

ALABAMA DEPARTMENT OF HUMAN RESOURCES
SOCIAL SERVICES DIVISION
ADMINISTRATIVE CODE

CHAPTER 660-5-22
ADOPTION

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660-5-22-.01 Definition Of Adoption. Services provided on behalf of a child who is legally free for adoption inclusive of recruitment and study of prospective adoptive homes, placement of the child, supervision of the child and home and other post placement services, legal services, reporting to the court and supervision of a child for whom adoptive petition has been filed in probate court and information and referral. The Department provides services in certain related adoptions and in adoptions where children are placed independently.

Author:

Statutory Authority: Code of Ala. 1975, Titles 12, 26, and 38; Title XX of the Social Security Act, 42 U.S.C. 1397.

History: Effective October 11, 1983.

660-5-22-.02 Eligibility For Title XX Services. After a child is placed for adoption by the Department or when a notice is received by the County Department that a petition has been filed to adopt a child (not an agency placement), the worker must complete and sign an Application for Services on behalf of the child, using the name given the child by the adoptive parents. The child will be considered a "separate family" for the purpose of the Title XX application. Only the child's own income will be considered in determining if the child meets the income limitations for Title XX services. If the child's own income exceeds the Title XX Income Scale for a one-person household, the child is not eligible for Title XX Adoption Services and must

receive these services under the Child Welfare Service (CWS) category of eligibility. A child who is a recipient of AFDC, SSI or SUP will be eligible for Title XX Services as a current recipient.

Author:

Statutory Authority: Code of Ala. 1975, Titles 12, 26, and 38; Title XX of the Social Security Act, 42 U.S.C. 1397.

History: Effective October 11, 1983. Emergency amendment effective January 23, 1991. Succeedent permanent amendment effective May 9, 1991.

660-5-22-.03 Adoption Placement.

(1) In fulfilling its responsibility to seek out and protect children in need of its service, the Department has an obligation to accept into its permanent custody those children who must be permanently separated from their own families and to place for adoption only those children for whom parental rights have been terminated and for whom custody has been committed to the Department by final order of the court.

(2) Legal Risk Placement. A legal risk placement is placement of a child with a prospective adoptive resource on a foster care basis pending legal proceedings to terminate parental rights or during appeal proceedings of a court order terminating parental rights. In some situations, infants may be placed with prospective adoptive families directly from the hospital on a legal risk, foster care basis. Direct placements will be considered only under the following conditions:

(a) The birth parents have been interviewed and counseled by the worker prior to the birth of the child and have had ample opportunity to consider alternate plans for the child, to decide whether adoption is the best plan for them and the child, and to understand the effects and permanency of adoptive placement and termination of parental rights.

(b) The birth mother and legal father, if there is one, have been interviewed after the child's birth and have had an opportunity to reconsider their plan after the birth of the child and to confirm their decision to place the child for adoption.

(c) The Department is prepared to accept permanent custody of the child.

(d) The infant has been observed in the hospital nursery by a pediatrician and medical reports on the child are

submitted to the Office of Adoption indicating the health status of the newborn child and the implications of any observable or suspected medical problems.

(e) An approved adoptive resource is available and appropriate for placement of the infant on a legal risk basis.

(f) The status of the alleged or legal father has been determined, preferably with an interview, such as to indicate the likelihood of moving easily from a legal risk placement to an adoptive placement.

(3) In offering services to families who are interested in having placed in their permanent home a child or children whom they may adopt, the Department has an obligation to consider carefully their interest and, if appropriate, to enter into a study for the purpose of deciding with them whether their home is a resource for a child who may be in the Department's custody.

(4) Application for the placement of a child should be filed in the county in which the applicants live. General requirements for adoptive applicants have been established to provide the applicants and the agency some guidelines within which to work.

(5) Applications to adopt children will be accepted from employees of the Department of Human Resources. For employees who applied to and incurred expenses with a licensed child-placing agency prior to March 9, 1990, the Department will continue to assume the cost of the fee charged by the agency for the home study and supervision of the child in the home, except that no expenses incurred out-of-state or transportation expenses of foreign born children will be paid. The Department will not assume the cost of applications by Department employees to child-placing agencies. All Department policies concerning acceptance of adoption applications, eligibility requirements, and placement processes shall apply to Department employees. In carrying out those policies, no special consideration may be given to an applicant's status as a Department employee. A Department employee may not apply to adopt a child who is or has been within his or her caseload, or in a caseload of a worker under his or her direct supervision.

(6) General Requirements For Applicants:

(a) Age. Both husband and wife must be at least nineteen years of age. Other than this restriction, applications to adopt may not be denied solely on the basis of a person's age. In considering the appropriateness of an adoptive resource for a

particular child, however, the applicant's age in relation to the age of the child to be placed will be considered in conjunction with the other general requirements listed in these rules.

(b) Single Person(s). Applications may be accepted from single persons.

(c) Marriage. Applicants must have been married at least three years. Marriage verification must be made. Acceptable documentation of marriage includes a valid marriage certificate sufficient to recognize a legal or common-law marriage in the jurisdiction. Previous marriages, divorces or deaths must be verified.

(d) Criminal Records Check. Applicants and members of their household 19 years of age and older are required to be fingerprinted and have a criminal records check.

(1) No home can be approved where any adult (or individual tried as an adult) in the household has been convicted of a crime (felony or misdemeanor) in this or another state at any time involving:

(i) a sex-related crime. Such crimes include, but are not limited to, sexual abuse, sexual exploitation, molestation, rape, child pornography, sale or exhibition of obscene materials, sodomy, sexual mischief, incest, enticement for immoral purposes, prostitution, obscenity; or

(ii) serious intentional, reckless or negligent physical injury, danger or death of any person. Such crimes include, but are not limited to, murder, homicide, manslaughter, assault with a weapon, reckless endangerment, kidnapping, unlawful imprisonment; or

(iii) a crime against a child. In addition to those crimes listed in 5(d)1.(i) and 5(d)1.(ii) such crimes include, but are not limited to, abandonment, endangerment, non-support, assault; or

(iv) involving major intrusion upon property or use of weapon to secure property. Such crimes include, but are not limited to, burglary and robbery; and

(v) arson; or

(vi) manufacture, sale, distribution, use or possession of controlled substances, opiates, illegal, addictive, or narcotic drugs. Such crimes include, but are not limited to,

convictions for DUI, DWI or for sale, distribution or possession of cocaine, heroin, LSD, marijuana, or alcohol.

2. Exceptions:

(i) Category I

(I) On an individual basis, the Division of Family and Children's Services may make an exception which will allow for the approval of an application notwithstanding the facts that a household member has a criminal conviction involving (1) major intrusion upon property or use of a weapon to secure property [other than those crimes falling under the no exception category] or (2) arson. A Category I exception will only be given where there is evidence of rehabilitation by the felon supported by credible documentation.

(II) Credible documentation includes: (1) written statements from law enforcement or community leaders; (2) statements regarding extenuating circumstances surrounding the crime and indicating that the crime is not likely to reoccur in the future; (3) statements regarding involvement in community organizations or programs; (4) statements establishing successful completion of a rehabilitation program indicating rehabilitation and a propensity not to recommit the crime in the future.

(ii) Category II

(I) On an individual basis, a special committee established by the State Department of Human Resources may grant an exception which will allow for the approval of an application notwithstanding the fact that a household member has a criminal conviction [other than to those crimes falling in the no exemption category] for a (1) sex related crime; (2) serious, intentional, reckless or negligent physical injury, danger or death of any person; or (3) a crime against a child; or (4) the manufacture, sale, distribution, use or possession of controlled substances, opiates or illegal, addictive or narcotic drugs. However, due to the serious nature of these offenses certain conditions must exist before a request for an exception will be evaluated. In case of a felony conviction, ten years must have elapsed since the sentence was served or probation ended, whichever is later. In the case of a misdemeanor, five years must have elapsed since the sentence was served or probation ended, whichever is later

(II) The application for a Category II exception will be reviewed by a three person Category II Exception Committee, none of whom has been involved in the case. In addition to the information cited above, the Committee will require evidence of

rehabilitation supported by credible documentation. Credible documentation includes: (1) written statements from law enforcement or community leaders; (2) statements regarding extenuating circumstances surrounding the crime and indicating that the crime is not likely to reoccur in the future; (3) statements regarding involvement in community organizations or programs; or (4) statements establishing successful completion of a rehabilitation program indicating rehabilitation and a propensity not to recommit the crime in the future; or (5) pardon, if it exists. Furthermore, additional information may be requested by the Committee, such as a medical examination, drug screening, psychological evaluation or personal interview with the County Department and applicant. A recommendation will be made by the Category II Exception Committee to the Director of Family and Children's Services for a final decision. The County Department will receive a response to their request from their county assistance consultant based upon the Director's decision.

3. No exception will be granted where there is a criminal conviction involving:

(i) a sex-related crime against a child;

(ii) serious intentional reckless or negligent physical injury or death of a child.

(e) Motivation. It is important to understand the motives of applicants who are seeking a child and the extent to which they are motivated by their own needs and by the needs of a child. Where infertility is present, the issues surrounding the infertility should be covered in considering the motivation to adopt.

(f) Financial Stability. There is no minimum income level for applicants. The family should have sufficient income and savings to meet its needs and provide for the child or children without difficulty. (Money management is important, as well as the amount of income and savings.)

(g) Employment. Applications may be accepted from a person(s) even though they are employed outside of the home. If the application is approved, placement of a child may be made even though the person(s) plans to continue employment outside the home. The Department may exercise sound discretion in requiring a person(s) to remain in the home with a child for a reasonable period of time when a particular child requires the presence of that person(s) to ensure his adjustment. The employment plans of a prospective parent(s) outside the home will be discussed during the study process. The Office of Adoption will review such plans for approval. When placement plans are

being made where the mother or the single parent plans to continue employment, specific information will be secured about child-care plans. Such plans are to be approved by the Office of Adoption.

(h) Health. The agency requires medical reports indicating that all family members are in good health.

(i) Assurance of Medical Treatment. The Department must have assurance that the adoptive parents are willing to provide medical treatment to children as recommended by a legally licensed physician.

(j) Religion. Applications may be accepted from persons of any religious faith. Children should have parents who can give them an opportunity for spiritual and ethical development. Any religious differences between the applicants should be worked through prior to approval.

(k) Residence. Applications may be accepted from persons who currently live in Alabama and who expect to remain in Alabama long enough to complete the application process and have a reasonable period of consideration for placement. Inquiring families living outside the State should be referred to the public social service agency in the state where they live.

(l) Citizenship. The application may be accepted where either the prospective father or mother is a citizen of the United States. In instances of single parent adoption, the parent must be a citizen of the United States. If naturalization is imminent, the family study may be initiated, but placement will not be made until citizenship of at least one parent is granted.

(m) Race. Race or national origin will not be used as a single or exclusive criterion in the placement of children for adoption. The categorical denial of placements based on race or national origin is hereby prohibited. The consideration of race or national origin of the child or prospective parents will be used as one relevant factor in placements only if doing so is in the best interest of the child. This determination will be made on a case by case basis to take into account the particular child, parents and circumstances.

(n) Exceptions. Exception to the requirement that applicants must have been married for at least three years may be made in order to locate the most appropriate resource for a child with exceptional needs such as a child with marked physical or mental handicaps, black children, older school-age children or

large family groups. Clearance should be made with the Office of Adoption prior to initiating home study.

(7) The Adoptive Home Study. The purpose of an adoptive home study is to meet the needs of the children for whom the agency has planning responsibility and to help adoptive applicants determine whether they have the capacity to become parents. Major consideration should be given to the personal adjustment of each of the prospective parents, their relationship to each other, their relationship to their own parents and siblings, their deeper as well as expressed motives in seeking a child, their understanding of children and children's needs, and their ability to accept an adopted child. At least one home visit during the study is required as well as individual interviews with the applicant(s).

(a) The following information on the adoptive couple or person should be included in the home study:

1. How the couple or person came to apply;
2. Experience with children, particularly adopted children;
3. Expectations they have for the prospective child;
4. Autobiography written by the applicants;
5. Description of the home and neighborhood;
6. Marital relationship including courtship, wedding, present satisfactions and adjustments and leisure time activities;
7. Early life;
8. School and work experiences, including child-care plans if both parents work or if applicant is single and employed;
9. Feelings on infertility, if present;
10. Religion;
11. The type child they will accept, including information on whether they will accept handicaps, special needs or problems, and certain background factors;
12. Ideas about child rearing;

13. Attitude about telling child of his adoption;
14. Information on others in home; and
15. Family support systems.

(b) At least two references are to be interviewed after it is reasonably certain that the applicant(s) will be recommended for approval.

(c) A diagnostic evaluation will be recorded at the end of the study and is inclusive of recommendation of the type of child as well as future plans for the applicant(s).

(d) Applicants are to be given a choice of group or individual study. The group study lends itself to an educational approach. The minimum number of group sessions is four and the following outline is followed: Session I-Basic Adoptive Information; Session II-Values Clarification; Session III-Panel of Adoptive Parents or Professionals; and Session IV-Parenting Skills. Following these sessions, the same steps are taken as in the conventional study method, namely home visit, references, recording, evaluation and assessment.

(e) Final approval of an application must be made by the Department.

(8) Release of Adoption Home Studies. Approved adoption home studies shall not be released to another state agency. Independent agency or Private Independent Practitioner prior to six (6) months after the date of the approval of the adoption home study.

(9) Reapplications. Applications for the second child may be taken at any point after the first adoption is legally final. The study includes areas of change since the first study and what applicants will accept in the second child.

(10) Rejection of Application. The failure to approve an application must always be related to the Department's responsibility to choose homes which appear to be the ones that would best serve the children under care.

(11) Selection of Home.

(a) The adoptive home is selected by the Office of Adoption in the State Office and its choice is shared with the County Office. Adoptive parents are selected on the basis of their capacity to meet the needs of a particular child rather than the length of time they have waited for a placement. The

prospective family is advised of the availability of the child for placement, and it is made clear that they are not obligated to take the child proposed for them.

(b) Adoption by Foster Parents. The Department recognizes that, for many children who become free for adoption, the child's foster parents will be the most appropriate adoptive resource. In those situations where the foster parents request to adopt a child in their home, those foster parents will be given first consideration as an adoptive resource for the child. The decision as to whether the foster home will be approved as the child's adoptive home will be a decision of the Department based upon the following factors: the child's attachment to the foster parents, the length of time the child has been in the home, the age of the child in relation to age of foster parents, health and income of foster parents, involvement/interference from biological family, and appropriateness of the foster home placement.

(12) When a legal risk placement [refer to definition in subsection (2)] is to be considered, the following procedures will be followed:

(a) The approved adoptive family must be issued a foster home approval for the particular child to be placed, unless the resource is already an approved foster home.

(b) A board payment (current rate) or Medicaid only (if the adoptive/foster parents do not desire to receive the board payment) will be awarded. The board payment and Medicaid will be in effect only until the adoptive home placement agreement is signed.

(c) Upon placement of the child, the foster/adoptive parents will be required to sign an acknowledgment of the legal risk involved in the placement and an acceptance of the child on a foster care basis pending legal proceedings to terminate parental rights. Adoption placement agreements will not be initiated until the child is legally free for adoption.

(13) Placement Process. The child is seen by the couple who will be given as much time as they wish to be with the child. History of child will be discussed, pertinent medical information will be reviewed, and questions will be answered. Pre-placement visits may be necessary before the child and the adoptive parents are ready for placement. Each placement will be handled in accordance with the child's and adoptive parents' needs and capacities. If the couple decides to take the child they will be asked to sign the Adoptive Home Placement Agreement, which is also signed by a representative of the State Department

of Human Resources. The couple will be given copies of the child's medical record and the Adoptive Home Placement Agreement. They will be instructed to have the child seen by their own pediatrician or physician as soon as possible. The supervising County Department will be sent copies of the child's record while in foster care, his medical, and a copy of the placement interview and placement agreement.

(14) Post Placement Services.

(a) The County Department will be responsible for providing or arranging post-placement services to the family and the child in the adoptive home.

(b) For children placed by the Department, at least two visits during the first three months should be made by the county worker, the first visit being with the child and family in the adoptive home within forty-five days of placement. At the end of the three months, the family may be ready to request that consent be given to their adoption of the child. Recording is forwarded to the Division of Family and Children's Services immediately after each visit, and the last should be accompanied by a request for consent to be given if the family is ready to initiate the legal procedure and if the worker agrees that this is appropriate. After the court has issued an Interlocutory Order, at least two more visits are to be made prior to issuance of the final decree and copies of the recording of each visit are sent as they are made to the Office of Adoption. Both adoptive parents should be involved in the post-placement contacts.

(c) Where the Department is investigating the adoption of children placed independently or by agencies other than the Department, only one post-placement visit is required. That visit with the child and adoptive family must occur in the home of the adoptive family within 45 days of the child's placement in the home. Additional services or visits should be provided by the worker as indicated by the family's or child's needs.

(15) Removal after Placement. The agency has authority to remove the child after placement and before legal adoption. This step should be considered only for reasons such as separation of the adoptive parents, death, mental breakdown, serious incapacitating illness, discovery of a felony conviction, or failure in adjustments. Even in such cases, the County and State Departments of Human Resources must examine each situation individually to determine whether the child should be removed. Every possible help should be offered the family before considering removal.

(16) Work with Other Agencies in Adoption. The State Department is prepared to work with any authorized or licensed child-placing agency in or out of the State in the interest of placement of a child with an Alabama family whose application is or can be approved. The interested family and the other agency should request this service. Applications may not be in approved status with the Department of Human Resources and another child-placing agency simultaneously.

(17) Intercountry Adoptions. The Department of Human Resources may work with families in Alabama who are interested in intercountry adoptions if those families have knowledge of a particular child and/or a particular agency which will consider placement with them. However, in most instances these families will be referred to licensed child-placing agencies whose services include intercountry placement.

Author: Margaret Livingston

Statutory Authority: Code of Ala. 1975, §§26-1-4, 26-10A-1 through 26-10A-38, Title 38, Chapter 2.

History: Effective October 11, 1983. Permanent amendment effective April 10, 1987. Succeedent permanent amendment effective August 11, 1987. Succeedent permanent amendment effective February 4, 1988. Succeedent permanent amendment effective May 12, 1988. Succeedent permanent amendment effective September 8, 1988. Emergency amendment effective October 13, 1989. Emergency amendment effective October 23, 1989. Succeedent permanent amendment effective January 9, 1990. Succeedent permanent amendment effective February 9, 1990. Succeedent permanent amendment effective March 9, 1990. Succeedent emergency amendment effective January 23, 1991. Succeedent permanent amendment effective May 9, 1991. Succeedent emergency amendment effective May 8, 1991. Succeedent permanent amendment effective August 12, 1991. **Amended:** Effective November 10, 1992.

Amended: Filed November 4, 2008; effective December 9, 2008.

660-5-22-.04 Adoption Legal Process.

(1) Pre-Placement Investigations.

(a) A child may not be placed in a prospective adoptive home, either independently or by an agency, prior to completion of a pre-placement investigation of the petitioners and their home, except for good cause shown to the court on the court's record and with immediate notice by the petitioners to the court and the County Department of Human Resources.

(b) The pre-placement investigation must have been completed within twenty-four months of the placement of the child.

(c) The investigation must be conducted by one of the following:

1. The Department of Human Resources;
2. A licensed child-placing agency;
3. An individual or agency licensed by the Department to perform investigations; or
4. A social worker appointed by the court who is licensed by the Alabama Board of Social Work Examiners and certified by the Board for private independent practice in the social casework specialty.

(d) In the case of persons applying to the Department to become an adoptive resource for a child in the Department's custody, the completion of the adoption home study will meet the requirement for the pre-placement investigation.

(e) When a specific child has been identified, all criteria for the pre-placement investigation as listed in (f) below must be included in the investigation and report. When a specific child has not been identified for placement at the time of the pre-placement investigation, the information pertaining to the child and birth family must be included in the post-placement investigation and report to the court.

(f) Information which must be obtained in the investigation and included in the report to the court includes the following:

1. The suitability of each petitioner and his or her home for adoption;
2. Why the natural parents, if living, desire to be relieved of the care, support, and guardianship of the child;
3. Whether or not the natural parents have abandoned the child or are otherwise unsuited to have custody of the child;
4. Any orders, judgments or decrees affecting the adoptee or any children of the petitioners;
5. Any property owned by the adoptee;

6. The medical histories, physical and mental, of the adoptee and his or her biological parents;

7. Criminal background investigations of the petitioners;

8. All costs and expenses related to the adoption; and

9. Any other circumstances which may be relevant to the placement of the adoptee with the petitioners.

(g) All current and previous marriages, divorces and deaths of the petitioners and their current or former spouses must be verified and current reports of medical examinations must be completed by the petitioners and other residents of the household (must have been completed within two years of date of application).

(h) Medical histories of the adoptee and his or her biological parents must be given to the petitioners prior to finalization of the adoption and the case record must document that this information was provided to the petitioners or their attorney.

2. Petition.

(a) Following placement of a child in the home of the prospective adoptive parents, a petition to adopt the child must be filed in the Probate Court in the county in which the petitioners have legal residence or are in military service, in the county in which the child lives or has legal residence, or in the county in which the agency or institution having custody or guardianship of the child is located.

(b) In independent adoptions, a copy of the child's birth certificate or an affidavit stating that application for the birth certificate has been made must be filed with the petition except in cases of abandonment, along with a copy of the report of the pre-placement investigation. For children placed by the Department, the petition must be accompanied by a copy of the report of the pre-placement investigation and an affidavit by the petitioners that they have requested the Department to provide the court with a copy of the child's birth certificate. The Department will acknowledge to the court the receipt of the adoption petition and forward a copy of the child's original birth certificate.

(c) The petition must be filed within thirty days of placement unless the child is in the custody of the Department or

a licensed child-placing agency, or unless the court extends the thirty day period for good cause shown. For children placed by the Department, a three-month post-placement period will precede the issuance of consent by the State Department, unless the Department determines that the best interests of the child warrant an earlier issuance of consent.

(d) The proceedings for the adoption of a child may be transferred to the juvenile court on motion of any party of the proceedings. Provisions of the adoption statute are still applicable in these cases.

(3) Notice of Adoption Proceedings.

(a) Unless previously waived, notice of the adoption proceedings must be served by the petitioner on the following:

1. Any person or agency whose consent is required by law;
2. The child's legal custodian or guardian;
3. The spouse of any petitioner who has not joined in the petition;
4. The spouse of the adoptee (if applicable);
5. The surviving parent or parents of a deceased parent of the adoptee;
6. The child's physical custodian, excluding foster parents or licensed child-placing agencies, or persons having court ordered visitation rights;
7. The agency or individual appointed by the court to investigate the adoption;
8. Any other person designated by the court;
9. The Department of Human Resources; and
10. The father and putative father of the adoptee if made known by the mother or otherwise known by the court.

(b) A copy of the petition must accompany the notice to persons in numbers 2 through 10 above and all persons served must respond within thirty days if they intend to contest the adoption.

(c) Upon receipt of the notice of adoption proceedings and petition, the State Department will acknowledge to the appropriate court the receipt of the petition and identify the investigator in the adoption if that information is known to the Department.

(4) Interlocutory Order. After placement of the child with the petitioners and the adoption petition has been filed, the court will enter the interlocutory order. In an independent adoption, the order will grant legal custody of the child to the petitioners. If the child was placed by the Department or a licensed child-placing agency which held legal custody of the child at the time of placement, custody will be retained by the Department or the agency through finalization of the adoption unless there is a relinquishment.

(5) Post-Placement Investigation and Report to the Court.

(a) A post-placement investigation and report to the court must be made in all adoptions, except that no pre- or post-placement investigation or report is required in a related or stepparent adoption unless otherwise ordered by the court.

(b) If a pre-placement investigation was completed by the Department within 24 months of placement, the post-placement investigation will reflect any subsequent changes in the family's situation and the additional information as described below. If the pre-placement investigation was not completed within 24 months of placement, the post-placement investigation must include all information as required in the pre-placement investigation.

(c) The Department must verify all of the allegations of the petition and include sufficient information for the court to determine whether there has been compliance with the consent or relinquishment provision of the adoption statute.

(d) The natural parents, unless they have lost custody or guardianship of the child through court proceedings or unless they cannot be found, must be interviewed.

(e) The adoptee must be observed and the petitioners interviewed in their home within 45 days after placement.

(f) If the Department considers the adoption not to be in the best interests of the child, the Department's objections shall be included in a report to the court in order for the judge to consider in determining whether or not the adoption may proceed.

(g) If the adoptive parents wish to be relieved of custody of the child or if the child is in need of protective services, the same procedure is to be followed for any child in need of protective services.

(h) The petitioners are required to file with the court a sworn statement of all fees and charges related to the adoption prior to finalization of the adoption. A description of these fees, charges, costs and expenses must also be a part of the Department's report to the court. The petitioners must have court approval for all charges for expenses, fees or services they will be paying related to the adoption. These expenses include fees in independent adoptions and other charges incurred in agency as well as independent adoptions.

1. It is a crime to pay or offer to pay money or anything of value to a birth parent for their consent or cooperation in an adoption or for placement of a child for adoption.

2. It is permissible to pay for the maternity-connected medical or hospital and necessary living expenses of the birth mother preceding and during her pregnancy-related incapacity as an act of charity, as long as payment of these expenses is not contingent upon placement of the child for adoption.

(i) The completed report of the post-placement investigation must be filed with the court within 60 days from receipt of notice of the adoption proceedings unless the court grants an extension upon a showing of good cause.

(j) In investigating the circumstances of the placement, if it appears that an unlicensed third-party arranged the placement, all relevant information should be obtained, reported to the court and sent to the State Department of Human Resources.

(6) Consents and Relinquishments.

(a) The following persons or agencies are required to consent to an adoption:

1. The adoptee if he or she is fourteen years of age or older, unless the court finds that the adoptee does not have the mental capacity to consent;

2. The adoptee's mother and presumed, or legal, father unless their parental rights have been terminated by the

court, or they have relinquished the child to the Department of Human Resources or a licensed child-placing agency for the purpose of adoption, or they have been adjudged by a court to be incompetent or mentally incapable of consenting or relinquishing or are dead or presumed deceased;

3. The putative or alleged father if his identity is made known by the mother or is otherwise known to the court provided he responds within 30 days to the notice of the adoption proceedings; unless he has signed a statement denying paternity; and

4. The Department of Human Resources or licensed child-placing agency to which the adoptee has been relinquished or which holds permanent custody of the child has placed the child for adoption. A relinquishment signed by the parents transfers the physical custody of the child to the Department or a licensed child-placing agency which then has the authority to place the child for adoption.

(b) Consents or relinquishments may be given before a Probate Judge or clerk of the court, or other officers appointed by the court to take consents; designated representatives of the Department of Human Resources or a licensed child-placing agency; or, a notary public. However, the consent of a birth mother taken prior to the child's birth must be signed or confirmed before a probate judge. The Department will not take consents in independent adoptions, but must verify that the consent was taken by an authorized party.

(c) For children placed by the Department, the State Department will provide consent for the adoption upon recommendation and request from the County Department following the initial three-month period after placement and two post-placement visits by the county worker with the adoptee and adoptive parents, provided the Department and the adoptive parents indicate their willingness to proceed with the adoption.

(d) In interstate placements, the Department will recognize consents or relinquishments to agencies taken by persons appointed to take consents and relinquishments by any agency which is authorized by the other state's law to conduct investigations and home studies for adoptions.

(e) In the case of a minor parent who is consenting to the adoption of his or her child, a guardian ad litem must be appointed to represent the interests of the minor parent prior to giving consent, the consent of the minor parent may not be revoked solely on the basis of the parent's minority.

(f) The consent or relinquishment must be in writing and signed by the person(s) giving consent or relinquishment and must state the following:

1. The date, place, and time of execution;
2. The child's name and date of birth or expected date of birth where consent or relinquishment is taken prior to the birth of the child;
3. The relationship of the person consenting or relinquishing;
4. The names of each petitioner unless the document is a relinquishment to the Department or a licensed child-placing agency or, if a consent, the person executing the consent has waived his or her right to know the identity of the petitioners;
5. The address of the court in which the petition will be filed, if known, and if not known, the name and address of the agency, petitioner, or their attorney on whom notice of the withdrawal of the consent may be served;
6. If a relinquishment, the name and address of the agency to which the child is being relinquished; and
7. Certification that the person executing the document:
 - (i) Is voluntarily and unequivocally consenting to the adoption;
 - (ii) Understands that the document may be irrevocable and should not sign it if he or she desires psychological counseling or legal advice;
 - (iii) Understands that by signing the document all rights and obligations to the child are forfeited;
 - (iv) That in signing the document in conjunction with the subsequent court order ratifying the consent, notice of adoption proceedings are waived, except in the case of a contest or appeal, and if indeed the consenter actually is waiving the right to further notice; and
 - (v) That the person executing the document understands it and executes it freely and voluntarily, and that the person has received or been offered a copy of the consent or relinquishment.

(g) The required consent or relinquishment may be implied when the parents have left the child for a period of 30 days without providing for his or her identification; left the child with others for a period of 6 months without providing for the child's support and without communication, or not otherwise maintaining a significant parental relationship with the child; or having received notice of the adoption proceedings fails to answer or respond within 30 days.

(h) Consents or relinquishments may be taken at any time, including prior to the birth of the adoptee, but the consent of the adoptee's natural mother taken prior to birth must be signed or confirmed before a Probate Judge. At the time of taking the mother's pre-birth consent, the Judge must explain to the mother the legal effect of signing the consent and the time limits and procedures for withdrawal of the consent, and must give the mother a form for withdrawing the consent. Although the law allows parents to sign pre-birth consents and relinquishments, under no circumstances will the Department accept a child for placement on a relinquishment signed prior to the birth of the child.

(i) The consent or relinquishment may be withdrawn without court action for any reason within 5 days after the birth of a child or within 5 days after signing or confirming (before the court) the consent or relinquishment, whichever comes last. The person withdrawing the consent must deliver or have postmarked a signed and dated written withdrawal signed by two witnesses to the court within the five day period. Within 14 days after the birth of the adoptee or of signing the consent, whichever comes last, the consent may be withdrawn by petitioning the court for withdrawal. Within this 14-day period, if the court finds the withdrawal to be reasonable and in the best interest of the child, the consent or relinquishment may be withdrawn. The parent may withdraw the consent or relinquishment at any time up until the final decree upon a showing that the consent or relinquishment was obtained by fraud, duress, mistake, or under influence. The consent or relinquishment may not be challenged on any grounds after one year from the date of the formal decree except in cases where the adoptee has been kidnapped.

(7) Dispositional Hearing and Final Decree. The court is to schedule the adoption petition for a dispositional hearing within 90 days (120 days for special needs child) after filing the petition unless the court extends the time period for good cause shown. The court may set the dispositional hearing earlier than the 90 or 120 days upon receipt of all required information and when the child has been in the actual physical custody of the petitioners for a period of 60 days or when the time requirement

is waived by the court for good cause. The court issues the Final Decree of adoption after which the child's new birth record is prepared by the Division of Vital Statistics.

(8) Adoption of Adults. The Department of Human Resources has no responsibility in regard to adoption of adults.

(9) Contested Hearings.

(a) If a motion is filed by any party contesting an adoption, the court will set the matter for a contested hearing. The court is required to give notice to all parties who have appeared before the court in the adoption, including the party contesting the adoption and the petitioners. Based upon the court's findings, the adoption proceedings may be dismissed or the motion to dismiss may be denied.

(b) A contested hearing may be transferred to juvenile court upon motion of any of the parties or on the court's own motion. If the contested hearing is held in Probate Court, the judge may proceed immediately to the dispositional hearing after completion of the contested hearing.

(c) Guardians ad litem must be appointed for the adoptee and minor natural parents in a contested adoption hearing.

(10) Appeals. Appeals from any Final Decree of adoption are filed with the Alabama Court of Civil Appeals and must be filed within 14 days from the Final Decree.

(11) Removal of Adoptee From County. After a child has been placed in an adoptive home and prior to issuance of the Final Decree, in independent and agency adoptions, the child may not be removed from the county of the petitioner's residence for a period longer than 15 consecutive days without prior notice to the investigating agency or individual. Children placed by the Department may not leave the state for any period of time without prior approval from the Office of Adoption.

(12) Related Proceedings. If it is determined at any point during the adoption proceedings that other custody actions concerning the adoptee are pending in any other court, a motion must be filed to stay the adoption proceedings until a determination is made by the appropriate court of the pending custody action.

(13) Responsibility for Making Other Plans for Child for Whom Adoption Proceedings Are Final. The responsibility of the County Department is not always ended when adoption

proceedings are final. The child may continue to need agency service. If it is deemed necessary to make plans for removal of the child from the petitioner's home and place him elsewhere, the County Department should stand ready to assist in making such plans, and the report to the court should so indicate.

(14) Court and Agency Records of Adoption.

(a) After the petition is filed and prior to the entry of the final decree, the court records of adoption proceedings will only be open to inspection by the petitioners or their attorney, the investigator, and any attorney that is representing the adoptee except upon court order for good cause. Court proceedings in adoption proceedings are confidential and not open to persons other than the parties in interest and their attorneys, except by order of the court.

(b) After the final decree has been entered, the court records will be sealed, kept as a permanent record of the court and withheld from inspection, except by order of the court which entered the final decree.

(c) All adoption files of the Department or other investigating agency are confidential and may not be inspected except with a court order. However, the State Department of Human Resources, Office of Adoption, will release to the adoptive parents, natural parents, or the adoptee who is at least 19 years old, upon request, the non-identifying information described in the second summary sheet noted below. If the natural mother or the natural or presumed father have consented in writing under oath to the release of identifying information, the State Department of Human Resources, Office of Adoption, will, upon request, release such identifying information to the adoptee who is at least 19 years old, including a copy of the adoptee's birth certificate, as it related to the consenting parent.

(d) When a final decree is issued, two separate summary sheets, one containing identifying information and the other containing non-identifying information, on children placed for adoption, including those placed by licensed child-placing agencies and wards placed by the Department and children placed independently are to be sent to the State Department of Human Resources. The summary containing identifying information will be sealed.

1. The sealed summary sheet will contain the following identifying information:

(i) The adoptee's birth name and adoptive name;

(ii) The date and place of birth of the adoptee, except in case of abandonment;

(iii) The circumstances under which the child came to be placed for adoption;

(iv) The physical and mental condition of the adoptee, insofar as this can be determined by a competent medical authority;

(v) The names and last known address(es) of the child's natural parents, along with their dates of birth and Social Security numbers, if known;

(vi) The age of the natural parents at the time of the child's birth;

(vii) The nationality, ethnic background, race and religious preferences of the natural parents;

(viii) The educational level of the natural parents;

(xi) Information pertaining to pre-adoptive brother/sister relationships; and

(x) Whether the identity and location of the natural father is known or ascertainable.

2. The second summary sheet will contain the following non-identifying information:

(i) Health and medical history of the adoptee;

(ii) Health and medical histories of the adoptee's natural parents;

(iii) The adoptee's general family background, including ancestral information, without name references or geographical designations;

(iv) Physical description of family members;

(v) The length of time the adoptee was in the care and custody of one other than the petitioner; and

(vi) The circumstances under which the child came to be placed for adoption.

(15) Status of Adopted Child. Upon entry of the final decree, the natural parents of the adoptee, except for a natural

parent who is the spouse of the adopting parent as in a stepparent adoption, are relieved of all parental responsibility for the adoptee and will have no parental rights over the adoptee. The adoptee will take the name designated by the adoptive parent(s) and will be treated as the natural child of the adopting parent(s), having all rights and duties of a natural child of the adoptive parent(s) including the right of inheritance. The adoptee may not inherit from his or her natural parents or other biological family who die intestate.

(16) **Persons Who May Place Children for Adoption.** Only a parent, a parent of a deceased parent, a relative of the degree of relationship specified in the law, the Department of Human Resources, a licensed child-placing agency, or an agency approved by the Department of Human Resources may place a child for adoption. Other persons may not be in the business of placing children for adoption and they will be deemed to be in the business of placing children for adoption if they place more than two unrelated children within a twelve-month period.

(17) **The Adult Who Was Adopted as a Child.**

(a) Any adoptee who has arrived at the age of 19 shall have the right to receive information from the appropriate agency about his placement. Identifying information pertaining to the adoptee's natural parent, including a copy of the adoptee's birth certificate, shall be given only with the written consent under oath of the natural parent.

(b) Any persons, including adoptees, natural parents and adoptive parents, who have a compelling need for additional non-identifying information that can only be obtained through contact with an adoptee, natural parents or adoptive parents, may petition the court for assistance. The court may direct the Department or another intermediary to establish contact with the adoptee, natural parents or adoptive parents and obtain the requested information without disclosing identifying information to or about the petitioner. The information will then be filed with the court and the court will release the non-identifying information using its own discretion.

(c) When an adoptee reaches age 19, if the natural parents have not consented to release of identifying information, the adoptee may petition the court for assistance. The court will direct the Department or another intermediary to contact the natural parents and determine if they will consent to the release of their identity. If the natural parents consent to release of their identity, the court will direct the release of the information to the petitioner. If the natural parents are deceased, cannot be found, or do not consent to the release of

identifying information, the court will weigh the interests and rights of all parties and determine if the identifying information should be released without consent of the natural parents. If the court does release the identifying information without consent of the natural parents, the court may restrict use of the information, including prohibiting contact between parties.

(18) Release of Children from Health Facilities for Adoption. No hospital or other health facility may release a child to be adopted to any person other than the Department of Human Resources, a licensed child-placing agency, the child's parent, relative by blood or marriage, or a person holding legal custody of the child, unless the release of the child is authorized in writing by one of the child's parents or any agency which holds legal custody of the child after the birth of the child. The hospital is required to send to the Department within 48 hours, the name and address of any person and, in the case of a person acting as an agent for an organization, the name and address of the organization, to whose physical custody the child is released from the hospital for adoption.

(19) Independent Adoptions.

(a) The term "independent adoption" refers to those adoptive placements of children with unrelated individuals arranged outside of the auspices of the Department or a licensed child-placing agency. The term generally does not include related and stepparent adoptions.

(b) Although a pre-placement investigation is required by law, there will be situations when a child is placed without the pre-placement investigation. In those situations, all of the required information for the investigation will be obtained after placement and reported to the court within 60 days of receiving notification of the adoption proceedings. If the child has been in the home less than 45 days when notification of adoption proceedings is received, the worker should visit the child and family in their home within the 45 day period following placement. If the child has been in the home 45 days or more, the Department is to immediately initiate an investigation of the child's circumstances upon receipt of a request for a pre-placement investigation or an adoption petition.

(c) Fees for Investigations in Independent Adoptions. The Department is required to collect a fee of \$300.00 for investigation services in certain adoptions. Unless waived by the Department, the fee will be charged to the petitioners in all adoptions except those in which an investigation is specifically not required by statute, e.g., stepparent adoptions and closely

related adoptions. The fee is also not to be collected for investigations where parental rights have been terminated, or in those adoptions involving children placed for adoption by the Department or a licensed child-placing agency, or in cases in which the investigative services were performed by a licensed child-placing agency. The fee is also not to be collected without evidence of the prior court approval for the Department to collect the fee.

1. The Department shall waive the fee for the investigation in cases of indigency of the petitioners where the family's gross income does not exceed 100% of the Annual Federal Poverty Income Guidelines.

2. The Department may waive the fee for other good cause under the following circumstances:

(i) Where the Department determines that the best interests of the child would not be served through imposition of the fee for the adoption investigation, including but not limited to the following circumstances:

(I) Where the petitioners are related to the child beyond the degree of relationship required by law to exempt them for an investigation and imposition of the fee would prevent the adoption of child, or

(II) Where the child has lived in the home of the petitioners for several years and imposition of the fee would prevent adoption of the child, or

(III) Where the child's relationship with siblings would be injured or severed if the adoption does not proceed and the imposition of the fee would prevent the adoption of the child, or

(IV) Where the child has diagnosed special needs for medical care or appliances, counseling, therapy, educational tutoring, or other treatment and the imposition of the fee would deny the child these services and prevent the adoption of the child, or

(V) Where the child is one of a sibling group of three or more children being adopted by the same petitioners and imposition of the fee would prevent the adoption of the child, or

(VI) Where the child's approved foster parents are adopting the child independently with the parents' consent and with the approval of the Department of Human Resources, and imposition of the fee would prevent the adoption of the child, or

(VII) Other unusual circumstances in which the Department determines that imposition of the fee would be contrary to the best interests of the child and would prevent the adoption of the child; or

(ii) Where the Department already has in its written files, through previous home studies, casework activities, investigations, etc. the information needed to report to the court on the pending adoption.

3. The fee may not be waived in cases where violations of Alabama's statutes relating to adoption and placement of children for adoption have occurred, such as placement by an unauthorized party, transporting the child across state lines in violation of the Interstate Compact on Placement of Children (irrespective of later attempts to comply with the ICPC), or failure to obtain a pre-placement investigation where one is required.

Author: Jeanette Gautney

Statutory Authority: Code of Ala. 1975, Title 26, Chapter 10, §§26-10A-1 through 26-10A-38, and Title 38, Chapter 7.

History: Effective October 11, 1983. Emergency amendment effective February 6, 1989. Permanent amendment effective May 10, 1989. Emergency amendment effective June 1, 1990. Succeedent permanent amendment effective September 7, 1990. Succeedent emergency amendment effective January 23, 1991. Succeedent permanent amendment effective May 9, 1991. **Amended:** Effective November 10, 1992.

660-5-22-.05 Bringing Or Sending A Child Into The State For The Purpose Of Placement Or Adoption.

(1) Before a child can be brought or sent into the State for purposes of the placement or adoption, the consent of the State Department is required. This is true whether the child is being placed by an agency holding custody or whether the child is being placed independently.

(2) When the County Department learns of a proposed placement of this nature, it is important to let the prospective adoptive parents know of the statutory provision for prior consent of the State Department. They should be advised of the agency's responsibility as a protective one both for them and the child. They should be acquainted with the fact that agency placements offer safeguards and that there are certain inherent risks in placements without benefit of agency service.

(3) If they wish to pursue the original plan, the worker has responsibility to secure identifying information about the parent or parents and the child so that an agency, in the state where the child is, may be requested to give cooperative service by interviewing the parent(s) and obtaining a birth record, medical, social, background and custody information to be sent to the State Department.

(4) At the same time, the County Department should proceed with a study of the proposed adoptive home. Home study information will be needed along with information from an agency in the child's state of residence so that a decision may be made on the soundness of the proposed plan and so that consent may be given, if appropriate, for the child to be brought into the State.

(5) The State Department should be advised as early as possible of the proposed placement, and correspondence to the out-of-state agency should be routed through the State Department for transmittal.

Author:

Statutory Authority: Code of Ala. 1975, Title 28, Chapter 7.

History: Effective October 11, 1983.

660-5-22-.06 Subsidized Adoption.

(1) Subsidies make it possible for children in special circumstances to be adopted. Their purpose is to make possible through public financial subsidy the most appropriate adoption of each child certified by the State Department of Human Resources as requiring a subsidy to assure adoption. The Alabama Subsidized Adoption Act provides that the State Department of Human Resources shall establish and administer an ongoing program of subsidized adoption and shall promulgate regulations consistent with the Act. The State Department of Human Resources will provide two types of adoption subsidy:

(a) Federal Adoption Assistance (IV-E) which provides a monthly benefit, eligibility for Medicaid benefits and Title XX services, and payment for nonrecurring adoption expenses;

(b) State Adoption Assistance which provides only a monthly benefit. Medicaid may be available for certain children receiving state adoption subsidy who also meet the criteria establishing the need for medical or rehabilitative care.

(2) Requirements for a Subsidy. (Both State and Federal Assistance.)

(a) The child must be certified by the State Department of Human Resources, Division of Family and Children's Services, as requiring a subsidy to assure adoption. The child's service record and the record of the prospective adoptive parents must be sent to the Division of Family and Children's Services for review. Each of the following three requirements for the definition of a special needs child must be met:

1. The State must have determined that the child cannot or should not be returned to the home of his parents and the child must be in the permanent custody of the State Department of Human Resources. A child in the custody of a licensed child-placing agency may be eligible for a state adoption subsidy;

2. Efforts to locate an adoptive resource for the child without a subsidy must be made unless it is determined that it is in the child's best interest to remain in a home which could not be an adoptive resource without subsidy. (Except in the case of adoption by foster parents, efforts to locate adoptive parents who can accept the child with a subsidy must be made.) For example, the child must be registered with exchanges, specialized adoption agencies, and recruitment efforts must be made to locate adoptive homes which do not require a subsidy; and

3. The State Department of Human Resources must determine that the child is a special needs child and is in special circumstances which make it unlikely for him to be adopted by reason of one or more of the following conditions:

(i) Physical or mental disability. For example, the child is suffering from some disease or illness or has been born with a physical or mental defect which make ordinary or non-subsidized adoption unavailable for him;

(ii) Emotional disturbance;

(iii) Recognized high risk of physical or mental disease. For example, the child may have suffered some injury at birth which may manifest itself later in some form of disability or it may be known at placement that the child is a carrier of some disease which has not yet appeared, but the risk for the child is present;

(iv) Children eight (8) years and older;

(v) Sibling groups of three or more children. (It may be sound casework practice to place a family group together and

the proposed adoptive family cannot financially afford the total responsibility of a family group);

(vi) A black child or child of black heritage, two (2) years old or older;

(vii) Potential danger to the child in severance of his emotional ties with the prospective adoptive parents. When significant emotional ties have been established between a child and the foster parents, the Division of Family and Children's Services will consider a subsidy upon the recommendation of the County Department or licensed child-placing agency if it is determined that the foster parents cannot financially support the child without a subsidy. When foster parents are the prospective adoptive parents, certification of the child's eligibility for a subsidy shall be conditioned upon his adoption by those prospective adoptive parents under applicable Alabama adoption policies, procedures, and statutes;

(viii) The child's record and the home study must be submitted for review, the record must substantiate a significant emotional bond between foster parents and the child, and there must be evidence that the foster parents are suitable adoptive parents;

(ix) If the child is in the permanent custody of a voluntary licensed child-placing agency, that agency shall present to the State Department of Human Resource (1) evidence to support the existence of potential danger to the child in severing his emotional ties with his foster parents who are the prospective adoptive parents, or (2) evidence of inability to place the child for adoption due to any of the other conditions specified in paragraph 3. a. through g. above. In the latter case, the licensed child-placing agency shall present evidence that reasonable efforts have been made to place the child without subsidy, such as recruitment of potential parents, use of adoption resource exchanges, and referral to appropriate specialized adoption agencies; or

(x) Any combination of these conditions.

(3) Subsidy Agreement.

(a) When parents are found and approved and the child has been certified as eligible for a subsidy under the state program or the Federal Adoption Assistance, the Division of Family and Children's Services will prepare a written agreement between the State Department of Human Resources and the adopting family. The agreement will set out the terms and conditions of the subsidy. The written agreement must be entered into by the

State Department of Human Resources and the adopting family before the final decree of adoption is issued. Adoption subsidies in individual cases may begin at any time after the adoption placement before the final decree of adoption is issued. Payments may not begin until the Adoption Assistance Agreement is complete.

(b) In instances of foster parents' adoption, the County Department will discuss the agreement with the adoptive parents. In cases of placements by the Office of Adoption, the placement worker will discuss the subsidy and complete the agreement forms. In placements from licensed child-placing agencies, the agency worker will discuss the agreement with the prospective adoptive parents. The adoptive parents will retain a copy of the agreement.

(c) When subsidies are for more than one year, the adoptive parents shall present an annual sworn certification that the adopted child remains under their care and that the condition(s) that cause the child to be certified continue(s) to exist. If the child receives a subsidy for medical reasons, a current evaluation by the attending physician must be presented to the Division of Family and Children's Services. If the child certified for subsidy was in the permanent custody of a licensed child-placing agency, that agency shall furnish the State Department of Human Resources information to establish that condition(s) that cause the child to be certified continue(s) to exist. This shall be submitted annually or upon request by the State Department of Human Resources. Failure on the part of adoptive parents to complete recertification forms will result in termination of payments.

(d) The subsidy agreement may be modified only with the approval of the Division of Family and Children's Services of the State Department of Human Resources. The adoptive parents may request termination of the subsidy agreement at any time.

(e) The subsidy agreement shall be continued in accordance with its terms but only as long as the adopted child is the legal dependent of the adoptive parents and the child's condition continues; except that in the absence of other appropriate resources provided by law and in accordance with Alabama regulations, the state payment for subsidy may be continued after the adopted child reaches majority, provided he is in school or in training in a program, the purpose of which is to aid him toward becoming self-supporting. Written notice will be sent the adoptive parents when payments are terminated.

(4) Residence. In the event the adoptive parents move from the State of Alabama after the child is certified for state

subsidy or an Adoption Assistance payment, the child shall remain eligible for the subsidy, if the child's needs remain the same and provided the child is a resident of Alabama when eligibility for subsidy is certified. In the event the child is placed with adoptive parents who live in another state, subsidy may be granted. For agreements entered into on or after October 1, 1990, if a needed service(s) specified in the agreement is not available in the new state of residence, the state making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(5) Requirements for Federal Adoption Assistance.

(a) The child must be receiving IV-E Foster Care Maintenance Payments (FCMP) or be receiving Supplemental Security Income (SSI) benefits or would have been eligible to receive FCMP if an application had been made. Verification of the child's receipt of FCMP or SSI will be requested from the County Department having responsibility of the child.

(b) The child must be determined by the State Department of Human Resources as being a child with special needs.

(c) The amount of the Adoption Assistance payments under the Federal Adoption Assistance program will be determined through agreement with the adoptive parents and the State Department of Human Resources, 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. In no case may the amount of the Adoption Assistance payment exceed the foster care payment which would have been paid during the period, including difficulty-of-care payments for which the child would have been eligible, if the child with respect to whom the Adoption Assistance payment is made had been in a foster family home.

(d) No payment may be made to parents with respect to any child who has attained the age of eighteen years or where the State Department of Human Resources determines the child has a mental or physical handicap which warrants the continuation of assistance until the child reaches 21 years of age. No payment may be made to parents with respect to any child, if the State Department of Human Resources determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents.

(e) Parents who receive Adoption Assistance payments shall keep the State Department of Human Resources informed of circumstances which would make them ineligible for such assistance payments or eligible for assistance payments in a different amount.

(f) Parents shall complete an Adoption Assistance Agreement when payments are initiated and a recertification agreement each year thereafter so long as assistance payments are continued.

(g) Adoption Assistance payments may begin as soon as the Adoption Assistance Agreement is signed and the child is placed in the adoptive home. The Adoption Assistance Agreement shall be signed and in effect prior to the final decree of adoption.

(h) For children receiving Federal Adoption Assistance, Title XX services and Medicaid (Title XIX) will be granted from the state in which the child actually resides, rather than in the state from which they were originally placed.

(6) Non-Recurring Adoption Expenses. The Department is authorized to provide reimbursement for non-recurring adoption expenses incurred by adoptive parents in the adoption of a child with special needs.

(a) Eligibility.

1. In order to be eligible for reimbursement of non-recurring expenses, the following criteria must be met:

(i) The State Department of Human Resources must determine that the child meets the definition of a special-needs child;

(ii) An Adoption Assistance Agreement must be signed and approved by the State Department of Human Resources prior to finalization of the adoption with two exceptions:

(I) Cases in which the final decree of adoption was entered into on or after January 1, 1987, and until June 14, 1989; or

(II) Cases in which the final decree was entered into before January 1, 1987, but non-recurring expenses were paid after January 1, 1987; and

(iii) The child must have been placed for adoption in accordance with all applicable laws.

2. Families adopting children through licensed child-placing agencies, independent adoptions, and inter-country adoptions may be eligible for reimbursement of non-recurring expenses provided the placement is not in violation of the law and provided all criteria in this section are met, including the Department's definition of a special-needs child.

3. There is no means test for adoptive parents in determining eligibility for non-recurring expense reimbursement. However, adoptive parents may not be reimbursed for expenses for which they have otherwise been reimbursed.

4. The child's eligibility for Title IV-E adoption assistance is not a requirement for reimbursement of non-recurring expenses.

(b) Benefits.

1. Only the one-time expenses of adoption for which the adoptive parents are responsible for payment are considered to be non-recurring expenses. These include the reasonable and necessary adoption expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of state or federal law, and which have not been reimbursed from other sources or other funds.

2. These expenses include:

(i) Attorney fees;

(ii) Court costs;

(iii) Criminal records clearance;

(iv) The adoption home study performed by a licensed child-placing agency;

(v) Medical and psychological evaluations required by the Department or the child-placing agency;

(vi) Supervision of the placement prior to finalization;

(vii) Transportation costs for placement and pre-placement; and

(viii) The reasonable costs of lodging and food for the child and/or adoptive parents when necessary to complete the adoption process.

3. The maximum amount of reimbursement will not exceed \$1,000.00 per child.

4. All claims for reimbursement must be made within two years of the date of the final decree of adoption. For families adopting a special-needs child between January 1, 1987, and June 14, 1989, an Adoption Assistance Agreement must be signed and all claims filed prior to December 14, 1990, in order to claim reimbursement.

5. In interstate placements, the state which enters into the agreement for ongoing state or federal adoption assistance will also be responsible for reimbursement of non-recurring expenses. If there is no ongoing subsidy the state where the adoption is to be finalized will be responsible for reimbursement.

(7) Type of Subsidy Under State Subsidized Adoption Act.

(a) Special Needs Subsidy is limited to the time span of the necessary service. It may involve a one-time payment or several payments in the case of a child with a medical condition which will require treatment or surgery after placement or after the adoption decree. Investigation must be made of the adopting family's medical insurance and of other public and voluntary community services to determine whether the costs of the treatment and related costs can be covered. Examples of Special Needs Subsidy are: cost of surgery for a pre-existing condition; payment of speech therapy, or other special needs related to the care and treatment of the child; or legal fees to an attorney handling the legal procedure of adoption.

(b) Time-Limited Subsidy is a payment for a specified time span after adoptive placement or after the legal completion of the adoption. It is designed to help with the expenses of intergrating the child or children into the family or to provide needed funds for a specified length of time. An example is providing assistance for a limited time in meeting the initial expense of a sibling group for school or clothing or other special expense to make the placement possible.

(c) Long-Term Subsidy is designed for children who cannot be adopted unless their long-term financial needs are met by subsidy. The periodic payments may continue until the child reaches majority or, in particular cases, beyond the child's majority, provided the child is in school or in training in a program, the purpose of which is to aid him toward becoming

self-supporting. Approval for continuance after majority must be given by the Division of Family and Children's Services.

(8) Amount of Subsidy. Neither the Long-Term Subsidy nor the Time-Limited Subsidy may exceed the rate established by the State Department of Human Resources, including difficulty-of-care payments for which the child would have been eligible. Whenever the foster care rates are changed, the money payment subsidies may be adjusted. The Special Needs Subsidies will be in accordance with the reasonable fees customary in the community where such services are rendered.

(9) Financial Procedure. The Office of Adoption shall be responsible for preparation of the subsidy requisition to be submitted to the Fiscal Administration Division monthly.

(10) Review. Any subsidy decision by the State Department of Human Resources which the placement agency or the adoptive parents deems adverse to the child is reviewable by the State Department of Human Resources. The placement agency or the adoptive parents may request a review by writing the Division of Family and Children's Services.

(11) Medicaid Eligibility for Children Receiving State Adoption Subsidies. Children placed for adoption after October 1, 1991, for whom there is in effect a signed approved state adoption subsidy agreement may be determined eligible for Medicaid under the following circumstances:

(a) Prior to execution of the subsidy agreement, the child must have been eligible for Medicaid under the state's approved Medicaid plan or it must be determined that the child would have been eligible for Medicaid if the standards and methodologies of the Title IV-E foster care program were applied rather than the AFDC standards and methodologies; and

(b) The Office of Adoption must determine that the child cannot be placed for adoption without medical assistance because of the child's special needs for medical or rehabilitative care including, but not limited to the following:

1. The child's need for regular prescription medication;
2. Pre-existing conditions at the time of placement, such as chronic health problems, dental, visual, or hearing problems;
3. Emotional or behavioral disorders requiring counseling or other treatment;

4. The need for speech, physical or other rehabilitative therapy;
5. The need for day treatment or special education services;
6. The need for nursing care or other specialized medical or rehabilitative services; or
7. High risk background of the child, such as patterns of mental illness or retardation, history of numerous separations or moves, or history of serious abuse or neglect, which would increase the likelihood of serious medical, emotional or adaptive problems in the child's future.

(c) Medicaid eligibility for a child will continue up to age 19 as long as the state adoption subsidy agreement is in effect. The Office of Adoption may approve an extension of Medicaid eligibility beyond the age of 19 but not beyond the child's twenty-first birthday.

Author:

Statutory Authority: Code of Ala. 1975, Title 26, Chapter 10; Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).

History: Effective October 11, 1983. Emergency amendment effective March 1, 1989. Permanent amendment effective June 9, 1989. Succeedent emergency amendment effective January 23, 1991. Succeedent permanent amendment effective May 9, 1991. Succeedent emergency amendment effective April 3, 1992. Succeedent permanent amendment effective July 9, 1992. Succeedent emergency amendment effective September 30, 1993. **Amended:** Filed December 6, 1993. Succeedent permanent amendment effective January 10, 1994.