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Administrative Directive

Transmittal:	17-OCFS-ADM-07
To:	Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Child Welfare and Community Services
Date:	July 11, 2017
Subject:	**Child Directly Relinquished to a Voluntary Authorized Agency: Change in Adoption Subsidy, Non-Recurring Adoption Expenses, and Medical Eligibility**
Suggested Distribution:	Voluntary Authorized Agency Adoption Supervisors Voluntary Authorized Agency Adoption Caseworkers
Contact Person(s):	See section IV
Attachments:	None

Filing References ***(check on these –be sure that are correct and there are no typos)***

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 421.24	SSL §§451, 453, 453-a, 454 and 456, SSA 473, Part K of Chapter 56 of the Laws of 2015		

I. Purpose

The purpose of this Administrative Directive (ADM) is to remind voluntary authorized agencies (VAs) that directly assume custody and guardianship or care and custody of children for adoption of the 2015 amendment to the eligibility standards for New York adoption subsidy, payments for non-recurring adoption expenses, and medical subsidy. The change involves the issue of payments to adoptive parent(s) who do not reside in New York State.

A “child,” for the purposes of adoption subsidy, payments for non-recurring adoption expenses, and medical subsidy, includes a person who is under the age of 21 years whose

guardianship and custody have been committed to a social services official or a voluntary authorized agency. It also includes certain other children where a social services official or a VA assumed care and custody of the child, and where all persons otherwise entitled to a notice of the child's adoption proceeding are deceased.[1]

II. Background

In 1990, New York amended its adoption subsidy, payments for non-recurring adoption expenses, and medical subsidy statutes to authorize such payments for otherwise eligible hard-to-place or handicapped children where the VA directly assumed custody and guardianship or care and custody of the child. This was done because of guidance and directives from the federal Department of Health and Human Services (DHHS) establishing that for a state to have a compliant Title IV-E adoption assistance program, adoption assistance payments must be available to otherwise eligible children with special needs, even where the state does not have placement and care (guardianship/custody) responsibility. [2]

The amendment to New York law in 1990 did not reflect any limitations on the residence of the adoptive parent in regard to adoption cases where the child was relinquished directly to the custody and guardianship or care and custody of a VA.

Subsequent to the change in New York law referenced above, DHHS issued guidance on the subject of which state is financially responsible for Title IV-E adoption assistance and non-recurring adoption expense payments where neither the state nor other government agency, such as a local department of social services, has placement and care (guardianship/custody) responsibility for the child. DHHS stated in Section 8.2A.1 of the federal *Child Welfare Policy Manual:*

> "If the State agency has responsibility for placement and care of a child, that State is responsible for entering into the adoption assistance agreement and paying the title IV-E adoption subsidy, even if the child is placed in an adoptive home in another State. If the State agency does not have responsibility for placement and care, it is the adoptive parents' State of residence where the adoption assistance application should be made. In that event, the public welfare agency in the adoptive parents' State of residence is responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement and paying subsidy, consistent with the way public benefits are paid in other programs."

Part K of Chapter 56 of the Laws of 2015 amended section 456 of the Social Services Law (SSL) relating to a child who has been placed for adoption by a VA with guardianship and custody or care and custody of such child as set forth in section 451(1) of the SSL. The amendment stated in relation to payments for adoption subsidy pursuant to section 453 of the SSL, non-recurring adoption expenses pursuant to section 453-a of the SSL, or medical subsidy pursuant to section 454 of the SSL that:

[1] Social Services Law §451(1).
[2] *Child Welfare Policy Manual* section 8.2B.10.

> "Notwithstanding any other provision of law to the contrary, the office of children and family services shall not enter into written agreements for, or issue, any such payments in instances where the person or persons applying for such payments reside outside of the state of New York at the time of the application for such payments is made."

III. Program Implications

The consequence of the 2015 amendment to New York's adoption subsidy, payment for non-recurring adoption expenses, and medical subsidy programs is that the New York State Office of Children and Family Services (OCFS) may no longer enter into adoption subsidy agreements involving children placed directly in the custody and guardianship or care and custody of a VA where the adoptive parent(s) resides in another state at the time of the application for adoption subsidy, payment for non-recurring adoption expenses, or medical subsidy. If the child is eligible for Title IV-E adoption assistance or payment for non-recurring adoption expenses, consistent with the federal guidance noted above, the application for adoption subsidy or payment for non-recurring adoption expenses will have to be made to the state of residence of the adoptive parent(s).

OCFS will continue to enter into adoption subsidy agreements with otherwise eligible children relinquished directly to a VA where the adoptive parent(s) resides in New York at the time of the application for adoption subsidy, payments for non-recurring adoption expenses, or medical subsidy in conformance with both federal and state law.

The limitations set forth in this release do not apply to children in the custody and guardianship or care and custody of a local department of social services who are placed through a VA. They only apply to children in the direct custody and guardianship or care and custody of the VA, for example, where the VA accepts a surrender of custody and guardianship of the child directly from the child's parent.

This change in state law took effect on July 1, 2015, and only applies to applications for adoption subsidy, payment for non-recurring adoption expenses, or medical subsidy made to OCFS on or after July 1, 2015. It does not impact applications made to OCFS or adoption subsidy agreements entered into prior to July 1, 2015.

IV. Required Action

In applicable cases, the VA must inform the adoptive parent(s) of this state law and the standards set forth in this release. In addition, in such cases, the VA must assist the adoptive parent(s) with application for adoption subsidy in their state of residence.

V. Contacts

Questions concerning this release should be directed to the appropriate regional office, Division of Child Welfare and Community Services:

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