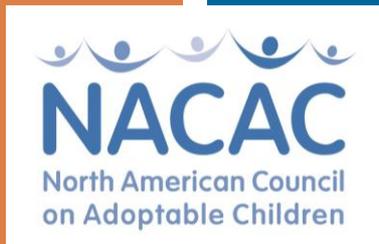


# Adoption Assistance

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# What is NACAC



## Four key areas of work

- Public Policy Advocacy
  - Adoption Tax Credit, Fostering Connections
- Parent Leadership Development
  - Work with support group and associations
- Adoption Support
  - Adoption Subsidy Resource Center, MN ASN
- Education and Information Sharing
  - Annual conference, trainings, fact sheets

# What is Adoption Subsidy?



- Adoption Subsidy is a program to help make possible the adoption of children with special needs.
- The program typically includes financial benefits and medical coverage to eligible children.
- I will call this Adoption Assistance and Adoption Subsidy, they mean the same thing.
  - Title IV-E (4E) is federal and state funded
  - Non IV-E is only state funds.

# Special Needs



- To qualify for subsidy, the child must meet the special needs definition
- Special needs also means “hard to place”
- The federal government has three parts to the special needs definition – one of which is set at the state level

# Federal Definition of Special Needs



- The federal definition of special needs consists of three parts:
  1. Child cannot and should not return home
  2. Reasonable efforts to place the child without adoption subsidy, exceptions include established ties with foster parents.
  3. State definition of special need
    - See Question 1 of state profile for state definition

# State Definition of Special Needs

- The child is 6 to 17 years old;
- The child has a physical or mental disease or disability;
- The child has an emotional disturbance;
- The child is recognized to be at high risk of a physical or mental disability or disease;
- The child is a member of a sibling group being placed together; or
- Race or ethnicity if combined with any of the above factors.

# Title IV-E subsidy vs State Only

- Title IV-E (4E) of the Social Security Act = federal funds. 50% Federal dollars and remaining 50% State dollars.
- State only funded subsidy = Non Title IV-E. Every subsidy dollar paid by state.
- You cannot get both a state subsidy AND a federal subsidy.

# How are children Title IV-E eligible?



- Previously, there were four ways for a child to be eligible for Title IV-E funding.
  1. Foster child received Title IV-E Foster Care that covers both the minor parent and child at the time the adoption petition is filed
  2. Child received Title IV-E adoption subsidy in previous adoptive placement
  3. Child is eligible for Supplemental Security Income (SSI)
  4. Birth parents were AFDC eligible
    - Yes, we are looking at birth parents who have had their parental rights terminated
    - Yes, we are looking at their income using 1996 income guidelines

# Expanded Title IV-E Eligibility



- Beginning October 1<sup>st</sup>, 2009
- Can still be eligible from previous four criteria or by these new criteria:
  1. Children in foster care for 60 consecutive months
  2. Currently children age 2 or older.
  3. Siblings being adopted with their sibling when at least one sibling meet one of the new criteria (1 or 2).

# Why does Title IV-E matter to me?



- The state saves money—50% of subsidy dollars is reimbursed by Federal Government
- Child is statutorily eligible for Medicaid.
- Maryland may reduce adoption assistance agreement if the child receives social security benefits if it is non IV-E funded.
- Maryland can suspend the non IV-E adoption assistance if the child is out of the home for more than 30 days.

# Adoption Subsidy—How Does it Support Families?

- Monthly maintenance payment
  - Basic up to \$887-902/month
  - Intermediate up to \$1,008-\$1,024/month
  - Medically fragile up to \$2000/month
- Medicaid
  - All children qualify
- Reimbursement of non-recurring adoption expenses, up to \$2,000
- Special Services

# Negotiating adoption subsidy



- In Maryland, the state via the Local Department of Social Services (LDSS) will negotiate the amount of the adoption subsidy.
- The highest amount that a child can receive is the foster care rate they are eligible for.
- One the next few slides we will look at Maryland Policy, Maryland Regulations, Federal Policy and Federal Law regarding negotiation.

# Negotiating adoption subsidy – MD Policy SSA 13-1

- This is policy for IV-E (has the added green language) and non IV-E.

Children who are eligible for adoption assistance shall receive a monthly assistance payment negotiated by the local department and the adoptive family. The adoptive family and designated local department staff shall negotiate the amount of the monthly assistance payment based on the child's specific needs as well as the adoptive family's individual circumstances. Federal law requires the amount of an assistance payment to be negotiated between the child welfare agency and the adoptive parent. **Adoption assistance rates cannot be established based solely on the criteria of the child's current foster care rate.** Questions must be asked and answered to determine if the current foster care rate is warranted based on the child's documented current needs and behaviors. **Once established, a federal adoption assistance payment cannot be adjusted without the agreement of the adoptive family, so it is critical that the amount of the payment is appropriate for the child's documented current quantifiable needs instead of basing the amount of the payment on broad generalizations or assumptions.**

# Negotiating adoption subsidy – MD Policy SSA 13-1



- Adoptive families must be advised to bring specific documentation to the negotiation, which includes, but is not limited to, the following:

Receipts for expenses related to the child's current, ongoing expenses **not covered through medical assistance or other sources;**

- The child's medical records;
  - The child's prescription history;
  - The child's psychological evaluations;
  - The child's educational records; and/or
  - Documentation related to risk factors for physical or mental disability or disease.
- **The documentation must be recent (less than 1 year old) from an appropriate health care or educational professional.** The local department of social services staff is expected to review the child's case record prior to negotiation and to be familiar with the child's special needs. The staff should bring the case record and the documentation of special needs to the negotiation

# Negotiating adoption subsidy – MD Policy SSA 13-1



- Expenses (mortgages, utilities, etc.) the family would incur if the child were not part of their family **are not** to be included in this calculation. Adoption assistance payments are not intended to cover every expense the family may incur to have that child as a member of the family, but rather to offset costs, such as therapy or therapeutic activities, incurred related to the child's special needs that are reflected in their eligibility criteria for assistance.
- The family is to be informed that the plans for the adoption finalization cannot move forward with the issue of adoption assistance being resolved, so it is important that this negotiation occur in a timely manner.

# Negotiating adoption subsidy – MD COMAR

## 07.02.12.05 (Title IV-E)

### F. (7) Negotiation.

(a) The local department shall negotiate the amount of the adoption assistance based upon the:

- (i) Needs of the child;
- (ii) The circumstances of the family; and
- (iii) The family's ability to incorporate the child into their household.**

(b) As a part of the negotiation process, the local department shall assess the child's needs based on:

- (i) Documentation in the record;
- (ii) Documentation provided by the adoptive family; and
- (iii) Any additional relevant information.

(c) The negotiation process shall include a discussion of:

- (i) The child's needs and the family's circumstances; and
- (ii) The assistance the local department may provide to help the family assume primary financial responsibility for the child.**

**(d) The local department and the adoptive parent shall explore the availability of other resources such as SSI and other Social Security benefits, adoption tax credits, educational or vocational training assistance, and community supports that may be available to meet the child's needs on an ongoing basis after the adoption is finalized.**

# Negotiating adoption subsidy – MD COMAR

## 07.02.12.06 (non Title IV-E)

### D. (6) Negotiation.

- a. A local department shall negotiate the amount of the adoption assistance based upon the needs of the child and the circumstances of the family and **the family's ability to incorporate the child into their household.**
- b. As part of the negotiation process, a local department shall assess a child's needs based on documentation in the record or provided by the adoptive family and any additional relevant information.
- c. The negotiation process shall include a discussion of the child's needs, the family's circumstances, and the assistance a **department may provide to help a family assume primary financial responsibility for a child.**
- d. **The local department and the adoptive parent shall explore the availability of other resources, such as SSI and other Social Security benefits, adoption tax credits, tuition waivers, educational or vocational training assistance, and community supports that may be available to meet the child's needs on an ongoing basis after the finalization of the adoption.**

# Maryland Family Code



## §5-410

### (c) Nature, amount, and duration of subsidy. --

- (1) The nature, amount, and duration of the subsidy shall be determined by:
  - (i) the needs of the eligible child because of the eligible child's special circumstances; and
  - (ii) the availability of other resources to meet the eligible child's needs.
- (2) The subsidy may be for a limited or a long period of time.
- (3) The subsidy shall be in an amount that is not more than:
  - (i) the allowable amount for a child under foster family care in this State, or if placement is in another state, the allowable amount for a child under foster family care in that state, whichever is higher;
  - (ii) in the case of a medically fragile child living in a treatment foster care home, \$ 2,000 per month; or
  - (iii) if the subsidy is for a special service, a reasonable fee for that service.

## §5-408

**(b) Eligibility of prospective adoptive parent.** -- An individual who has been approved by a child placement agency as an appropriate adoptive parent and who seeks to adopt an eligible child is eligible to receive a subsidy on behalf of the eligible child regardless of the individual's income or other eligibility factors.

# Federal Child Welfare Policy Manual 8.2D.4



## Question 1

Please explain how the title IV-E agency should set rates for title IV-E adoption assistance payments.

## Answer

The amount of the adoption assistance payment cannot exceed the amount the child would have received if s/he had been in a foster family home, but otherwise must be determined through agreement between the adoptive parents and the title IV-E agency. Unlike other public assistance programs in the Social Security Act, the title IV-E adoption assistance program is intended to encourage an action that will be a lifelong social benefit to certain children and not to meet short-term monetary needs during a crisis. Further, the adoptive parents' income is not relevant to the child's eligibility for the program. Title IV-E adoption assistance is not based upon a standard schedule of itemized needs and countable income. Instead, **the amount of the adoption assistance payment is determined through the discussion and negotiation process between the adoptive parents and a representative of the title IV-E agency based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parents' resources to cover the ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g., child care.** Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.

## Legal and Related References

Social Security Act - section 473 (a)(3)

# Federal Law 42 USC 673(a)(3)

(3) The amount of the payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration **the circumstances of the adopting parents and the needs of the child being adopted**, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment made under clause (ii) of paragraph (1)(B) exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

# Negotiation summary of policy, regulations and laws

- Maryland policy is focused on the out of pocket expenses to meet the child's special needs.
  - However they allow sibling groups and children 6 and older to be eligible for adoption assistance, even though they may have no specific out of pocket expenses.
- Maryland regulations talk both about the ability of the family to incorporate into the household, while also trying to help the family assume primary financial responsibility for the child.
- Maryland Family Code does not allow an otherwise eligible child to be denied adoption subsidy because the family makes too much.
  - State may contend that the Medicaid portion is part of the adoption subsidy program.
- Federal policy specifically mentions ordinary and special needs of the child.
  - This is contrary to the language in Maryland policy that say ordinary costs like mortgage or utilities are not for consideration.
- Federal law says needs.
  - Children need shelter and food, these are ordinary costs that should be a factor in the negotiation process.

# Renegotiating adoption assistance



- Adoptive parents may request a change in the adoption assistance agreement if there is a change in the child's needs or the family's circumstances. The department and the family review agreements annually, but **parents can request a change whenever there is a need** by contacting in writing the local Department of Social Services (LDSS) that processed the adoption assistance agreement.
- The LDSS reviews the request if they believe an increase is warranted they will submit a memo to the Social Services Administration (SSA) indicating the current amount, the requested increase, and reason they believe the increase is warranted with supporting documentation.
- Upon receipt of the memo and supporting documentation, SSA will review the request to determine whether an increase is appropriate. Once SSA has determined the request to have validity, the packet will be reviewed by the Adoption Assistance Committee which meets bi-monthly to review all requests and to determine if the request will be approved.
- If parents do not receive the requested change, they can request a fair hearing and appeal the decision through the local office that denied the request.
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# Interstate adoption



- When children are in a state's foster care system, the adoption subsidy comes from the placing state.
- Medicaid comes from the adoptive parent's state of residence.
- For children receiving non IV-E (state only funded subsidy), Medicaid becomes complicated

# Medicaid in Interstate Adoptions



- Remember children receiving IV-E subsidy are statutorily eligible for Medicaid in ALL states.
- For children receiving non-IV-E subsidy, then it depends on the adoptive parent's state of residence COBRA reciprocity rules.
- Maine provides Medicaid to children residing in Maine who have non IV-E subsidy from another state.
- IL, HI, NM, and NV will not provide Medicaid to children adopted from ANY other state who only receives a non IV-E subsidy
- IA, NY, and PA will not provide Medicaid to children from IL, HI, NM or NV who receive non IV-E subsidy

Information from APHSA/AAICAMA

# When do subsidies end



- Subsidy can be extended to age 21 if the child has a disability that warrants continuation.
- It can continue for youth adopted at age 16 or older who are still in secondary or post secondary school, in a works program, working 80 hours a week or unable to do any of these because of a disability. If the youth meets one of these criteria it can continue, but must end by age 21.
- Subsidy can end before age 18 if the parents are no longer legally responsible or financially supporting a child.
- You are no longer legally responsible if your parental rights are terminated, the child enlists in the military, marries, or is an emancipated minor
- A state may determine you are still financially responsible if you are pay for therapy, gifts, etc...
- Important!!! – if the child re-enters foster care or goes into a residential treatment facility, and you are receiving Title IV-E adoption assistance. The state is NOT allowed to reduce or suspend your subsidy without your agreement.
  - Equally as important you do not want the case to be referred to child support
  - If it is non IV-E, the state can suspend the payments.

# Social Security Administration and Adoption Subsidy

- If a child receives Supplemental Security Income (SSI), then adoption subsidy **MUST** be reduced dollar for dollar, this is called “concurrent receipt of federal benefits” or you can think of it as “double dipping”
- Social Security benefits received on behalf of the (adoptive or birth) parent, and the accompanying dependent benefits do **NOT** require a dollar for dollar reduction in subsidy benefits.
  - Maryland may reduce adoption subsidy if it is non IV-E.

# Other Welfare Programs and Adoption Subsidy

- While the IRS does not count adoption subsidy as income, other programs may count it as income in determining eligibility
  - School Lunches count 100% of subsidy in family income.
  - Food Stamps count 100% of subsidy in family income.
  - Section 8 housing counts \$480 per year per child of the subsidy in family income.
  - Low Income Home Energy Assistance Program (LIHEAP)—the federal government allows the state agency to set what is excluded income.
  - FASFA – application says not to include.
  - Income test for Chapter 7 and 13 Bankruptcy excludes unearned income funded by the Social Security Act (Title IV-E)

# How to contact me

- Any questions?
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