from the foster parent(s) would adversely affect the child's development.

(4) *Board rate* means the board rate paid to the boarding family including any rate increases in room and board rates and clothing replacement allowances as a result of, but not limited to cost of living adjustments and a change in the age of the child. Such rate includes board, clothing replacement allowance, child's allowance, and any other routine cash payments made to the boarding family for this child, or that would have

been made for this child if boarded out, which rate was established pursuant to section 398-a of the Social Services Law as implemented by Part 427 of this Title. In the case of a minor parent who is adopted, such rate also includes amounts as may be necessary to cover the costs associated with the care and maintenance of the child or children of such minor parent who remain(s) with the minor parent following adoption.

(5) *Applicable board rate* means:

(i) in the case of a child in the guardianship and custody of a social services official and placed out for adoption, the board rate of the social services district placing the child for adoption or of the social services district in which the adoptive parent(s) reside(s), at the discretion of the placing district; or

(ii) in the case of a child in the guardianship and custody of a social services official and adopted by parent(s) residing outside the State, the board rate governing in the social services district which had custody of the child; or

(iii) in the case of a child in the guardianship and custody of a voluntary authorized agency and placed out for adoption with adoptive parent(s) residing in the same district, the board rate of such district; or

(iv) in the case of a child in the guardianship and custody of a voluntary authorized agency placed out for adoption with adoptive parent(s) residing in another district, the board rate of such other district; or

(v) in the case of a child in the guardianship and custody of a voluntary authorized agency and adopted by parent(s) residing outside the State, the board rate of the district where the voluntary authorized agency has its principal office or business.

(6) *Maximum rate of reimbursement for applicable board rates* means the maximum rate of payment for care provided in a foster boarding home, as determined by the department pursuant to section 398-a of the Social Services Law, as implemented by Part 427 of this Title and the annual appropriation set forth in the State's aid to localities budget. State reimbursement may not exceed the maximum rates set forth below. Social services districts may set an amount less than the maximum rate. For the period July 1, 1991 through June 30, 1992, the maximum rate of reimbursement for applicable board rates are as follows:

(i) Maximum rates for board and care:

(a) For adoptions finalized prior to July 1, 1987:

Region	Age 0-5	Age 6-11	Age 12 and over
New York City and Nassau, Suffolk, Rockland and Westchester Counties	\$310	\$365	\$423

All other counties	284	340	395
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For children who require special foster care services

—up to \$681 per month

For children who require exceptional foster care services

—up to \$1,033 per month

(b) For adoptions finalized on or after July 1, 1987:

<i>Region</i>	<i>Age 0-5</i>	<i>Age 6-11</i>	<i>Age 12 and over</i>
New York City and Nassau, Suffolk, Rockland and Westchester Counties	\$386	\$455	\$526
All other counties	353	424	490

For children who require special foster care services

—up to \$845 per month

For children who require exceptional foster care services

—up to \$1,281 per month

(ii) The maximum rates for clothing replacement:

<i>Age</i>	<i>Yearly rate for replacement</i>
0-5	\$292
6-11	409
12-15	634

16 and over	775
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(iii) The maximum rates for diaper allowance:

Age	Monthly allowance
0-3	\$45

(7) *Voluntary authorized agency* means an authorized agency as defined in paragraphs (a) and (c) of section 371(10) of the Social Services Law.

(8) *State income standard* means the most recent Federal income official poverty line (as defined and annually revised by the Federal Office of Management and Budget) updated by the department for a family size of four and adjusted by the department for family size.

(9) *Applicable State income standard* means 275 percent of the State income standard.

(10) *Social services official* means a county commissioner of social services, a city commissioner of social services, or an Indian tribe with which the department has entered into an agreement to provide adoption services.

(11) *Appropriate social services official* means the social services official with guardianship and custody of the child, or for a child in the guardianship and custody of a voluntary authorized agency and placed out for adoption, the social services official of the district where the prospective adoptive parent(s) resides.

(b) Application for adoption subsidy.

(1) The social services official or voluntary authorized agency responsible for an adoption placement must provide information to foster parent(s) and prospective adoptive parent(s) regarding the adoption subsidy program, including an explanation of the criteria used to determine whether a particular child is hard-to-place or handicapped, at the time a child is identified to a person or persons interested in adopting that child or at the time the foster parent(s) with whom the child is residing are told that a proceeding to free the child for adoption has been commenced.

(i) Prior to placing a child in an adoptive home, or approving foster parent(s) as adoptive parent(s) for a child, the social services official or authorized agency must document whether the person(s) with whom the child will be placed or the foster parent(s) with whom the child is living will adopt the child with or without an adoption subsidy.

(ii) The official or agency must also document its assessment as to whether or not the child may be currently eligible for an adoption subsidy. If a child does not appear to be eligible for the adoption subsidy and the prospective adoptive parent(s) or the foster parent(s) indicate an inability or unwillingness to adopt the child without subsidy, the social services official or voluntary authorized agency must seek an alternative adoptive placement for the child. Efforts to locate adoptive parent(s) willing to accept the adoptive placement of the child without payment of an adoption subsidy must be documented by the caseworker.

(2) At the time of an adoptive placement, the social services official or voluntary authorized agency responsible for placement must provide an adoption subsidy agreement to any person(s) who indicate(s) a desire to apply for an adoption subsidy.

(i) Written notice must be given to any person(s) applying for an adoption subsidy that:

(a) except as specifically provided in this clause, the person(s) applying for an adoption subsidy must submit a completed subsidy agreement and supportive documentation to the social services district or voluntary authorized agency as early as possible but in no event after the date the child's adoption is finalized. The notice must indicate that completed subsidy agreements and supportive documentation may only be submitted after finalization of the child's adoption in cases where:

(1) the adoptive parent can establish that he or she was unaware of any handicapping condition affecting the child at the time the child's adoption was finalized;

(2) a physician submits a written diagnosis of the child's medical condition, certifies that such condition existed prior to the date the child's adoption was finalized, and describes the basis for making each of these findings; and

(3) the child's adoption was finalized on or after January 1, 1982;

(b) if an adoption subsidy is denied or granted in an amount which the applicant determines to be inadequate or inappropriate or if the application for the subsidy is not acted upon within 30 days of filing, such person has the right to a fair hearing pursuant to subdivision (g) of this section.

(ii) In the case of a child in the guardianship and custody of a social services official, but placed out for adoption by a voluntary authorized agency, or in the case of a child in the guardianship and custody of a voluntary authorized agency and placed out for adoption by such voluntary authorized agency, the agency must attach any and all agency documentation relevant to eligibility for an adoption subsidy to the adoption subsidy agreement and must forward completed subsidy materials to the appropriate social services official for review and approval within 15 working days of receipt of the subsidy agreement.

(iii) Within 15 working days of receipt of the subsidy agreement and the documentation provided by the voluntary authorized agency responsible for the adoptive placement or by the adoptive parent(s), the social services official must complete an assessment of eligibility and, unless authorized by the department to approve the agreement, must forward its recommendation and the completed subsidy materials to the State Adoption Service for review and final approval.

(iv) Within 30 working days of receipt of the subsidy agreement and documentation provided by the voluntary authorized agency, if authorized by the department, the social services official must approve or disapprove the agreement. If the agreement is not approved or disapproved within 30 days of submission, the voluntary authorized agency may submit the agreement to the department for approval or disapproval.

(c) Payments for the care and maintenance of a handicapped or hard-to-place child.

(1) A social services official must make monthly payments, for the care and maintenance of a handicapped or hard-to-place child, to the person(s) with whom the child has been placed out for adoption or by whom the child has been adopted. Such payments must be applied for either prior to adoption, or subsequent to the adoption if the person(s) adopting the child first became aware of the child's physical or emotional condition or disability subsequent to the adoption and a physician certifies that the

condition or disability existed prior to the child's adoption. All applications for adoption subsidies must be made on forms and reviewed according to procedures as may be established by the department.

(2) Such payments must be made as follows:

(i) In the case of a child in the guardianship and custody or the care and custody of a social services official who is being adopted by the foster parent(s) with whom the child has been boarded, such payment must continue as a foster care payment until the date of the court order finalizing the adoption and must be made in accordance with Part 427 of this Title. Monthly payments for the care and maintenance of the child as an adopted child under the provisions of this subdivision must begin on the date of the court order finalizing the adoption.

(ii) In the case of a child in the guardianship and custody or the care and custody of a social services official who is placed with and is to be adopted by foster parent(s) other than the foster parent(s) with whom the child had been previously boarded and who is otherwise eligible for an adoption subsidy payment, such payment must initially be made as a foster care payment and must be made from the day of placement for adoption to the foster parent(s) with whom the child is placed, provided such placement does not result in a violation of section 378.3 or 378.4 of the Social Services Law and/or section 443.1(j) of this Title. If the placement would result in a violation of either of such sections, the person(s) adopting the child must be approved adoptive parent(s) and payment must be made as an adoption subsidy payment from the date of placement in accordance with the provisions of subparagraph (iii) of this paragraph. Foster care payments under this provision must be made in accordance with Part 427 of this Title. Except where the provisions of section 378.3 or 378.4 of the Social Services Law and/or section 443.1(j) of this Title require that adoption subsidy payments be made to the prospective adoptive parent(s) prior to finalization of the adoption, such payments must begin upon the date of the court order finalizing the adoption and must be made in accordance with the provisions of this section.

(iii) In the case of a child in the guardianship and custody or the care and custody of a social services official who is freed for and placed for adoption, is otherwise eligible for adoption subsidy payments and is to be adopted by approved adoptive parent(s) who are not also certified or approved foster parent(s), such payment must be made as an adoption subsidy payment from the date of placement with the approved adoptive parent(s).

(iv) In the case of a child in the guardianship and custody of a voluntary authorized agency who is freed for and placed out for adoption, and who is otherwise eligible for an adoption subsidy, an adoption subsidy payment for the care and maintenance of the child will be made from the date the department approves the subsidy agreement submitted for approval if:

(a) an approved home study has been completed; and

(b) a placement agreement has been signed and the child has been placed in the home.

(3) Payments must be made only pursuant to a written agreement between the social services official or agency and the person(s) with whom the child has been placed out for adoption or by whom the child has been adopted. The written agreement must include, but is not limited to, the following:

(i) the date on which the agreement is entered;

(ii) the first name and birthdate of the child for whom the payment is to be made;

(iii) the nature of the child's handicap, if any, indicated both in terms of the diagnosing physician and in lay terms; or

(iv) the condition(s) which make the child hard-to-place, as determined from paragraph (a)(3) of this section; and

(v) the family's annual income, as determined from paragraph (9) of this subdivision;

(vi) the amount to be paid monthly for the care and maintenance of the child, and the board rate upon which the amount of payment is based;

(vii) the provisions contained in paragraph (4) of this subdivision relating to payment when the child is out of the home and/or the custody of the adoptive parent(s);

(viii) the conditions under which the agreement may be modified;

(ix) a provision that whenever applicable board rate increases or whenever a change in the age of an adopted child qualifies such child to receive adoption subsidy payments at an increased rate, the social services official responsible for making adoption subsidy payments will adjust the adoption subsidy payments to reflect such increases; and

(x) such other provisions as the department, the social services official or the adopting parent(s) may agree to.

(4) Where more than one child is placed with the same person(s) for adoption subject to payments for care and maintenance, a separate written agreement must be completed for each child.

(5) The written agreement authorizing monthly payments will remain in effect until the child's 21st birthday. No payments may be made if the social services official determines that the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents. Such written agreement must state that it will be the responsibility of the adoptive parent(s) to inform the appropriate State or local official when they are no longer legally responsible for the child or no longer providing any support to the child.

(6) The written agreement shall not be affected by amelioration, remission or cure of the handicapping condition, if any.

(7) The amount of the monthly payment must be determined in accordance with paragraphs (11) and (12) of this subdivision.

(8) The income of the person(s) adopting a handicapped or hard-to-place child shall not be considered by the local social services official in determining whether or not to enter into such an agreement.

(9) Once an agreement to provide a subsidy payment is made, the annual income of the person(s) adopting the child will be considered only for the purpose of determining the amount of the monthly payment to be made, according to the provisions of paragraphs (11) and (12) of this subdivision.

(10) Computation of annual income shall be subject to the following provisions:

(i) Only income earned as wages or salary from employment and/or net income from nonfarm self-employment or net income from farm self-employment as defined in section 404.5(b)(5) of this Title shall be considered in computing annual income. The income of persons other than the adopting parent(s) shall not be considered.

(ii) As evidence of income, a social services official may request wage stubs, or the most recent W-2, or an employer's statement of wages, or, in the case of income other than wages or salary, a copy of the adopting person's latest Federal income tax return.

(iii) When a person adopting is 62 years old or older, or will be subject to mandatory retirement from present employment within five years of the date of adoptive placement, such person's income shall be disregarded in computing annual income.

(11) If the annual income of the person(s) adopting a handicapped or hard-to-place child pursuant to the provisions of this section, as determined by the applicable provisions of paragraph (10) of this subdivision, is equal to or less than the applicable State income standard, the monthly payment for care and maintenance of the adopted child must be 100 percent of the applicable board rate, unless the person(s) adopting voluntarily and, in writing, request and agree to a lower rate.

(12)

(i) If the annual income of the person(s) adopting a handicapped or hard-to-place child pursuant to the provisions of this section, as determined by the applicable provisions of paragraph (10) of this subdivision, is greater than the applicable State income standard, a social services district has two options in determining the amount to be paid for care and maintenance of the child. Unless the person(s) adopting voluntarily and, in writing, request and agree to a lower amount, such amount must be either:

(a) 100 percent of the applicable board rate regardless of the annual income of the person(s) adopting; or

(b) an amount less than 100 percent, but not less than 75 percent, of the applicable board rate, as determined in accordance with the following formula. The social services district must:

(1) calculate the annual income of the person(s) adopting pursuant to the applicable provisions of paragraph (10) of this subdivision;

(2) determine what percentage such annual income is of the applicable State income standard; and

(3) use the following schedule to determine the amount to be paid based on the percentage calculated in subclause (2) of this clause:

ADOPTION SUBSIDY PAYMENTS SCHEDULE

Annual income of person(s) adopting; percentage of applicable State income standard	Amount of adoption subsidy payment
Over 100% but not more than 110%	95% of Applicable Board Rate
Over 110% but not more than 120%	90% of Applicable Board Rate
Over 120% but not more than 130%	85% of Applicable Board Rate
Over 130% but not more than 140%	80% of Applicable Board Rate

Over 140%

75% of Applicable Board Rate

(ii) The social services district must use the same option for all subsidized adoptions. If a social services district wishes to change from one option to the other option, the district must inform the department in writing of the intended change at least 30 days prior to the effective date of the change. The district must use the newly selected option in all new subsidy agreements entered into on or after the effective date of the change. Subsidy agreements finalized before the effective date of the change will not be affected by the change.

(13) The department may authorize the social services official to approve or disapprove the written agreement on behalf of the department pursuant to section 453(2) of the Social Services Law.

(i) The standards for authorization include, but are not limited to, the following:

(a) the social services district must submit a written request to the department requesting authorization to approve adoption subsidy agreements concerning hard-to-place and/or handicapped children;

(b) the social services district must have an adequate number of staff who have been properly trained in the requirements of the Federal and State adoption assistance program and the agreement approval process;

(c) the social services district must have a satisfactory and effective system in place to complete the review and approval of written adoption subsidy agreements;

(d) the social services district must assume responsibility for maintaining the necessary files and documentation for Federal and State audits and fair hearings, and for providing information to the department related to such audits and hearings; and

(e) the social services district must be willing to assume fiscal responsibility for those cases which the district has been authorized by the department to approve.

(ii) The department may require social services districts to comply with additional standards to ensure that a social services district complies with State and Federal adoption assistance requirements, and may revoke the authority of a social service official to approve written adoption subsidy agreements when the social services district fails to comply with the Federal or State statutory and regulatory standards relating to the administration of the adoption assistance program.

(14) Except where the social services district has been authorized by the department to approve or disapprove written adoption subsidy agreements, all written agreements for payments for the care and maintenance of handicapped or hard-to-place children must be submitted to the department for approval or disapproval, in accordance with the provisions of title 9 of article 6 of the Social Services Law and this section. A disapproval must be in writing and must state the reasons therefor. If an agreement is not disapproved in writing by the department or the social services district, where the social services district has been authorized by the department to approve or disapprove the written agreement within 30 days after its receipt, it will be deemed approved except that:

(i) in the case of an agreement submitted pursuant to section 453(d) of the Social Services Law, approval will be granted contingent upon commitment of the guardianship and custody of the child to an authorized agency; and

(ii) in the case of an agreement submitted by a voluntary authorized agency to a social services official, the voluntary agency may submit the agreement directly to the department for approval or disapproval if the agreement is not approved or disapproved by the social services official within 30 days of submission.

(15) Neither the written agreement nor the amount of the payment is subject to an annual review, except as provided for by paragraph (17) of this subdivision. However, the adopting person(s) may request a review of the agreement and/or a change in the amount paid under the agreement. Such review or change may be granted at the discretion of the social services official in accordance with the regulations, and subject to the approval of the department if the agreement was approved by the department, as set forth in paragraph (14) of this subdivision.

(16) The social services official may adjust the monthly payment in accord with the provisions of the schedules in paragraphs (9) and (12) of this subdivision and changes made thereto by the department pursuant to the provisions of section 453(3) of the Social Services Law. Except as provided for by paragraph (17) of this subdivision, any change in the amount of the monthly payment must be made by amendment to the written agreement and must require the consent of the adoptive parent(s) and the approval of the department if the agreement was approved by the department, as set forth in paragraph (14) of this subdivision.

(17) Whenever the applicable board rate increases due to an increase in the board rate, and/or the clothing replacement allowance or whenever a change in the age of an adopted child qualifies such child to receive adoption subsidy payments at an increased rate, the social services official responsible for making adoption subsidy payments must adjust the adoption subsidy payments to reflect such increases. A review must be conducted by such official to ensure that such adjustments are included in the adoption subsidy payments made to the persons who have entered into adoption subsidy agreements. The official must provide such person(s) with appropriate notice of such adjustments. Such notice will constitute an amendment to the adoption subsidy agreement and must be attached to such agreement. Such adjustments in payments are neither subject to the approval of the department nor subject to the consent of the adoptive parent(s).

(18)

(i) Upon the death of the person(s) who adopted the child prior to the 21st birthday of the child, payments made pursuant to this subdivision must continue and must be made to the legal guardian or custodian of the child under the age of 18 upon the issuance of letters of guardianship or order of custody until the child has attained the age of 21. If the guardian or custodian was the caretaker of the child under the age of 18 prior to the issuance of letters of guardianship or order of custody, such payments must be made retroactively from the death of the adoptive parent or parents. All provisions of this section applicable to maintenance payments made to the person(s) who adopted the child will be applicable to maintenance payments made to the legal guardian or custodian of the child.

(ii)

(a) Upon the death of the sole or surviving adoptive parent or both adoptive parents after the 18th birthday and before the 21st birthday of the adopted child, where such adoptive parent or parents were receiving adoption subsidy payments at the time of

death, such subsidy payments must continue, but must be made to the guardian of the child on behalf of such child, where the child consents to the appointment of a guardian. Such subsidy payments must be made retroactively from the death of the adoptive parent or parents to the appointment of a guardian, and must continue until the 21st birthday of the child. If, however, there is no willing or suitable person to be appointed as guardian, or the child does not consent to the appointment of a guardian, such subsidy payments must be made retroactively from the death of the adoptive parent or parents and must continue to be made until the 21st birthday of the child:

(1) through direct payments to the child, if the social services official determines that the child demonstrates the ability to manage such direct payments; or

(2) to a representative payee certified by the social services official.

(b) Upon receipt of notification of the death of the sole or surviving adoptive parent or both adoptive parents after the 18th birthday and before the 21st birthday of the adopted child, where such adoptive parent or parents were receiving adoption subsidy payments at the time of death, the social services official must notify the child of:

(1) the processes available to continue subsidy payments until the 21st birthday of the child including appointment of a guardian under the Surrogate's Court Procedure Act, application to be approved for direct subsidy payments, or the appointment of a representative payee; and

(2) the right of the child to be involved in all such processes.

(c) Where the social services official has determined that the child does not demonstrate the ability to manage direct subsidy payments, the social services official must certify payment to a representative payee on behalf of the child. Subsidy payments received by the representative payee must be held and used strictly for the use and benefit of the child. Designation of the appropriate entity or individual and investigation of an individual for certification as a representative payee must be conducted by the social services official responsible for payment of the adoption subsidy pursuant to this section.

(1) The social services official may designate an employee of the social services district to be the representative payee responsible for receipt of the adoption subsidy on behalf of the child only where the official determines that such employee has no conflict of interest in performing the duties and obligations as representative payee. If the child resides in a social services district other than the district responsible for payment of the adoption subsidy, the social services district in which the child resides may be designated the representative payee and a social services official of such district must select an employee of such social services district to be responsible for receipt of the adoption subsidy as the representative payee, only where the official determines that such employee has no conflict of interest in performing the duties and obligations as a payee. Where a voluntary authorized agency has a prior relationship with a child, or where the social services district does not have sufficient or appropriate staff available to perform the functions of the representative payee, the social services district may contract with a voluntary authorized agency as the representative payee on behalf of the child where the social services district determines it would be in the best interests of the child to do so.

(2) The social services official may designate an individual for certification as a representative payee who must perform the functions and duties of a representative

payee in accordance with the best interests of the child. In determining whether an individual is appropriate to be certified as the representative payee, the social services official must first consult with the child and must give the child's preferences significant weight. The child's preference must be determinative of the representative payee only where such preference does not conflict with the best interests of the child. Prior to designation of an individual by the social services official for certification as a representative payee, the social services official must:

- (i) collect proof of identity and a verifiable social security number of the nominated representative payee;
- (ii) conduct an in-person interview of the individual;
- (iii) investigate any potential conflicts of interest that may ensue if such individual is certified; and
- (iv) determine the capabilities and qualifications of the individual to manage the subsidy payment for the child.

(3)

(i) If, after completion of the investigation, the social services official is satisfied that the individual is qualified, appropriate and will serve the best interests of the child, the social services official must certify the selected individual as the representative payee for the child.

(ii) If the 21st birthday of the child occurs while awaiting the certification of a representative payee, the child is entitled to retroactive direct payment of subsidy payments since the death of the adoptive parent or parents after the 18th birthday of the child.

(4) The representative payee must submit reports to the social services official no less than once a year describing the use of the payments in the preceding year. Such reports must be submitted by December 31st of each year. The social services official may also request reports from time to time from the representative payee. If a representative payee fails to submit a report, the social services official may require that the representative payee appear in person to collect payments. The social services official must keep a centralized file and update it periodically with information including the addresses and social security or tax-payer identification numbers of the representative payee and the child.

(5) The social services official must revoke the certification of a representative payee upon:

- (i) determining that the representative payee has misused the payments intended for the benefit of the child;
- (ii) the failure of the representative payee to submit timely reports or appear in person as required by the social services official after such failure; or
- (iii) the request of the child upon good cause shown.

(6) The social services official must notify the child of the contact information of the representative payee within five days of making a decision.

(7) A child may appeal the refusal of the social services official to certify the individual preferred by the child for certification as the representative payee or revoke the certification of a representative payee upon request of the child pursuant to section 455 of the Social Service Law.

(19) The social services official on an annual basis in a written notification must remind the adoptive parents of their obligation to support the adopted child and to notify the social services official if the adoptive parents are no longer providing any support or are no longer legally responsible for the support of the child. Where the adopted child is school age under the laws of the state in which the child resides, such notification must include a requirement that the adoptive parents must certify that the adopted child is a full-time elementary or secondary student or has completed secondary education. For the purposes of this paragraph, an *elementary or secondary school student* means an adopted child who is:

- (i) enrolled, or in the process of enrolling, in a school which provides elementary or secondary education, in accordance with the laws where the school is located;
- (ii) instructed in elementary or secondary education at home, in accordance with the laws in which the adopted child's home is located;
- (iii) in an independent study elementary or secondary education program, in accordance with the laws in which the adopted child's education program is located, which is administered by the local school or school district; or
- (iv) incapable of attending school on a full-time basis due to the adopted child's medical condition, which incapacity is supported by annual information submitted by the adoptive parents as part of this certification.

(d) Payments for nonrecurring adoption expenses.

(1) Nonrecurring expenses means reasonable and necessary adoption fees, court costs, attorney fees, the costs of an adoption study, including health and psychological examinations and consultations, the cost of supervising an adoption placement, transportation costs, the reasonable costs of lodging and food for a child and his or her adoptive parent(s), which are incurred by or on behalf of the adoptive parent(s) and not otherwise reimbursed from other sources, which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of Federal law or the laws of this State or any other state.

(2) As used in this subdivision, a *child with special needs* means a child who:

- (i) the State has determined cannot or shall not be returned to the home of his or her parents;
- (ii) is handicapped as defined in paragraph (a)(2) of this section or is hard-to-place as defined in subparagraph (a)(3)(iii) of this section; and
- (iii) a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without adoption assistance, except where such an effort would not be in the best interest of the child.

(3) A social services official must make a payment for nonrecurring adoption expenses incurred by or on behalf of adoptive parents in connection with the adoption of a child with special needs through an authorized agency when the final decree of adoption was entered on or after January 1, 1987 or the final decree of adoption was entered on or after January 1, 1986 and before January 1, 1987, but nonrecurring adoption expenses were paid after January 1, 1987. The payment for nonrecurring expenses will be made as a one-time payment, not to exceed \$2,000.

(4) Payments for nonrecurring adoption expenses must be made either to the adoptive parents directly, to an authorized agency on behalf of the adoptive parents or to an attorney on behalf of the adoptive parents for the allowable amount of attorney's fees or

court costs incurred in connection with a completed adoption. Such payments must also be made when a child is placed from this State by an authorized agency and is adopted in another state, and the adoptive parent(s) are not eligible for nonrecurring expenses in the other state, but are otherwise eligible for nonrecurring expenses in this State.

(5) Except as specifically provided in this subdivision, payment for nonrecurring adoption expenses must be made pursuant to a written agreement signed prior to the final decree of adoption. The exceptions are:

(i) the final decree of adoption was entered on or after January 1, 1987, and prior to June 14, 1989; or

(ii) the final decree was entered on or after January 1, 1986 and before January 1, 1987, but nonrecurring expenses were paid after that date.

(6) Parents who qualify for an exception as set forth in paragraph (5) of this subdivision must sign an agreement and file a claim for nonrecurring adoption expenses before December 14, 1990.

(7) The agreement for payment of nonrecurring adoption expenses may be part of the adoption subsidy agreement or may be a separate agreement for those who will not receive an adoption subsidy. The agreement for the payment of nonrecurring adoption expenses must include, but is not limited to, the following:

(i) the nature and amount of any payments to be provided for nonrecurring adoption expenses;

(ii) the condition(s) which make a child "a child with special needs" as defined in paragraph (2) of this subdivision;

(iii) a provision that the payment of nonrecurring adoption expenses will be made as a one-time payment, not to exceed a maximum of \$2,000;

(iv) a provision that the agreement will remain in effect if the adoptive parents move to another state; and

(v) a provision for the protection of the interests of the child where the adoptive parent(s) and the child move to another state while the agreement is effective.

(8) Documentation of the nonrecurring adoption expenses, defined in paragraph (1) of this subdivision, must be provided by the adoptive parent(s) to a social services official or authorized agency so that the amount of the payment for nonrecurring adoption expenses may be determined. Such documentation must be in the form of receipts or written verification of services received and paid for, or services rendered or being rendered but for which payment has not been made. Except for adoptions specified in paragraph (5) of this subdivision, all receipts or verifications must be received by the social services official or authorized agency with whom the adoptive parents have signed an agreement within two years of the date of the final adoption decree.

(9) All written agreements for the payment of nonrecurring adoption expenses must be submitted to the department for approval or disapproval. The procedures contained in paragraph (c)(13) of this section will apply to the approval or disapproval of agreements for the payment of nonrecurring adoption expenses.

(e) Medical subsidy payments.

(1) Any child with respect to whom payments made for care and maintenance under subdivision (c) of this section are federally reimbursable shall be deemed a recipient of aid to families with dependent children for purposes of determining eligibility for medical assistance. Payments for medical care, services and supplies for all such eligible

children shall be made under and in accordance with the provisions of the State's program of medical assistance in Articles 3 and 4 of Subchapter E of this Title.

(2) For any handicapped child with respect to whom a payment made under subdivision (c) of this section is not federally reimbursable, the social services official must make payments for medical care, services and supplies subject to the following conditions:

(i) A social services official must make payments, without regard to the financial need of the person(s) with whom the child has been placed for adoption, for the costs of medical care, services and supplies provided to a handicapped child adopted or placed for adoption by the social services official or by a voluntary authorized agency. For the purposes of this subdivision, a *handicapped child* shall include, but not be limited to, a child with special needs where a social services official has determined that the child cannot be placed with an adoptive parent or parents without medical subsidy because such child has special needs for medical, mental health or rehabilitative care.

(ii) Payments made for medical care, services and supplies for a handicapped child shall be made only pursuant to written agreement between the social services official and the person(s) adopting the handicapped child.

(iii) A written agreement for medical subsidy payments made under the provisions of this subdivision shall remain in effect until the child's 21st birthday, provided that the child continues to reside in the home of the person(s) with whom the agreement is made or remains financially dependent on such person(s), except as may otherwise be provided in this section.

(iv) Medical subsidy payments shall be made only for the costs of such care, services and supplies as may be authorized under the State's program of medical assistance for needy persons according to the provisions of Articles 3 and 4 of Subchapter E of this Title. The amount of such payments shall not exceed the schedules of payments for such care, services and supplies as contained in Article 4 of Subchapter E of this Title.

(v) Medical subsidy payments shall be made only for the cost of care, services and supplies for which the child or the adoptive parent(s) will not receive payment or reimbursement from insurance, medical assistance or other sources.

(vi) Medical subsidy payments may not be limited to the particular condition for which a child was determined to be a handicapped child, but shall be made for all care, services and supplies payable under the State's program of medical assistance of needy persons.

(vii) Payments for medical care, services and supplies for a handicapped child shall be made only where the person(s) adopting the child has/have applied for such payments prior to the child's adoption, provided that an application may be made subsequent to the adoption if the person(s) adopting the child first became aware of the child's condition or disability subsequent to the adoption and a physician certifies that the condition or disability existed prior to the child's adoption.

(viii) Neither the application for, nor the agreement for medical subsidy payments shall require approval by the Office of Children and Family Services.

(ix) The agreement for medical subsidy payments shall not be subject to review or change, except that the social services official shall request, at the social services official's discretion, either annually and/or at the submission of any claim, information about medical insurance or other coverage from the adopting person(s) in order to determine compliance with subparagraph (v) of this paragraph.

(x) At the discretion of the social services official, or pursuant to provisions contained in the written agreement for medical subsidy payments, payments for medical care, services and supplies for an adopted handicapped child may be made either to the provider(s) of such care, services and supplies or to the person(s) with whom the agreement is made.

(3) Payments for medical care, services and supplies for a hard-to-place child with respect to whom a payment under subdivision (b) of this section is not federally reimbursable may be made only if any adopting person at the time of adoption is 62 years of age or older or is subject to mandatory retirement from his present employment within five years of the adoptive placement. Such payments shall be subject to the provisions of paragraph (2) of this subdivision.

(4) Upon the death of persons who have adopted the child prior to the 21st birthday of the child:

(i) the payments made pursuant to this subdivision shall continue and shall be made to the legal guardian of the child until the child has attained the age of 21;

(ii) the assistance provided pursuant to this subdivision shall continue in the form of a medical subsidy payment to the legal guardian of the child until the child has attained the age of 21, if the child would otherwise have been eligible for a medical subsidy at the time of the application for an adoption subsidy; and

(iii) provided the child is not eligible for medical assistance, the appropriate social services official shall make medical subsidy payments on behalf of a child who, upon the finalization of the adoption, was receiving federally reimbursable adoption assistance payments. Such payments may be paid to the legal guardian of the child until the child has attained the age of 21, provided the child would otherwise have been eligible for a medical subsidy at the time of the application for an adoption subsidy, or may be paid directly to a provider of medical care, services or supplies rather than to the legal guardian.

(5) All provisions of this section applicable to medical subsidy payments made to persons who adopted the child shall be applicable to medical subsidy payments made to the legal guardian of the child.

(f) Payments to out-of-state adoptive parents.

(1) Payments made pursuant to subdivision (b) or (c) of this section with respect to a child who was adopted within this State but who has been removed legally from this State by his adoptive parent(s) shall remain in effect until the child's 21st birthday. Such payments shall be made to the adoptive parent(s) at the out-of-state address.

(2) A hard-to-place or handicapped child, as defined in this subdivision, may be placed with residents of another state or of the Commonwealth of Puerto Rico, for the purposes of adoption with subsidy. Payments for a child adopted by such residents of another state or of the Commonwealth of Puerto Rico may be made pursuant to the provisions of this subdivision, provided that such payments are made pursuant to a written agreement between the social services official placing the child and making the payment and the adoptive parent(s) resident of such other state or the Commonwealth of Puerto Rico. The written agreement shall be in accord with the provisions of this subdivision. Payments made to adoptive parents resident of another state or the Commonwealth of Puerto Rico shall be made to the adoptive parents at the out-of-state address.

(3) An adoption subsidy agreement shall become void at such time as it is determined by a social services official that a child, on whose behalf payments for care and maintenance and/or medical care are being made pursuant to provisions of this section, was brought into this State for the sole purpose of qualifying the out-of-state adoptive parents for such payments.

(4) A social services official who makes a determination pursuant to paragraph (3) of this subdivision shall advise the adoptive parent(s) of his decision and shall advise the adoptive parent(s) that the determination may be appealed according to the provisions of section 455 of the Social Services Law and Part 358 of this Title. The local determination shall remain in effect unless and until reversed by the department.

(g) Appeals and fair hearings.

(1) Any person aggrieved by the decision of a social services official or an official of the department not to make a payment or by a decision to make the amount of such payment contrary to provisions of title 9 of article 6 of the Social Services Law or this section or by the failure of such official to determine any application made under this section within 30 days after it is filed with such official may appeal to the department and request a fair hearing thereon. A request for a hearing must be made within 60 days after:

(i) receipt of a written notice indicating denial of the subsidy application by the local social services official or the State adoption service;

(ii) receipt of a written notice indicating that an adoption subsidy will be granted in an amount which the applicant determines to be inadequate or inappropriate; or

(iii) the expiration of the 30-day period in which a social services official or an official of the department is required to either approve or disapprove an adoption subsidy application.

(2) A fair hearing under this section may address only the following issues:

(i) whether the social services official or an official of the department has improperly denied an application for payments to be made under this section, including the failure of such official to issue a determination of an application within 30 days of its filing;

(ii) whether the social services official or an official of the department has determined the amount of payment made or to be made in violation of the provisions of this section;

or

(iii) whether the social services official or an official of the department has improperly discontinued payments made under an agreement entered pursuant to this section.

(3) The department shall affirm a social services official's denial of an application for payments under this section if it is found that:

(i) the child for whom payments would be made is not a handicapped or hard-to-place child; or

(ii) there is/was another approved adoptive parent or parents who is/was willing to accept the placement of the child without payment under this section within 60 days of such denial and placement of the child with such other parent(s) would not be contrary to the best interests of the child.

(4) At least six working days prior to the scheduled date of the fair hearing, written notice thereof shall be sent to the parties and their representatives.

(5) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.

- (i) The grounds for removing a hearing officer are that such hearing officer has:
 - (a) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or
 - (b) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or
 - (c) displayed bias or partiality to any party to the hearing.
- (ii) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in subparagraph (i) of this paragraph.
- (iii) The request for removal made by a party must:
 - (a) be made in good faith; and
 - (b) be made at the hearing in writing or orally on the record; and
 - (c) describe in detail the grounds for requesting that the hearing officer be removed.
- (iv) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.
- (v) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel or the general counsel's designee.
- (vi) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.
- (vii) The general counsel or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.
- (viii) The written determination of the general counsel or the general counsel's designee will be made part of the record.
- (6) The department shall render its decision within 30 days after the fair hearing.
- (7) The department may also review, on its own motion, any decision of the social services official. All decisions of the department shall be binding upon the social services district involved, and shall be complied with by the social services official thereof.
- (h) Applicability.

Notwithstanding any other provision of this section, agreements for the care and maintenance or for medical care of adopted handicapped or hard-to-place children entered into prior to January 1, 1982, shall continue in force and effect as written.
- (i) Information services.
 - (1) Each social services district, through the use of television, radio or newspaper media, shall inform the general public of the availability of adoption subsidy payments for handicapped and hard-to-place children available for adoption.
 - (2) Each social services district shall disseminate literature and shall make available other informational services regarding the adoption subsidy program to any person making inquiry, application or other expression of interest in adopting a child.
- (j) Reimbursement.

(1) Subject to the provisions of this Title and only for payments for the care and maintenance or for medical care of adopted handicapped and hard-to-place children, the department shall pay to each social services district:

(i) the amount of Federal funds, if any, properly received or to be received on account of such payments;

(ii) except with regard to a child who was in the guardianship and custody of a voluntary authorized agency, seventy-five percent of the amount of such payments remaining after first deducting therefrom any Federal funds paid pursuant to subparagraph (i) of this paragraph for a handicapped or hard-to-place child who was in the care and custody of a social services official, where such child is freed for adoption because his or her parent or parents are deceased, or the guardianship and custody of a social services official at the time the child was placed out for adoption; provided, however, that when payments for the care and maintenance of a handicapped or hard-to-place child are made to a person or persons residing in a social services district whose board rate exceeds that of the district making such payments, that portion of the payments which exceeds the board rate of the district making the payments shall be subject to reimbursement by the State in the amount of 100 percent thereof.

(iii) 100 percent of the amount of such payments remaining after first deducting therefrom any Federal funds paid pursuant to subparagraph (i) of this paragraph for a handicapped or hard-to-place child who was in the guardianship and custody of a voluntary authorized agency at the time the child was placed out for adoption, or was placed out for adoption or being adopted after being placed out for adoption by an Indian tribe.

(2) Where agreements for payment require review and/or approval by the department, reimbursement shall be available only for payments made under those agreements which have been submitted to and approved by the department in accordance with the requirements of this section.

(3) No payments shall be made pursuant to this section if the social services official determines that the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents.

(k) Claiming.

Claims for reimbursement for payments made for adoption subsidies shall be made by each local social services district in the manner and upon such forms as shall be required by the department.

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 18. DEPARTMENT OF SOCIAL SERVICES

CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES

SUBCHAPTER C. SOCIAL SERVICES

ARTICLE 2. FAMILY AND CHILDREN'S SERVICES

PART 421. STANDARDS OF PRACTICE FOR ADOPTION SERVICES

18 CRR-NY 421.25

18 CRR-NY 421.25

421.25 Agency staff review and evaluation.

(a)

(1) Staff members must be qualified by training and experience to carry out their respective functions in the administration and operation of the agency and in the provision of adoption services for children and families. Consistent with any appropriate bargaining agreement(s) and, where applicable, provisions of the Civil Service Law, an authorized agency operating an adoption program must establish a procedure to review and evaluate the backgrounds of and information supplied by applicants for employee or volunteer positions. As part of this procedure, the agency must require such applicants to submit all of the following information:

(i) a statement or summary of each applicant's employment history, including but not limited to any relevant child-caring experience;

(ii) the names, addresses and, where available, telephone numbers of references who can verify the applicant's employment history, work record and qualifications;

(iii) the names, addresses and telephone numbers of at least three personal references, other than relatives, who can attest to the applicant's character, habits, reputation and personal qualifications; and

(iv) a sworn statement by the applicant indicating whether, to the best of the applicant's knowledge, the applicant has ever been convicted of a crime in New York State or any other jurisdiction.

(2) If an applicant discloses in the sworn statement furnished in accordance with subparagraph (1)(iv) of this subdivision that he/she has been convicted of a crime, the agency must determine, in accordance with guidelines developed and disseminated by the department, whether to hire or use any such applicant, except that any local social services district which had guidelines for the review of persons with conviction records in use prior to January 1, 1986 may continue to use the district guidelines in making the required determination. If the agency determines it will hire the person or use the person as a volunteer, the agency must maintain a written record, as part of the application file or employment or other personnel record of such person, of the reason(s) why such person was determined to be appropriate and acceptable as an employee or volunteer.

(3) Each agency must inquire of the department whether any person who is actively being considered for employment or any individual or any person who is employed by an individual, corporation, partnership or association which provides goods or services to such agency and who will have the potential for regular and substantial contact with children being cared for by the agency is the subject of an indicated report of child abuse or maltreatment on file with the State Central Register of Child Abuse and Maltreatment. The agency may make such an inquiry to the department regarding any current employee or a person who is being considered for use as a volunteer or for hiring as a consultant and who has or will have the potential for regular and substantial contact with children being cared for by the agency. An inquiry regarding any current employee may be made only once in any six-month period. Inquiries made pursuant to this paragraph will be subject to the following provisions:

(i) Prior to making an inquiry to the department, the agency must notify, in the form prescribed by the department, the person who will be the subject of the inquiry that an

inquiry will be made to determine whether such person is the subject of an indicated report of child abuse or maltreatment on file with the State Central Register of Child Abuse and Maltreatment.

(ii) If the applicant, employee, or any other person about whom the agency has made an inquiry is found to be the subject of an indicated report of child abuse or maltreatment, the agency must determine, on the basis of information it has available and in accordance with guidelines developed and disseminated by the department, whether to hire, retain or use the person as an employee, volunteer, or consultant or to permit the person providing goods or services to have access to children being cared for by the agency, except that any local social services district which had guidelines for the review of persons who are the subjects of indicated reports of child abuse or maltreatment in use prior to January 1, 1986 may continue to use the district guidelines in making the required determination. Whenever such person is hired, retained, used or given access to children, the agency must maintain a written record, as part of the application file or employment or other personnel record of such person, of the specific reason(s) why such person was determined to be appropriate and acceptable as an employee, volunteer, consultant, or provider of goods or services with access to children being cared for by the agency.

(iii) If a denial of an application for employment or a decision not to retain a current employee, not to use a volunteer, not to hire a consultant, or not to permit a person providing goods or services to have access to children who are being cared for by the agency is based in whole or in part on the existence of an indicated report of child abuse or maltreatment, the agency must provide a written statement to the applicant, employee, volunteer, consultant, or other person indicating whether the denial or decision was based in whole or in part on the existence of the indicated report of child abuse or maltreatment and, if so, the reasons for such denial or decision. If the denial or other negative decision was based in whole or in part on the indicated report, the statement must also include, in the form prescribed by the department:

(a) written notification to the applicant, employee, volunteer, consultant, or other person that he/she has a right, pursuant to section 424-a of the Social Services Law, to request a hearing before the department regarding the record maintained by the State Central Register of Child Abuse and Maltreatment;

(b) a statement indicating that a request for such a hearing must be made within 90 days of the receipt of the notice of denial or decision indicating that the denial or decision was based in whole or in part on the existence of the indicated report; and

(c) a statement indicating that the sole issue at any such hearing will be whether the applicant, employee, volunteer, consultant, or other person who is the subject of the indicated report has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

(iv) If, in a hearing held pursuant to a request made in accordance with subparagraph (iii) of this paragraph and section 424-a of the Social Services Law, the department fails to show by a fair preponderance of the evidence that the applicant, employee, volunteer, consultant or other person committed the act or acts upon which the indicated report is based, the department will notify the agency which made the inquiry to the department that, pursuant to the hearing decision, its decision to deny the

application for employment, discharge the employee, or not to use the volunteer, not to hire the person as a consultant or not to allow the person to have access to children, should be reconsidered. Upon receiving such notification from the department, the agency should review its decision without considering the indicated report.

(4)

(i) Each agency under this section is required to check applicants for employment and volunteer positions as well as contractors and consultants, with the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of People with Special Needs, before determining whether to hire or otherwise allow any person to be an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with children being served for by the agency.

(ii) If an applicant under this section is listed on the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of People with Special Needs, the agency shall determine, on the basis of information it has available and in accordance with guidelines developed and disseminated by the department, whether to hire, retain or use the person as an employee, volunteer, or consultant or to permit the person providing goods or services to have access to children being cared for by the agency. Whenever such person is hired, retained, used or given access to children, the agency must maintain a written record, as part of the application file or employment or other personnel record of such person, of the specific reason(s) why such person was determined to be appropriate and acceptable as an employee, volunteer, consultant, or provider of goods or services with access to children being cared for by the agency.

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE
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TITLE 18. DEPARTMENT OF SOCIAL SERVICES

CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES

SUBCHAPTER C. SOCIAL SERVICES

ARTICLE 2. FAMILY AND CHILDREN'S SERVICES

PART 421. STANDARDS OF PRACTICE FOR ADOPTION SERVICES

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421.26 Adoptive placements across State and county jurisdictions.

An authorized agency may not delay or deny the placement of a child freed for adoption with otherwise suitable approved adoptive parents on the basis that the approved adoptive parents reside in a state or county different from that of the authorized agency with custody and guardianship of the child.

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421.27 Criminal history record check.

(a) An authorized agency must perform a criminal history record check with the Division of Criminal Justice Services and the Federal Bureau of Investigation in accordance with subdivision (c) of this section regarding any prospective adoptive parent and each person over the age of 18 who is currently residing in the home of such prospective adoptive parent before the adoptive parent is finally approved for the placement of a child.

(b) Except for the requirement that a criminal history record check must be completed by the Federal Bureau of Investigation, the provisions of this section also apply to persons who were approved as adoptive parents on or before February 11, 1999 but have not completed the adoption process.

(c)

(1) The authorized agency must obtain fingerprints of the prospective adoptive parent and each other person over the age of 18 who currently resides in the home of such prospective adoptive parent in the form prescribed by the Office of Children and Family Services and such other information as is required by the Office of Children and Family Services, the Division of Criminal Justice Services and the Federal Bureau of Investigation.

(2) The authorized agency must provide to the prospective adoptive parent sufficient blank fingerprint cards and a description of how the completed fingerprint cards will be used upon submission to the authorized agency. A voluntary authorized agency must also provide the applicant, and any other person over the age of 18 who currently resides in the home of the applicant with a consent to disclose crime specific information. Such consent must be in a form prescribed by the Office of Children and Family Services. Such consent provides for the release to the voluntary authorized agency of criminal history record information provided by the Federal Bureau of Investigation to the Office of Children and Family Services

(3) The authorized agency or its designee must promptly transmit such fingerprint cards to the Office of Children and Family Services.

(4) The Office of Children and Family Services will promptly submit the fingerprint cards to the Division of Criminal Justice Services for its full search and retain processing in regard to the State criminal history record check and for the forwarding of the fingerprints to the Federal Bureau of Investigation. The Office of Children and Family Services will also include the applicable fee imposed by the Division of Criminal Justice Services and the Federal Bureau of Investigation.

(5) No part of the fee imposed for the processing of the fingerprints with the Division of Criminal Justice Services or the Federal Bureau of Investigation will be charged to the prospective adoptive parent or any person over the age of 18 who currently resides in the home of such prospective adoptive parents who submitted fingerprints pursuant to this subdivision.

(6) The Division of Criminal Justice Services and the Federal Bureau of Investigation will promptly provide the Office of Children and Family Services with a criminal history record, if any, on such person(s).

(7) The Office of Children and Family Services will review the criminal history record information provided by the Division of Criminal Justice Services and the Federal Bureau of Investigation and promptly provide the authorized agency with a summary of the criminal history record and notify the authorized agency of the actions that it must take regarding the person as set forth in subdivisions (d), (e), and (f) of this section.

(d)

(1) Except as set forth in subdivision (h) of this section, the authorized agency must deny an application to be an approved adoptive parent or revoke the approval of an approved adoptive parent when a criminal history record of the prospective or approved adoptive parent reveals a conviction for:

(i) a felony conviction at any time involving:

(a) child abuse or neglect;

(b) spousal abuse;

(c) a crime against a child, including child pornography;

(d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery; or

(ii) a felony conviction within five years for physical assault, battery, or a drug-related offense.

Notwithstanding any other provision to the contrary, with regard to an adoptive parent fully approved prior to October 1, 2008, the provisions of this paragraph only apply to mandatory disqualifying convictions that occur on or after October 1, 2008.

(2) The authorized agency must hold the final determination of an application for approval of a prospective adoptive parent or the final approval of the placement of a child with an approved adoptive parent in abeyance when the criminal history record of the prospective or approved adoptive parent reveals:

(i) a charge for a crime set forth in paragraph (1) of this subdivision which has not been finally resolved; or

(ii) a felony conviction that may be for a crime set forth in paragraph (1) of this subdivision. An authorized agency may proceed with a determination of such application or the final approval of such placement, in a manner consistent with this subdivision, only upon receiving subsequent notification from the Office of Children and Family Services regarding the status of such charge or the nature of such conviction.

(3) The authorized agency may deny an application for approval of a prospective adoptive parent or revoke the approval of an approved adoptive parent, consistent with the provisions of article 23-A of the Correction Law, when:

(i) a criminal history record of the prospective or approved adoptive parent reveals a charge or a conviction of a crime other than one set forth in paragraph (1) of this subdivision; or

(ii) a criminal history record of any other person over the age of 18 who resides in the home of the prospective or approved adoptive parent reveals a charge or a conviction of any crime.

(4) A voluntary authorized agency, as defined in section 371(10)(a) or (c) of the Social Services Law, must deny an application for approval as an adoptive parent when the voluntary authorized agency is notified by the Office of Children and Family Services that the applicant or other person over the age of 18 who currently resides in the home of the applicant has a conviction or open charge as reported to the Office of Children and Family Services by the Federal Bureau of Investigation for a crime committed outside of the State of New York and the applicant or other person who currently resides in the home of the applicant, after such notification, thereafter refuses to sign a consent authorizing the Office of Children and Family Services to release the specific crime or crimes to the voluntary authorized agency.

(e) When an authorized agency denies an application or revokes an approval pursuant to this section, an authorized agency must provide to the prospective or approved adoptive parent, to the extent authorized by Federal and State law, a written statement setting forth the reasons for such denial, including the summary of the criminal history record provided by the Office of Children and Family Services in accordance with subdivision (c) of this section. The authorized agency must also provide a description of the Division of Criminal Justice Services' and the Federal Bureau of Investigation's record review process and any remedial processes provided by the Office of Children and Family Services of any prospective or approved adoptive parent. If the prospective or approved adoptive parent is disqualified under clause (d)(1)(i)(b) of this section for a felony conviction of spousal abuse, then the prospective or approved adoptive parent may apply for relief from the disqualification based on the grounds that the offense was not spousal abuse, as that term is defined in subdivision (h) of this section.

(f) When a criminal history record of the prospective or approved adoptive parent or of any other person over the age of 18 who currently resides in the home of the prospective or approved adoptive parent reveals a charge or conviction of any crime, the authorized agency must perform a safety assessment of the conditions in the household. Such assessment must include: whether the subject of the charge or conviction resides in the household; the extent to which such person may have contact with foster children or other children residing in the household; and the status, date and nature of the criminal charge or conviction. The authorized agency must thereafter take all appropriate steps to protect the health and safety of such child or children, including, when appropriate, the removal of any foster child or children from the home and the revocation of the approval or certification to be a foster parent and/or the approval to be an adoptive parent, as applicable. The authorized agency must document the safety assessment and the steps and actions taken by the authorized agency to protect the health and safety of the child. Where the authorized agency denies the application or revokes the approval of the prospective adoptive parent in accordance with the standards set forth in this section, such authorized agency must remove any foster child or children from the home of the prospective adoptive parent.

(g) Any criminal history record information provided by the Division of Criminal Justice Services and the Federal Bureau of Investigation, and any summary of the criminal history record provided by the Office of Children and Family Services to an authorized

agency pursuant to this section, is confidential and is not available for public inspection; provided, however, nothing herein prevents an authorized agency, the Office of Children and Family Services or other State agency referenced in paragraph (a) of subdivision two of section 378-a of the Social Services Law from disclosing criminal history information to any administrative or judicial proceeding relating to the denial or revocation of an approval of an adoptive parent or the removal of the foster child from the home. Where there is a pending court case, the authorized agency which received the criminal history record summary from the Office of Children and Family Services must provide a copy of such summary to the Family Court or the Surrogate's Court.

(h) For the purposes of this section *spousal abuse* is an offense defined in section 120.05 or 120.10 of the Penal Law where the victim of such offense was the defendant's spouse; provided, however, spousal abuse does not include a crime in which the prospective or approved adoptive parent, who was the defendant, has received notice pursuant to subdivision (e) of this section and the Office of Children and Family Services finds after an administrative hearing held pursuant to section 22 of the Social Services Law, that he or she was the victim of physical, sexual or psychological abuse by the victim of such offense and such abuse was a factor in causing the prospective or approved adoptive parent to commit such offense.

(i) The authorized agency must inform the Office of Children and Family Services either through the child care review service, CONNECTIONS or any other means so specified by the Office of Children and Family Services when an approved adoptive parent has completed the adoption.

(j) Notwithstanding any other provision of this Part, for the purpose of this section, an *authorized agency* includes an authorized agency as defined by section 371(1)(a), (b) or (c) of the Social Services Law and any agency approved by the Office of Children and Family Services to place out children for adoption in accordance with article 13 of the Not-for-Profit Corporation Law.

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