

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES
**ADOPTION SUBSIDY AND NON-RECURRING
ADOPTION EXPENSES AGREEMENT**

Post Finalization Application

NOTE: Adoptive Parent(s) – Please read this Agreement carefully before signing, including the copy of the Summary of New York’s Adoption Subsidy and Non-Recurring Adoption Expenses Programs (Appendix A). The Adoptive Parent(s) has the right to consult with an attorney before signing this Agreement. The Adoptive Parent(s) must sign and receive a copy of this Agreement. This Agreement must be submitted and receive final approval before finalization of the adoption to comply with federal Title IV-E requirements.

Section I

Child Information

Child’s First Name: _____
Child’s Date of Birth: _____
Date Child Freed for Adoption: _____
Date Adoptive Placement Agreement Signed: _____
Date of Disruption from Previous Adoption Placement (If Any): _____
Date Child Entered Adoptive Home: _____
Date Adoption was Finalized (Application Following Finalization): _____

Full Name and Address of Adoptive Parent(s):

Adoptive Parent: _____
Adoptive Parent: _____
Address: _____
City: _____ County: _____
State: _____ Zip: _____
Phone: () - _____ Ext: _____

Name and Address of Social Services District or Voluntary Authorized Agency with custody and guardianship

Name: _____
Address: _____
City: _____ County: _____
State: _____ Zip: _____
Case Manager’s Name: _____
Care Manager’s Phone Number: () - _____ Ext. _____

Name and Address of Agency of Case Planner (If Applicable)

Name: _____
Address: _____
City: _____ County: _____
State: _____ Zip: _____
Case Planner’s Name: _____
Case Planner’s Phone Number: () - _____ Ext. _____

**Section II
Purpose of the Agreement**

Both Federal and State law require that payments for an adoption subsidy and non-recurring adoption expenses must be made in accordance with a written agreement. This Agreement will enable the social services district worker and/or the agency worker to determine whether an adoption subsidy and non-recurring adoption expenses will be provided.

New York's Adoption Subsidy and Non-Recurring Adoption Expenses Programs provide for payments to all parents adopting eligible children without regard to the adoptive parent(s) income. However, there are a number of factors that determine the extent and type of benefits that will be provided. These are explained in the Summary of New York's Adoption Subsidy and Non-Recurring Adoption Expenses Programs that is attached to this Agreement and is incorporated herein (see Appendix A). This Agreement will clearly spell out the benefits to be provided and identify the provisions affecting those benefits. It will also specify the circumstances under which the benefits may be changed in the future and whether such changes require a new Agreement and State approval or only an amendment to this Agreement.

Once this Agreement is completed and signed by the adoptive parent(s) and the appropriate social services district and receives final approval by the Office of Children and Family Services (OCFS), or by the social services district if OCFS has authorized the district to give final approval to the Agreement, it constitutes a contract between the adoptive parent(s) and the social services district or OCFS subject to the laws of the State of New York and the regulations of OCFS. The adoptive parent(s) will be given a copy of the final signed Agreement.

The adoptive parents(s) should retain their copy along with the Summary of New York's Adoption Subsidy and Non-Recurring Adoption Expenses Programs.

**Section III
Type of Subsidy Condition**

The child is eligible for subsidy based on the selected category.

A Handicapped Child (Select all that apply):

A child who possesses a specific physical, mental or emotional condition or disability of such severity or kind, which in the opinion of OCFS, would constitute a significant obstacle to the child's adoption. Such conditions entitle the child to an adoption subsidy. Those conditions include but are not limited to the following:

1. A medical or dental condition which will require repeated or frequent hospitalization, treatment or follow-up care;

OR

2. A 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;

OR

3. A substantial disfigurement, such as the loss or deformation of facial features, torso or extremities;

OR

4. A diagnosed personality or behavior problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his/her peers and/or authority figures, including mental retardation or developmental disability.

OR

5. The child was determined to need an extraordinary level of care while in foster care, in accordance with 18 NYCRR 427.6(f)(1)

Child Diagnosis:

Note: Documentation of the above stated diagnosis as required by OCFS must be submitted.

Section III - Continued
Type of Subsidy Condition

B **Hard-To-Place: A child other than a handicapped child (Select all that apply):**

Note: Where an application is made following finalization of the adoption, this category is not applicable unless eligibility is determined by a fair hearing.

1. who 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 18NYCRR 421.2(e) and 421.18(d);

AND

 - a. at least one of the children is five years old or older;

OR
 - b. at least one of the children is a member of a minority group which is substantially over-represented in New York State foster care in relation to the percentage of that group to the State's total population;

OR
 - c. at least one of the children is otherwise eligible for subsidy;

OR
2. who is the sibling or half-sibling of a child already adopted by a family and it is considered necessary that such children be placed together pursuant to 18NYCRR 421.2(e) and 421.18(d);

AND

 - a. the child to be adopted is five years old or older;

OR
 - b. the child is a member of a minority group which is substantially over-represented in New York State foster care in relation to the percentage of that group to the State's total population;

OR
 - c. the siblings or half-siblings already adopted are eligible for subsidy or would have been eligible for subsidy if an application had been made at the time of or prior to adoption;

OR
3. who 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 18NYCRR 421.2(e) and 421.18(d);

OR
4. who is eight years old or older and is a member of a minority group which is substantially over represented in New York State foster care in relation to the percentage of that group to the State's total population;

OR
5. who is 10 years old or older;

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

OR
7. 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 voluntary authorized agency; **[State Subsidy Only]**

OR
8. who has not been placed for adoption within six months from the date the child's guardianship and custody were committed to the social services official or voluntary authorized agency. **[State Subsidy Only]**

Section IV Eligibility for Federal Adoption Assistance

The child's eligibility for federally funded adoption assistance (known in New York as adoption subsidy) was determined at the time the child entered care and was determined to be a child with special needs at the time the adoption petition is filed.

Note: Where an application is made following finalization of the adoption, **the child is ineligible** for federally funded adoption assistance unless such eligibility is determined by a fair hearing.

- The child is eligible for federal adoption assistance under Title IV-E of the Social Security Act.
- The child is not eligible for federal adoption assistance under Title IV-E of the Social Security Act.

Section V Medical Assistance/Medical Subsidy

Medical Assistance is available for a child who is Title IV-E eligible. Also, a child who meets the criteria of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), for Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), or minor parent infant foster care, is eligible to receive Medical Assistance (MA). Medical Assistance provides coverage for eligible medical care, services or supplies obtained from a provider enrolled in the Medical Assistance program. No payment may be made for services otherwise covered by insurance or other third-party payments

Note: For a child who is Title IV-E eligible, moving to another state after adoption will result in the transfer of responsibility for the child's Medical Assistance to the new state of residence. For a child who is eligible for Medical Assistance through MA/COBRA, who moves to another state after adoption, the continuation of MA/COBRA will depend on the policy of the new state of residence. However, the county responsible for the subsidy agreement will continue to be responsible for the Medical Assistance if the child is unable to obtain MA/COBRA in the other state or NYS medical subsidy if the child is otherwise eligible.

Medical Subsidy is a non-federal State funded program available for a child who is not eligible for Medical Assistance including MA/COBRA and the child is handicapped, or the child is hard-to-place, and an adopting parent is 62 years old or older, or subject to mandatory retirement from the adopting parent's present employment within five years of the adoptive placement. Medical Subsidy is limited to the costs of medical care, services and supplies covered under the Medical Assistance Program for which there is no reimbursement from third party insurance, Medical Assistance or any other source. Providers do not have to be enrolled in the Medical Assistance program. However, payment is limited to amounts not to exceed those established for the Medical Assistance program.

For the purposes of this adoption, Medical Assistance including MA/COBRA and/or Medical Subsidy is based on the item(s) selected below:

- Child is **handicapped and Title IV-E eligible**, and will be covered by Medical Assistance up to the age of 18; or up to age 21 if the handicapping condition warrants continuation of assistance. If Title IV-E eligibility is discontinued at age 18, the child will be covered by MA/COBRA up to age 21, or if not eligible for MA/COBRA, by NYS Medical Subsidy from age 18 to age 21 providing that the adoptive parent(s) remains legally responsible for the support of the child or provides any support for the child.
- Child is **handicapped but not Title IV-E eligible**, and will be covered by Medical Assistance MA/COBRA up to age 21, providing that the adoptive parent(s) remains legally responsible for the support of the child or provide any support for the child.
- Child is **handicapped but not Title IV-E eligible** and not otherwise eligible for Medical Assistance including MA/COBRA, and will be covered by NYS Medical Subsidy up to age 21, providing that the adoptive parent(s) remains legally responsible for the support of the child or provides any support for the child.
- Child is **hard-to-place and Title IV-E eligible** and will be covered by Medical Assistance up to age 18. Child will thereafter be covered by MA/COBRA from age 18 to age 21. If the child is being adopted by a person within five years of mandatory retirement or age 62 or over and at age 18 will be ineligible for Medical Assistance including MA/COBRA, the child will be covered by NYS Medical Subsidy from age 18 to age 21, providing that the adoptive parent(s) remains legally responsible for the support of the child or provides any support for the child.
- Child is **hard-to-place but not Title IV-E eligible** and will be covered by MA/COBRA up to age 21, providing that the adoptive parent(s) remains legally responsible for the support of the child or provides any support for the child.
- Child is **hard-to-place but not Title IV-E eligible** and is ineligible for Medical Assistance including MA/COBRA, and is being adopted by a person within five years of mandatory retirement or age 62 or over, the child will be covered by NYS Medical Subsidy up to the age of 21, providing that the adoptive parent(s) remains legally responsible for the support of the child or provides any support for the child.
- Child is **not eligible** for either Medical Assistance or Medical Subsidy.

APPENDIX A
SUMMARY OF NEW YORK 'S ADOPTION SUBSIDY AND NON-RECURRING ADOPTION EXPENSES PROGRAMS

SUMMARY OF NEW YORK 'S ADOPTION SUBSIDY AND NON-RECURRING ADOPTION EXPENSES PROGRAMS

The following is a summary of the New York State Adoption Subsidy and Non-Recurring Adoption Expenses Programs. If you have any additional questions concerning adoption subsidy or non-recurring adoption expenses, please consult your caseworker or call the New York State Adoption Services (NYSAS) toll free at 1-800-345-5437. If you have questions concerning Medical Assistance please contact your local social services district.

1. The State legal authority for the Adoption Subsidy and Non-Recurring Adoption Expenses Programs for eligible children are found in sections 450-458 of the Social Services Law (SSL) and OCFS regulation, 18 NYCRR 421.24. The applicable federal legal authority is Title IV-E of the Social Security Act (sections 470-479).

Pursuant to this Agreement, maintenance subsidy payments will remain in effect until the child's 21st birthday, provided that the child's adoptive parent(s) remains legally responsible for the support of the child or provides any support to the child. The adoptive parent(s) will receive an annual notice of the obligation to support the adopted child and to notify the social services district if the adoptive parent(s) is no longer providing any support or is no longer legally responsible for the support of the child.

The annual notice will include the requirement for the adoptive parent(s) to provide certification of the education status of a school age adopted child. The adoptive parent(s) should complete, sign and return the form, according to the instructions on the form. Adoption subsidy payments must cease when the adoptive parent(s) is no longer legally responsible for the support of the child or the child is no longer receiving any support from the adoptive parent(s).

2. Where the Agreement has been approved by OCFS for federal participating Maintenance Subsidy and Medical Assistance, the adoptive parent(s) may be required to provide documentation as to the child's mental or physical handicap when the child is eighteen (18) years old in order to meet federal requirements and/or continue to be eligible for Medical Assistance.

3. Maintenance Subsidy will generally not begin until an adoption is finalized for a child in the guardianship and custody of a social services official. For a child in the guardianship and custody of a voluntary authorized agency, the maintenance subsidy will begin upon final approval of this Agreement if an approved home study has been completed, an Adoptive Placement Agreement has been signed and the child has been placed in the adoptive parent(s)' home. Families Adopting eligible children receive a monthly payment regardless of family income. The amount of this subsidy is calculated in Section VI of this Agreement and it is based on the board rate for the child. In Adoption Subsidy and Non-recurring Adoption Expenses agreements initially approved prior to 9/1/23 where the per diem was based on family size and income, the percentage of the board rate will carry through on all subsequent amendments. The applicable board rate will be:

- (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 the social services district in which the adoptive parent(s) reside(s), at the discretion of the placing social services 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 guardianship and 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 social services 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 and placed out for adoption with adoptive parent(s) residing in another social services 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 social services district where the voluntary authorized agency has its principal office or business.
- (vi.) In the case of a child who satisfies the eligibility standards for adoption assistance pursuant to Title IV-E and who is placed by an out of state private adoption agency with adoptive parent(s) residing in New York, the board rate of the social services district of residence of the adoptive parent(s).

The social services district determined to be the applicable district in executing the Agreement will remain the responsible social services district regardless of where the family subsequently moves. This Agreement will remain in effect regardless of the State in which the adoptive parent(s) reside at any time.

4. When the Agreement provides for medical benefits:

- (i.) Medical Assistance coverage will be provided only for the costs of such care, services and supplies as may be authorized under the State's Medical Assistance program.
- (ii.) Medical Subsidy payments must 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.
- (iii.) Medical Subsidy payments may not be limited to the particular condition for which a child was determined to be a handicapped child but must be made for all care, services and supplies payable under the State's Medical Assistance program. The amount of such payments will not exceed the schedules of payments for such care, services and supplies available under the State's Medical Assistance program.
- (iv.) The Agreement for Medical Subsidy payments will not be subject to review or change, except that the social services official may 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 adoptive parent(s) in order to determine compliance with paragraph (ii) of this section.

APPENDIX A-continued

SUMMARY OF NEW YORK 'S ADOPTION SUBSIDY AND NON-RECURRING ADOPTION EXPENSES PROGRAMS

5. The adoptive parent(s) must inform the social services district of any changes in the residential or dependency status of the child including circumstances, which would make them ineligible for such assistance as well as any circumstances that would make them eligible for assistance payments in a different amount.

Should your adopted child require replacement into foster care, you may be required to provide financial support to offset at least part of the cost of care.

6. Upon the death of the person(s) who adopted the child, prior to the child's 18th birthday, payment made pursuant to this Agreement must be made to the adopted child's court appointed legal guardian or custodian until the child's 21st birthday, provided that at the time of death the child's adoptive parent(s) was legally responsible for the support of the child or was providing any support to the child. Where the legal guardian or custodian of the child under the age of 18 was the caretaker of the child at the time of issuance of the letter of guardianship or the court order granting custody, the payment must be made retroactively from the time of the death of the parent(s). Upon the death of the parent(s) who adopted the child after the child's 18th birthday, payments made pursuant to this Agreement must be made to the adopted child's court appointed legal guardian, to the adopted child or to a representative payee, in accordance with the provisions of section 453 of the Social Services Law until the child's 21st birthday, provided that at the time of death of the child's adoptive parent(s) such parent(s) was legally responsible for the support of the child or was providing any support to the child. Such payments must be made from the date of the death of the adoptive parent(s).

7. Any person aggrieved by the decision of a social services district official or the New York State Office of Children and Family Services not to make a payment pursuant to this Agreement or by a decision to make such payment in an inadequate or inappropriate amount, or by the failure of such official to determine an application within thirty (30) days after it is filed may appeal to the New York State Office of Children and Family Services and request a fair hearing thereon. A request for a fair hearing must be made within sixty (60) days after notice of the agency's decision. The only issues that may be raised at a fair hearing are:

- (i.) whether the official of the social services district or the New York State Office of Children and Family Services has improperly denied an application for subsidy including the failure to issue a determination of an application within thirty (30) days of its filing; or
- (ii.) whether the official of the social services district or the New York State Office of Children and Family Services has improperly discontinued payments made under this Agreement; or
- (iii.) whether the official of the social services district or the New York State Office of Children and Family Services has determined the amount of payment was made in violation of the provisions of law or regulation.

8. The adoptive parent(s) may request a fair hearing by writing the New York State Children and Family Services, Fair Hearings Unit, 52 Washington Street, Rensselaer, NY 12144-2796. Additional rights regarding the fair hearing process to which the adoptive parent(s) is entitled are set forth in Section 455 of SSL and 18 NYCRR 421.24(g) and 18 NYCRR Part 358.

9. The Maintenance Subsidy will reflect any annual increases in the foster care board rate and clothing replacement allowance.

10. **Payment for Non-Recurring Adoption Expenses.** For a child to be eligible for the non-recurring adoption expenses program, the child must be a child with special needs. A child with special needs is defined as a child who:

- (a) the state has determined cannot or shall not be returned to the home of the child's parent(s); and
- (b) is either handicapped as defined in 18 NYCRR 421.24(a)(2) or is a hard-to-place child as defined in 18 NYCRR 421.24(a)(3)(iii); and
- (c) reasonable, but unsuccessful effort has been made to place the child with appropriate adoptive parent(s) without adoption subsidy, except where it would not be in the child's best interest because of such factors as the existence of significant emotional ties with the prospective adoptive parent(s) as a foster child or the child is placed with a relative.

Payment for non-recurring adoption expenses will be made as a one-time payment which may not exceed the maximum level established by the New York State Children and Family Services. Payment for non-recurring adoption expenses must be made pursuant to a written Agreement signed (approved) prior to the finalization of the adoption.

Documentation of all non-recurring adoption expenses being claimed by the adoptive parents(s) must be submitted by the adoptive parent(s) to the social services district prior to payment and within two (2) years of the final adoption decree. Payment may be made either to the adoptive parent(s) or to an attorney on behalf of the adoptive parent(s).

This Agreement will remain in effect if the adoptive parent(s) move to another State. Adoptive parent(s) residing outside New York State who experience a problem regarding the payment of subsidy and/or non-recurring adoption expenses under this Agreement may request assistance from the social services district referenced on page 1 of this Agreement.

Adoptive parent(s) who experience a problem regarding medical services as provided under this Agreement may request assistance from the New York State Department of Health or the social services district referenced on page 1 of this Agreement.

11. **Post Finalization Adoption Subsidy.** An adoption subsidy may be applied for and received after the adoption of the child if the person(s) adopting the child first becomes aware of the child's physical or emotional condition or disability after the child's adoption AND a physician certifies that the condition or disability existed prior to the child's adoption.

PLEASE NOTE: Federal and State tax credits may be available. It is recommended that you consult a tax specialist or the IRS to determine your eligibility and that you check any impact of a non-recurring adoption expense payment on those credits.

THIS IS THE FINAL PAGE OF THE ADOPTION SUBSIDY AND NON-RECURRING ADOPTION EXPENSES AGREEMENT

