

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



CESAR A. PERALES
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 83 ADM-43
 [Family & Children Services]

TO: Commissioners of Social Services

SUBJECT: Adoption Subsidy

DATE: September 9, 1983

SUGGESTED DISTRIBUTION: Directors of Social Services
 Directors of Child Welfare Services
 Auditors
 Directors

CONTACT PERSON: Any questions concerning this release should be directed to Hal Harkess, Division of Family and Children Services by calling 800-342-3715, extension 4-9574.

I. PURPOSE

The purpose of this release is to advise districts of the changes in the Social Services Law and regulations affecting adoption subsidy. Social Security Act Section 473 establishes a Federal Adoption Assistance Program under Title IV-E. Chapter 989 of the laws of 1981 repealed Section 452 and amended Sections 451 and 453 of the New York Social Services Law. Section 421.24 of NYCRR Title 18 promulgated on August 18, 1982, implements this chapter law.

II. BACKGROUND

New York State's adoption subsidy program, initiated in 1968 through the enactment of SSL 398.6(k) was strengthened in 1977 by the replacement of this statute with Sections 450-458 of the Social Services Law. This revision provided for 75% state reimbursement of the non-federal share of district expenditures on maintenance and medical subsidy and established uniform state approaches to determining child and parent eligibility as well as the level of subsidy payments to be made.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
78 ADM-2	78 ADM-2	421.24	Section 450-458 of the Social Services Law Sections 473-475 of the Social Security Act	Chapter 1064 (82 MB-32)	

DSS-296 (REV. 8/82)

Section 452 provided for the Department to establish income maxima for persons receiving subsidy on behalf of hard-to-place children while Section 453 established eligibility for maintenance subsidy for handicapped children and Section 454 established the eligibility for medical subsidy for handicapped and hard-to-place children without regard to the income of the person(s) adopting. This statute was implemented by the Section 431.7 of NYCRR Title 18 and Department Administrative Letters 78 ADM-2 and 78 ADM-4.

When Congress enacted Public Law 96-272, or the Adoption Assistance and Child Welfare Act of 1980, it established a program of federal participation in payments (adoption subsidies) under Title IV-E of the Social Security Act, to assist parents adopting special needs children. Program standards differed from those in New York in a number of ways including prohibiting the use of any financial means test for eligibility. Chapter 989 of the New York laws of 1981 amended New York's law to conform with this aspect of federal standards.

Section 421.24 of NYCRR 18 implementing this change replaces 431.7. All material in the regulation has been reviewed and reorganized and certain areas previously not addressed clearly in regulation have been added.

III. PROGRAM IMPLICATIONS

The program implications of the deletion of the means test for persons adopting hard-to-place children are extensive and are spelled out below. In addition, the implications of certain other changes and additions to Department regulations are described.

This means test deletion removes a whole range of program distinctions based upon whether the child adopted or placed for adoption is hard-to-place or handicapped.

The means test previously required for persons adopting hard-to-place but not handicapped children is now prohibited for both. [421.24(b)(7) and (8)]

The annual review previously required for persons adopting hard-to-place but not handicapped children is now prohibited for both. [421.24(b)(14)]

State Department approval of the subsidy agreement previously required for handicapped but not hard-to-place children is now required for both. [421.24(b)(13)]

Previous law required the payment of maintenance subsidy of 100% of the applicable board rate on behalf of hard-to-place children and of between 75% and 100% of the applicable board rate for handicapped children. Present law permits the payment of less than 100% but not less than 75% for all children to be adopted with subsidy.

This permissible range of payments is spelled out in detail in paragraphs 8 through 11, and Schedules AD-1 and AD-2 of Subdivision 421.24(b). Schedule AD-1 contains an income level by family size based on New York State median income data, which will be reviewed annually. Any person adopting an eligible child whose family income falls below this level must be given an adoption subsidy equal to 100% of the applicable board rate, unless (s)he voluntarily requests less in writing. Schedule AD-2 sets minimum subsidies in terms of proportion of such applicable board rate for families whose incomes exceed the amounts in AD-1. While the regulation thus permits a payment of somewhat less than the applicable board rate to families above the median income level, it does not prohibit a payment of 100% of the applicable rate in every case.

The availability of federal participation in the subsidy (adoption assistance) for cases eligible under Title IV-E of the Social Security Act has additional program implications.

Adoption subsidies paid to families are eligible for federal participation after 4/1/82, if:

- the child has been legally adopted (as opposed to placed for adoption);
- the child was adopted after 9/30/80;
- the child was in receipt of or eligible to receive ADC or SSI at the time adoption proceedings were initiated;
- the child has special needs (children who are hard-to-place under SSL 451 and Section 421.24 only because they have been legally freed or returned from an adoptive home for six months without having been placed into an adoptive home are not deemed to have special needs);
- the child is under 18, or if he has a mental or physical handicap and continued assistance is warranted, under 21.

Title IV-E's differing eligibility standards require claiming procedures to distinguish between IV-E eligible subsidies and those without federal participation. Claiming instructions may be found in Chapter 1064 (released as 82 MB-32) of Book Ten for expenditures being claimed on the Schedule K (DSS-3479).

There are implications for the provision of medical subsidy in both Section 473 of the Social Security Act and in Chapter 989 of the laws of 1981. The federal legislation provides that every child in receipt of assistance under Title IV-E be deemed Title XIX eligible and provided with Medicaid. It is thus required that Medicaid be provided to every child in receipt of a subsidy eligible for federal participation. Detailed instructions for providing Medicaid will be issued separately. In these cases Medicaid replaces state and locally funded medical subsidy for handicapped children and children adopted by persons at or near retirement who previously were eligible for state medical subsidy. Hard-to-place children not previously entitled to medical subsidy are now entitled to Medicaid if they are eligible under IV-E. Some cases will remain which are not eligible under IV-E, nor eligible for medical subsidy under the New York program (SSL 454). A new adoption subsidy agreement which will clearly inform parents about the extent of assistance to be provided them will be made available shortly.

OTHER PROGRAM IMPLICATIONS

While the above changes are the most significant, the following also have program implications:

1. The partial tying of the definition of handicapped to the Education law and the Public Health law [NYCRR Title 18 421.24(a)(2)(ii)] and the spelling out of the meaning of "substantial disfigurement" [NYCRR Title 18 421.24(a)(2)(iii)] clarify and somewhat limit which children may be considered handicapped. No significant change is made in so defining any child who needs on-going medical care or has a behavioral, personality or intellectual problem;
2. Paragraph 4 of subdivision (b) addresses the use of subsidy in the case of a child who has been placed for adoption or adopted with a subsidy agreement and subsequently returns to foster care. The requirement for continuation of subsidy payments for 60 days upon the return to foster (or other out-of-home) care of such a child and discontinuation after the 61st day until such time as the child is returned to the home, will clarify how this situation should be handled. This paragraph also provides that the

amount which would otherwise be paid as a subsidy be considered a contribution by the parent(s) to the cost of the child's care. This paragraph requires the district receiving the adopted child into foster care to reduce the amount of support for which it determines the parents to be liable by the amount of the subsidy the parent(s) would have otherwise received. This regulation applies whether the district paying the subsidy is the same as or different from the one receiving the child into foster care.

Unfortunately, as promulgated, the regulation refers to Section 398.6(e) of the Social Services Law (court ordered payments in court placements) rather than, as intended, Section 398.6(d) (district ordered payments in voluntary placements). Districts have implemented the provisions of 18 NYCRR 421.24(b)(4) as though the paragraph referred to Section 398.6(d) and should continue to do so until the regulation is corrected. Rather than seeking a technical amendment to correct this error, the Department will seek a general regulatory amendment which will establish a comprehensive and more equitable solution to the issue of parental financial responsibility for adopted children who need out-of-home care. The Department will shortly file for public comment a proposed regulation 18 NYCRR Part 422 which will set limits on the amounts parents may be required to contribute to the support of their children who are receiving foster care. This proposed regulation will also set limits on the amount parents who are receiving adoption subsidy will be required to contribute when their adopted children are returned to foster care.

3. Paragraph 14 of this subdivision permits a commissioner to review and change a subsidy agreement at a parent's request. This permits but does not require districts with Department approval to adjust the payment for families whose circumstances have changed.

Foster home board rates for all children in a district's care are periodically revised due to economic factors and each foster child's board rate is increased in several steps as he gets older. In paragraph 15 of subdivision (b) districts are permitted to change monthly subsidy payments made on behalf of all children adopted from that district in accord with the changes in board rates by amending the written agreements with parents and obtaining Department approval of such an amended agreement. This provision creates a firmer basis for a practice which has been wide-spread since before 1977. In addition, this section also permits a district to revise

a subsidy agreement, with Department approval, when AD-1 or AD-2 are revised. If a district chooses to pay less than 100% of the applicable board rate, in accordance with AD-1, the district may wish to adjust all such cases when AD-1 is revised. Such a change, however, requires the parent(s) consent;

4. The regulation, in paragraph 9 of subdivision (c), requires that districts shall, either annually, or at the submission of any medical subsidy claim, request information from the adopting person(s) about medical insurance in order to make payments only for items for which the person(s) will not receive other payment or reimbursement. This control has been exercised on an optional basis by a number of districts in the past;
5. Subdivision (g) provides that all subsidy agreements entered into prior to January 1, 1982 will remain in effect as written. There is thus no need to change practice with regard to existing subsidies.

IV. REQUIRED ACTION

Districts are required to review Section 421.24 and change any practices regarding subsidy which are not in compliance with these regulations;

Districts shall provide subsidy on behalf of each eligible child in their custody and guardianship adopted or placed for adoption. Although Section 453 of the Social Services Law states "A social services official may make monthly payments for the care and maintenance of a handicapped or hard-to-place child whom he has placed out for adoption or who has been adopted." (emphasis added) Fair hearing decisions have interpreted this to mean that the payments are obligatory when the child is eligible and this interpretation is consistent with Section 473(a)(1) of the Social Security Act;

Districts shall consider the income of the person adopting only for the purpose of establishing the amount of the subsidy;

Districts shall submit all agreements to pay subsidy to the New York State Adoption Service (NYSAS) for approval;

Districts shall include the information required under 421.24(b)(2) in any agreements to pay subsidy entered into after the effective date of these regulations.

With regard to the following options, districts shall inform NYSAS by June 1, 1983 whether they will:

- use Schedule AD-2 or pay each adoptive parent 100% of the applicable board rate for a hard-to-place or handicapped child adopted or placed for adoption;
- raise the subsidy payment of each child when he passes an age milestone at which the applicable board rate is raised;
- request information about medical insurance from those persons with whom agreements for medical subsidy are made subsequent to the effective date of these regulations, annually or upon the submission of a medical claim. Such information should likewise be requested from all persons with whom subsidy agreements are made pursuant to Title IV-E.

Whenever districts increase board rates they shall inform NYSAS within 30 days of the increase whether they will increase existing subsidy agreements accordingly.

Districts shall submit a plan for informing the general public about the availability of adoption subsidy payments to the director of the Division of Family and Children's Services regional office by July 1, 1983.

V. SYSTEMS IMPLICATIONS

There are systems requirements related to adoption and to the request for and approval of subsidy which occur prior to finalization of the adoption and others which relate to subsidy after finalization.

A. The following systems processes are required before finalization:

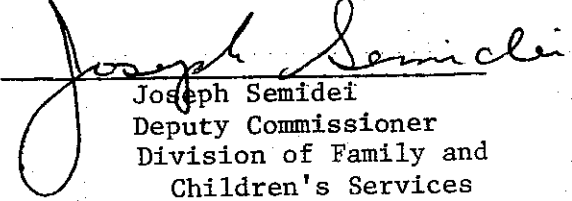
1. Once the child is freed for adoption, close the existing WMS case or delete the child from the existing WMS case and enter an M999 (Child Track Closed) in CCRS activity system.

2. Open the freed child in his/her case
 - a) Use a new case number.
 - b) Use the child's existing CIN number.
 - c) Enter the child's social security number if available.
 - d) Enter a new supplemental.
 3. Enter code M910 (Child Placement) indicating where the child is currently placed.
 4. Enter code A499 (Child Completely Freed for Adoption) in the Adoption Activity System.
 5. Enter code A530 (Adoption Subsidy Requested) in the Adoption Activity Reporting System.
 6. NYSAS will enter code A 535 when subsidy is approved.
 7. Authorize purchase of service (subsidy) on WMS in the prescribed manner. The adoptive parents are considered the provider of this purchased service. A provider ID may be assigned so that their name does not appear.
 8. Continue to report Assessment Service Plan information, as required.
 9. Once the child is legally adopted, close the WMS case.
- B. The following systems processes are required after finalization:
1. Open the child only in a WMS case (CCRS processing not required):
 - a) With a new case number;
 - b) With the child's adoptive name;
 - c) With a new CIN number.
 - d) If the child's new social security number is available, it should be entered. Do not use the old social security number from previous cases.
 2. Requests for approval of adoption subsidies subsequent to finalization pursuant to NYCRR Title 18 421.24(c)(7) require the written approval of the New York State Adoption Service.

3. The purchase of service will be authorized by using POS code 78 - Adoption Subsidy. Districts may opt to indicate the adoptive parents' name as the provider or a provider ID will be assigned (no name will be required).

VI. EFFECTIVE DATE

January 1, 1983


Joseph Semidei
Deputy Commissioner
Division of Family and
Children's Services

Attachment



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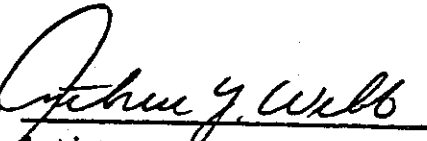
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STATE DEPARTMENT OF SOCIAL SERVICES
ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), 453 through 457 of the Social Services Law, I, Arthur Y. Webb, Acting Commissioner of Social Services, do hereby repeal Section 431.7 and enact a new Section 421.24 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective immediately upon filing with the Secretary of State.

Dated: AUG 18 1982

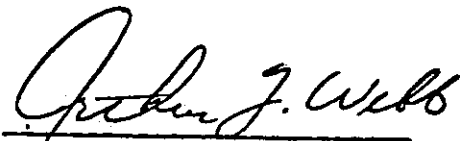
Signed:


Acting
Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on AUG 18 1982 repealing Section 431.7 and adding Section 421.24 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, a summary of which was published in the New York State Register on APR 7 1982

Dated: AUG 18 1982

Signed:


Acting
Commissioner

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

Furthermore, it is noted that the records should be kept in a secure and accessible format. Regular backups are recommended to prevent data loss in the event of a system failure or disaster.

The second section details the specific procedures for data entry. It outlines the steps from initial data collection to the final review and approval process.

It is stressed that accuracy is paramount at every stage of the process.

The third part of the document addresses the role of management in overseeing the data collection process. It highlights the need for clear communication and the establishment of a strong quality control system.

Management should ensure that all staff involved are properly trained and understand their responsibilities. Regular audits and reviews should be conducted to identify and correct any errors or discrepancies.

Finally, the document concludes by reiterating the commitment to data integrity and the importance of continuous improvement in the data management process.

The document is intended to serve as a guide for all personnel involved in data management.

Section 431.7 is hereby repealed.

A new section 421.24 is hereby enacted to read as follows:

421.24 Adoption with Subsidy

(a) Definitions.

- (1) Child, as used in this section, shall mean a person under the age of 21 years whose guardianship and custody have been committed to a social services official prior to such person's 18th birthday.
- (2) Handicapped child shall mean 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 provided in the Education Law (Section 4044), or makes or may be expected to make a child handicapped as provided in the Public Health Law (Section 2851);
 - (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 shall mean a child, other than a handicapped child:
 - (i) who has not been placed for adoption within six months from the date his guardianship and custody were committed to the social services official; 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

(iii) who possesses or presents one of the attributes listed in this subparagraph and which present an obstacle to the child's adoption, notwithstanding that the child has been in the guardianship and custody of the social services official for less than 6 months:

- (a) is one of a group of two or more siblings (including half-siblings) and it is considered necessary that the group be placed together; or
- (b) is 10 years old or older; or
- (c) is a child over eight years of age who 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 total population; or
- (d) the child is hard to place with a parent(s) other than his present foster parent(s) because he has been in care with the same foster parent(s) for eighteen months or more and has developed a strong attachment to his foster parent(s) while in their care such that separation from them would adversely affect the child's development.

(4) Board rate shall mean the board rate, including clothing allowance, child's allowance, and any other routine cash payments made to the boarding family for this child currently 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.

(5) Applicable board rate shall mean:

- (1) in the case of a child adopted by his foster parents, the board rate governing in the social services district which has custody of the child;
- (ii) in the case of a child adopted by New York State residents who were not the child's foster parent(s), the board rate governing in the social services district in which the adopting parent(s) resided at the time of adoptive placement;
- (iii) in the case of a child adopted by a parent(s) residing outside New York State, the board rate governing in the social services district which had custody of the child.

(1)

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

- (1) A social services official may 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 when such payments were applied for prior to adoption according to such form and procedure as may be established by the Department.
- (2) Payments shall be made only pursuant to a written agreement between the social services official 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 (3) of subdivision (a) of this section;
 - (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; and
 - (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; and
 - (ix) such other provisions as the department, the social services official or the adopting parent(s) may agree to.
- (3) 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 shall be completed for each child.
- (4) The written agreement covering monthly payments 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 indicated in this section. The written

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agreement shall provide that, if the adopted child is subsequently transferred to the care and custody of a social services official or an authorized agency, to the custody of the director of the division of youth or the commissioner of mental hygiene, or to the care of any of the residential facilities certified or licensed by the offices of mental health or mental retardation and developmental disabilities, the division of alcoholism and alcohol abuse or the division of substance abuse services and remains in such care or custody for more than 60 days, no payment under the agreement shall be made after the 61st day. No additional payments shall then be made until such time as the child returns to the home of the adoptive parent(s). During the period the child remains out of the home of the adoptive parent(s) and in consideration of any obligation that may be imposed upon such parent(s) pursuant to section 398.6(e) of the Social Services Law, the amount of any payment that would otherwise be made under a written agreement pursuant to this section shall be deemed to be a contribution by the parent(s) to the cost of the child's care. It shall be the responsibility of the adoptive parent(s) to inform the social services official of any change in the residential or dependency status of the child.

- (5) The written agreement shall not be affected by amelioration, remission or cure of the handicapping condition, if any.
- (6) The amount of monthly payment may not be less than 75 percent nor more than 100 percent of the applicable board rate, except as provided in paragraph (12) of this subdivision or upon the request and written consent of the adoptive parent(s).
- (7) 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.
- (8) Once an agreement to provide a subsidy payment is made, the annual income of the person(s) adopting the child shall be considered only for the purpose of determining the amount of the monthly payment to be made, according to the following income schedule and the provisions of paragraphs (10) and (11).

SCHEDULE AD-1

ANNUAL INCOME SCHEDULE---ADOPTION SUBSIDY PAYMENTS

<u>Family Size (including adopted child)</u>	<u>Gross Annual Income One Parent Family</u>	<u>Gross Annual Income Two Parent Family</u>
2	\$ 16,486	Not Applicable
3	\$ 19,479	\$ 17,708

4	\$ 22,347	\$ 21,082
5	\$ 25,922	\$ 24,455
6	\$ 30,169	\$ 28,461
Each additional person	Add \$ 1,500	Add \$ 1,500

(9) 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 non-farm self-employment or net income from farm self-employment as defined in paragraph (5) in subdivision (b) of section 404.5 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.

(10) 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 (9) of this subdivision, is equal to or less than the income standard in the applicable portion of the annual income schedule in paragraph (8) of this subdivision, the monthly payment for care and maintenance of the adopted child shall be 100 percent of the applicable board rate, unless the person(s) adopting voluntarily and, in writing, request and agree to a lower rate.

(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 (9) of this subdivision, is greater than the income standard in the applicable portion of the income schedule in paragraph (8) of this subdivision, the amount to be paid for care and maintenance of the child may be an amount less than 100 percent, but not less than 75 percent, of the applicable board rate, according to the following schedule, unless the person(s) adopting voluntarily and, in writing, request and agree to a lower rate.

SCHEDULE AD-2

ADOPTION SUBSIDY PAYMENTS

<u>Income Percentage of Income Schedule AD-1</u>	<u>Amount of Adoption Subsidy Payment</u>
Up to 100%	100% of Applicable Board Rate
Up to 110%	95% of Applicable Board Rate
Up to 120%	90% of Applicable Board Rate
Up to 130%	85% of Applicable Board Rate
Up to 140%	80% of Applicable Board Rate
Up to 150% or more	75% of Applicable Board Rate

- (12) At the discretion of the social services official, the agreement may specify that, for a period not exceeding 90 days following the date of an adoption order, the monthly payment may be increased by an amount not to exceed 75 percent of the applicable board rate.
- (13) All written agreements for payments for the care and maintenance of handicapped and hard-to-place children shall be submitted to the Department for approval or disapproval. A disapproval shall be in writing and shall state the reasons therefore. If an agreement is not disapproved in writing by the Department within 30 days after its receipt by the Department, it shall be deemed approved.
- (14) Neither the written agreement nor the amount of payment shall be subject to an annual review. 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, as set forth in paragraph (13) of this subdivision.
- (15) The local social services official may adjust the monthly payment in accord with the provisions of the schedules in paragraphs (8) and (11) of this subdivision and changes made thereto by the Department pursuant to the provisions of section 453.3 of the Social Services Law. Any change in the amount of the monthly payment shall be made by amendment to the written agreement and shall require the consent of the adoptive parent(s) and the approval of the Department, as set forth in paragraphs (13) and (14) of this subdivision, except that the agreement may specify that the payment made under the agreement may be adjusted in keeping with the applicable board rate established pursuant to Section 398-a of the Social Services Law.

11

(c) Medical subsidy for a handicapped child.

- (1) A social services official may make payments, without regard to the financial need of the person(s) with whom the child has been placed for adoption, for the cost of medical care, services and supplies provided to a handicapped child adopted or placed for adoption.
- (2) 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.
- (3) 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.
- (4) 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 Article 3 and Article 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.
- (5) 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.
- (6) 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 to needy persons.
- (7) 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.
- (8) Neither the application for nor the agreement for medical subsidy payments shall require approval by the Department.
- (9) 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 paragraph (5) of this subdivision.

(12)

(10) 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.

(d) Medical subsidy for a hard-to-place child. Payments for medical care, services and supplies for a hard-to-place child 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 subdivision (c) of this section.

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

- (1) Payments made pursuant to subdivision (b), (c) or (d) 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 Social Services Law and Part 358 of this Title. The local determination shall remain in effect unless and until reversed by the Department.

(f) Appeals and fair hearings.

- (1) Any person aggrieved by the decision of a social services official not to make a payment pursuant to this section or by a decision to make such payment in an inadequate or inappropriate amount contrary to provisions of this section or by the failure of a social services official to determine any application made under this section within thirty days after it is filed with such official may appeal to the Department and request a fair hearing thereon.
- (2) A fair hearing under this section may be for the following issues only:
 - (i) whether the social services official has improperly denied an application for payments to be made under this section, including the failure of the social services official to issue a determination of an application within 30 days of its filing; or
 - (ii) whether the social services official 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 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) The Department shall render its decision within 30 days after the fair hearing.
- (6) All provisions of Part 358 of this Title not inconsistent with paragraphs (1) through (5) of this subdivision, shall apply to fair hearings under this section.

(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.

(g) 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.

(h) 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.

(i) 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) 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, 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.

(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.

(j) 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.

15