

**CHILDREN AND FAMILIES
DIVISION OF YOUTH AND FAMILY SERVICES**

Readoption with Amendments: N.J.A.C. 10:121

Adopted Amendment: N.J.A.C. 10:120A-1.3

Adoptions

Proposed: December 20, 2010 at 42 N.J.R. 3030(a).

Adopted: September 26, 2011 by Allison Blake, Commissioner, Department of Children and Families.

Filed: December 7, 2011 as R.2012 d.005, **without change**.

Authority: N.J.S.A. 9:3-54.1, 30:4C-4(h), and 30:4C-49.

Effective Dates: December 7, 2011, Readoption;
January 3, 2012, Amendments.

Expiration Dates: December 9, 2015, N.J.A.C. 10:120A;
December 7, 2018, N.J.A.C. 10:121.

Summary of Public Comments and Agency Responses:

Comments on the notice of proposal were received from Debra L. Wentz, Ph.D., New Jersey Association of Mental Health and Addiction Agencies, Inc. (NJAMHAA), and Cecilia Zalkind and Mary Coogan, Advocates for Children of New Jersey (ACNJ).

1. COMMENT: NJAMHAA recommends clarification to explain if resource families include Treatment Foster Care providers who adopt children.

RESPONSE: Treatment home providers can adopt children who are eligible for adoption subsidy as long as they are also licensed as resource family parents in New Jersey.

2. COMMENT: In the Economic Impact statement, there seems to be a lack of discussion related to the negative effects of adoption subsidies, such as foster/adoptive parents being financially driven to adopt.

RESPONSE: The Division of Youth and Family Services (Division) does not believe that the adoptive parent suffers any negative economic effects by adopting a child who is eligible for an adoption subsidy. The adoption subsidy is based on the child's eligibility and special needs, and not on the economic circumstances of the adoptive parent. An adoptive parent who receives adoption subsidy payments receives neither more nor less than he or she would receive if the child were in foster care.

3. COMMENT: The next to last paragraph of the Federal Standards Analysis statement raises the question of research that may support this statement. For example, is this a result simply due to financial constraints? It could be perceived that the motives of the Division and/or adoptive parents are financially driven, whether accurate or not. We would like to recommend that further research be conducted to determine the reason for subsidized adoptions increasing due to financial incentive and, potentially, alternative solutions for the protection of special needs foster children.

RESPONSE: The Division based the information in the Federal Standards Analysis statement on the results of working with families who receive adoption subsidy payments. The Division has no plans to conduct research on this topic. State and Federal law require that the Division seek a permanent home for children who cannot return to their parents' care as social research indicates that special needs children who are adopted fare better than those who are not adopted. While the Division's costs for a child are less once the child is adopted, that is never the Division's motivation for pursuing a permanent plan of adoption with subsidy for a child. The Division's motivation is to secure a permanent family for each child.

4. COMMENT: Expanding the definition of "child" in N.J.A.C. 10:121-1.1 to include a person approved for continued adoption subsidy up to a maximum age of 21, is helpful to families who adopt children from foster care, especially older youth, who may be behind in school, not ready to be independent at age 18, and need assistance to complete their education.

RESPONSE: The Division thanks ACNJ for supporting this amendment.

5. COMMENT: ACNJ also supports the inclusion of "mental health" in N.J.A.C. 10:121-1.2 as a reason for determining that a child is a special needs child and thus eligible for an adoption subsidy. Many children living in foster care have mental health needs that require therapy not always covered by insurance.

RESPONSE: The Division thanks ACNJ for its support.

Federal Standards Analysis

N.J.A.C. 10:121-1 is consistent with the Title IV-E of the Social Security Act, 42 U.S.C. §§ 673 et seq., Adoption and Guardianship Assistance Program, and the definition of "adoption assistance agreement" at 42 U.S.C. § 675(3). The adopted amendment of N.J.A.C. 10:120A-1.3 and 10:121-1.7 is consistent with 42 U.S.C. § 671(a)(12) and 45 CFR 205.10, which require an opportunity for a fair hearing to any individual whose claim for benefits is denied or is not acted upon with reasonable promptness.

The Department exceeds Federal standards by operating an identical State-funded adoption subsidy program for special needs children who are not eligible for the Title IV-E Adoption Assistance program, pursuant to N.J.S.A. 30:4C-45 through 49. This program ensures that all special needs children have an equal opportunity to have a permanent adoptive family.

If the State-funded subsidy program were not available, the majority of these children would remain in the foster care system, to the detriment of their emotional well being and at an increased expense to the State. Not only would all of the direct

costs paid through subsidy be incurred by the Division while the children are in foster care, but the administrative costs which arise from the supervision of these children in their foster homes would have to be assumed by the State as well. In addition, most children who are adopted are provided with a familial support system that assists them emotionally and financially after they reach 18 and are no longer eligible for subsidy. In contrast, most children with special needs, who age out of the foster care system, seek out assistance from the public service delivery system at an additional expense to the State. The provision of the State subsidy program is neither administratively, or financially onerous, as it utilizes the same technology as the Federal Title IV-E program.

There are no Federal standards or requirements applicable to the subject matter of Subchapters 2 and 3.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:121.

Full text of the adoption follows:

CHAPTER 120A
DISPUTE RESOLUTION

SUBCHAPTER 1. INTRODUCTION AND OVERVIEW

10:120A-1.3 Definitions

(a) The definitions in N.J.A.C. 10:122B-1.3 and 10:133-1.3 are hereby incorporated by reference. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

"Division service issue" means a Division action affecting a case goal or a case plan necessary to achieve a case goal, as allowed in N.J.A.C. 10:133D-1, and limited to: the denial of a request for, or the reduction, suspension or termination by a Division representative of the following services, as defined in N.J.A.C. 10:133-1.3 and listed in N.J.A.C. 10:133E-2: adoption subsidy, child care, discharge planning and aftercare services, domestic violence services, DYFS Legal Guardianship Subsidy Program, educational support, emergency maintenance service, family preservation services, health care services, homemaker service, mentor services, out-of-home placement, post-adoption services, pre- and post-natal services, psychological/therapeutic services, respite care, self-sufficiency skills, substance abuse services, Title XIX Medicaid, transportation; or parent and child visitation as described in N.J.S.A. 9:6B-4 and N.J.A.C. 10:122D-1; or the failure of a Division representative to act with reasonable promptness on a request for any of the above services.

...

(b) (No change.)

CHAPTER 121
ADOPTIONS

SUBCHAPTER 1. ADOPTION SUBSIDY

10:121-1.1 Definitions

The following words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

...

"Child" means any person under the age of 18 or approved for continued adoption subsidy up to the maximum age of 21.

"Department" means the New Jersey Department of Children and Families.

"DYFS Director" means the Director of the Division of Youth and Family Services in the Department of Children and Families.

...

10:121-1.2 Determining that a child is a special needs child

(a) A Department representative shall determine that a child is a special needs child for any of the following reasons:

1.-3. (No change.)

4. A diagnosed emotional, mental health or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his or her peers or authority figures, including, but not limited to, a developmental disability;

5. The child is one of a group of three or more siblings (including half-siblings) and the siblings are placed together, or the child is one of two siblings (including half-siblings) one of whom meets the special needs criteria, and it is considered most appropriate that the children be placed together;

6. (No change.)

7. The child is over two years of age and a member of an ethnic or minority group for whom adoptive homes are not readily available. Information regarding availability of homes may be obtained from the Department;

8. The child is over five years of age and has been living with a resource parent for at least 12 months and adoption by the resource parent is the most appropriate plan for the child. A child under five may be deemed special needs and qualify for subsidy under this subsection if he or she is a member of an ethnic or minority group for whom adoptive homes are not readily available; or

9. Any other condition of a specific child which may be approved by the DYFS Director or designee.

10:121-1.3 Payments for the care and maintenance of a special needs child (adoption subsidy)

(a) The Department shall make payments for the care and maintenance of a special needs child to the person(s) with whom the child has been placed for adoption or by whom the child has been adopted when such payments are applied for prior to adoption according to such forms and procedures as may be established by the Department. The Department shall make adoption subsidy payments only to a person who, at the time the adoption is finalized, is a licensed resource parent in accordance with N.J.A.C. 10:122C or to a person who has been approved as an out-of-State adoptive parent.

(b) The Department shall determine and approve the qualifications for subsidy payments prior to the completion of an adoption proceeding. In order to qualify for subsidy, a child must meet at least one criterion for a special needs child listed in N.J.A.C. 10:121-1.2. The failure of the Department to complete its determination and approval of qualifications prior to the finalization of adoption shall not prevent qualification for adoption subsidy, if application for such subsidy was made in a timely manner. Eligibility for subsidy shall be subject to an annual review and redetermination as described in N.J.A.C. 10:121-1.4(a).

1. An adoptive family may re-apply for adoption subsidy on behalf of a child who was initially found ineligible for the subsidy benefit. The adoptive family may apply for adoption subsidy at any time after finalization, if the child develops problems traceable to either his or her genetic heritage or pre-adoptive experiences and which may qualify him or her for adoption subsidy.

(c) (No change.)

(d) In addition to meeting the requirements as set forth in (a) through (c) above, payments pursuant to this section shall be made on behalf of a child only in one of the following circumstances:

1.-4. (No change.)

5. A non-New Jersey child who is Title IV-E or Supplemental Security Income eligible prior to adoption finalization is placed with a New Jersey family by a private agency located anywhere in the country that is approved to provide adoption services.

(e) (No change.)

(f) Payments shall be made only pursuant to a written Adoption Assistance Agreement between the Department and the adoptive parent(s), which shall include:

1.-3. (No change.)

4. The needs of the child being adopted;

5.-7. (No change.)

8. How the adoptive parent(s) shall notify the Department of changes in the needs of the child or circumstances of the adoptive family that would affect the eligibility for, or amount of, adoption subsidy, including complying with the annual certification of the adoptive parent's legal responsibility to support the child;

9. How adoptive parent(s) shall be notified of any changes in the amount of adoption subsidy and how they may request changes in the adoption assistance agreement;

10. Payments for non-recurring adoption expenses;

11. Annual verification that each child six years of age or older is enrolled in school or medical verification that the child is medically unable to attend school; and

12. (No change in text.)

(g) A Department representative shall make a reasonable effort to place the child in an adoptive setting without providing a subsidy, unless doing so is against the best interest of the child, including, but not limited to, situations involving adoption by a child's resource parent or where the Department determines that such efforts should not be made because of the special needs of the child or the special qualifications of the adoptive parents.

10:121-1.4 Duration and amount of adoption subsidy

(a) (No change.)

(b) Payments in subsidization of adoption shall include, but are not limited to, the maintenance costs, medical, and surgical expenses, and other costs incidental to the care, training, and education of the child. Such payments may not exceed the cost of providing comparable assistance in resource family care and shall be made until the child becomes 21 years of age if the child is enrolled as a verified, full-time student of a secondary school or its equivalent.

(c)-(e) (No change.)

10:121-1.5 Other payments

(a) (No change.)

(b) Any child eligible for adoption subsidy is eligible for legal subsidy directly related to the adoption when agreed upon and approved by the Department prior to the adoption.

(c) (No change.)

10:121-1.7 Administrative hearings

Any person aggrieved by a decision of the Department regarding adoption subsidy payments pursuant to this subchapter, including when the adoption subsidy payments are terminated or suspended without the concurrence of the adoptive parent, shall be entitled to an administrative hearing in accordance with N.J.A.C. 10:120A, Dispute Resolution, when an application for a hearing is filed with the Department's Administrative Hearings Unit within 20 calendar days of such decision or failure to act by the Department.

SUBCHAPTER 3. MEDICAL INFORMATION

10:121-3.1 Medical information forms

Pursuant to N.J.S.A. 9:3-41.1, an approved adoption agency shall provide prospective adoptive parents with all available information relevant to the child's developmental and medical history, personality, and the parent's medical histories, including drugs or medications taken during pregnancy or any conditions believed to be hereditary and any other aspects of the parent's health which may influence the child's present or future health. This information shall be shared with the prospective adoptive parent prior to the actual placement of the child in the home or upon completion of an investigation conducted by an approved agency pursuant to N.J.S.A. 9:3-41.1. This information shall be provided to the prospective adoptive parent on a specified form which is designated by the Office of Licensing to be used for each adoption complaint investigation in New Jersey and is available from:

Office of Licensing
PO Box 717
Trenton, NJ 08625-0717