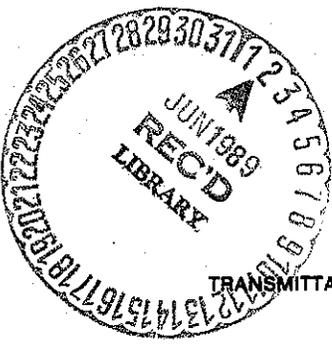


NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001



EAR A. PERALES
Commissioner

INFORMATIONAL LETTER

TRANSMITTAL NO: 89 INF-28

TO: Commissioners of Social Services
Directors of Authorized Agencies

DIVISION: Family and Children
Services

SUBJECT: Payment of Non-Recurring Adoption
Expenses

DATE: May 26, 1989

SUGGESTED DISTRIBUTION: Child Welfare Executives
and Supervisory Staff
Legal Staff
Foster Care Staff
Adoption Staff
Staff Development Coordinators

CONTACT PERSON: Your Regional Office Director

Albany: John O'Connor, (518) 432-2751
Buffalo: Linda Brown, (716) 847-3145
Metropolitan: Fred Cantlo, (212) 804-1202
Rochester: Ross Hayman (Acting), (716) 238-8200
Syracuse: Jack Klump, (315) 428-3235

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Social Services Law and Other Legal References	Manual References	Miscellaneous Reference
		421.24	453-a		

DSS-329 (Rev. 7)

This will serve as an interim release pending finalization of department regulations on payment of non-recurring expenses. Specific procedures and guidelines for the payment of such expenses will be provided in either an Administrative Directive or in the Adoption Services Program Manual.

There are several purposes for providing this release to local social services districts and voluntary authorized agencies:

- o To inform them of new provisions concerning payments to be made for non-recurring adoption expenses related to the adoption of DSS and non-DSS special needs children **through an authorized agency**, as provided for in Chapter 315 of the Laws of 1988. Chapter 315 implements changes in federal law which require the payment of non-recurring adoption expenses; and
- o To notify them of several important dates indicated in the final federal ruling for implementation of the provisions on non-recurring expenses; and
- o To indicate that department regulations are currently being developed regarding the maximum level of reimbursement available for payment of non-recurring expenses and procedures to be followed in making such payments.

Prior to the enactment of Chapter 315 of the Laws of 1988, Section 453(3) of the Social Services Law provided for the monthly adoption subsidy payment to be increased not more than 75% of the board rate for a 90 day period. This payment has traditionally been used as a "transitional payment" by local social services districts to cover adoption-related expenses, but was not federally reimbursable. The Tax Reform Act of 1986 amended Title IV-E and provided federal matching funds to the states to pay for non-recurring adoption expenses. Chapter 315 incorporated the federal provisions on payment of non-recurring adoption expenses in state statute, and repealed the 90 days increased subsidy payment.

Provisions of Chapter 315 of the Laws of 1988 require a social services official to make payments for non-recurring adoption expenses incurred by or on behalf of adoptive parents who adopt a child with special needs on or after January 1, 1987, when such a child was adopted **through an authorized agency**.

A child with special needs as defined in this statute applies to a child who:

1. the state has determined cannot or shall not be returned to the home of his or her parents; and
2. is a handicapped child as defined in department regulations section 421.24(a)(2) or a hard-to-place child as defined only in section 421.24 (a)(3)(iii) (conditions which constitute a significant obstacle to a child's adoption); and

3. a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without adoption assistance, except where it would not be in the best interest of the child. (The child does not need to be IV-E eligible for the adoptive parents to qualify for payment of these expenses.)

Parents who adopt DSS and non-DSS special needs children and who are eligible to receive payment for such expenses must sign an agreement prior to the final decree of adoption. However, the final federal ruling on the payment of non-recurring expenses, allows two exceptions to this requirement:

1. Cases where the final decree of adoption was entered into on or after January 1, 1987 and prior to June 14, 1989; or
2. Cases where the final decree was entered into before January 1, 1987 but non-recurring expenses were paid after that date.

Parents who qualify for these two exceptions can still sign an agreement and file a claim for non-recurring expenses before or on December 4, 1990.

It is important to note that as of **June 14, 1989** parents adopting a child with special needs must sign an agreement for non-recurring adoption expenses **prior** to the date the final decree of adoption is entered into in order to receive payment for such expenses. Attached is a copy of the agreement form to be used in the interim until an official DSS form is available.

A one-time payment, up to a maximum level to be determined by department regulations, must be made to reimburse parents for non-recurring expenses. Parents must be informed that receipts of allowable expenses such as adoption fees, court costs, attorney fees, transportation, etc., directly related to the adoption of a child with special needs must be provided for payment to be made. This payment will replace the "transitional payment" repealed by this statute. Payments made by local social services districts for non-recurring expenses since the effective date of the statute and up to June 14, 1989 will be evaluated for reimbursement in light of the new statute. In addition, when qualified adoptive parents have received "transitional payments" prior to June 14, 1989, and such payments are less than the maximum dollar amount for non-recurring adoption expenses to be determined by the Department, the adoptive parents must receive a subsequent payment for the additional amount.

Department regulations which are currently being developed will specify procedures for approval of the agreement by the department, the maximum level of reimbursement available, and the period of time within which parents must file a claim for payment of non-recurring expenses. A copy of Chapter 315 of the Laws of 1988 is attached for your information.



Joseph Semidei
Deputy Commissioner
Division of Family and
Children Services

STATE OF NEW YORK

8064

IN SENATE

April 6, 1988

Introduced by Sen. GOODHUE -- (at request of the Department of Social Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Child Care.

AN ACT to amend the social services law, in relation to payments for non-recurring adoption expenses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision three of section four hundred fifty-three of
2 the social services law, as added by chapter eight hundred sixty-five of
3 the laws of nineteen hundred seventy-seven, is amended to read as
4 follows:

5 3. The amount of the monthly payment made pursuant to this section
6 shall be determined pursuant to regulations of the department and based
7 upon the financial need of such persons. The department shall review
8 such regulations annually. The amount of the monthly payment shall not
9 be less than seventy-five per centum of the board rate nor more than one
10 hundred per centum of such rate[; provided, however, that in accordance
11 with regulations of the department, the amount of the monthly payment
12 may exceed the board rate by an amount not to exceed seventy-five per
13 centum thereof for a period of up to ninety days following the date of
14 the order of adoption].

15 S 2. Such law is amended by adding a new section four hundred fifty-
16 three-a to read as follows:

17 S 453-a. Payments for non-recurring adoption expenses. 1. A social
18 services official shall make payments for non-recurring adoption ex-
19 penditures incurred by or on behalf of the adoptive parents of a child with
20 special needs, when such expenses are incurred in connection with the
21 adoption of a child with special needs through an authorized agency. The
22 payments shall be made by the social services official either to the
23 adoptive parents directly or to the authorized agency on behalf of the
24 adoptive parents.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LBD14417-01-8

1 2. The amount of the payment made pursuant to this section shall be
2 determined pursuant to the regulations of the department. Nothing herein
3 shall obligate a social services official to make payments for the full
4 amount of non-recurring adoption expenses incurred by or on behalf of
5 the adoptive parents of a child with special needs.

6 3. Payments for non-recurring adoption expenses made by a social ser-
7 vices official pursuant to this section shall be treated as administra-
8 tive expenditures under title IV-E of the social security act and shall
9 be reimbursed by the state accordingly.

10 4. Payments under this section shall be made pursuant to a written
11 agreement between the social services official, other relevant
12 authorized agencies and the adoptive parents of a child with special
13 needs. The written agreement shall specify the nature and amount of any
14 payments, services and assistance to be provided, shall stipulate that
15 the agreement remain in effect regardless of the state of residence of
16 the adoptive parents at any time and shall contain provisions for the
17 protection of the interests of the child where the adoptive parents and
18 the child move to another state while the agreement is effective.

19 5. When the parental rights of a child with special needs have been
20 terminated in this state and the child's guardianship has been committed
21 to an authorized agency, the child is adopted in another state and the
22 adoptive parents are not eligible for payments of non-recurring adop-
23 tion expenses in the other state, a social services official shall make
24 payments of the non-recurring adoption expenses incurred by or on behalf
25 of the adoptive parents, if such parents are otherwise eligible for
26 payments under subdivision one of this section.

27 6. As used in this section, non-recurring adoption expenses shall mean
28 reasonable and necessary adoption fees, court costs, attorney fees and
29 other expenses which are directly related to the legal adoption of a
30 child with special needs and which are not incurred in violation of fed-
31 eral law or the laws of this state or any other state.

32 7. As used in this section, a child with special needs shall mean a
33 child who:

34 (a) the state has determined cannot or shall not be returned to the
35 home of his or her parents; and

36 (b) the state has first determined:

37 (i) is a handicapped child as defined in subdivision two of section
38 four hundred fifty-one of this title, or is a hard-to-place child as
39 defined in paragraph (c) of subdivision three of section four hundred
40 fifty-one of this title; and

41 (ii) a reasonable, but unsuccessful effort has been made to place the
42 child with appropriate adoptive parents without adoption assistance.
43 Such an effort need not be made where such efforts would not be in the
44 best interests of the child because of such factors as the existence of
45 significant emotional ties with prospective adoptive parents while in
46 the care of such parents as a foster child.

47 S 3. This act shall take effect immediately and shall apply to any
48 eligible non-recurring adoption expense for a child with special needs
49 incurred after January first, nineteen hundred eighty-seven.