



CDSS

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**DEPARTMENT OF SOCIAL SERVICES**

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REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

December 13, 2013

ALL COUNTY LETTER NO. 13-100

TO: ALL COUNTY WELFARE DIRECTORS  
 ALL CHILD WELFARE SERVICES PROGRAM MANAGERS  
 ALL CHIEF PROBATION OFFICERS  
 PRIVATE ADOPTION AGENCIES  
 COUNTY ADOPTION OFFICES  
 COUNTY ADOPTION AGENCY CONTACTS  
 TITLE IV-E AGREEMENT TRIBES

SUBJECT: IMPLEMENTATION OF ASSEMBLY BILL 1712 (CHAPTER 846,  
 STATUTES OF 2012) NON-MINOR DEPENDENT ADOPTION

REFERENCE: ASSEMBLY BILL (AB) 12; WELFARE AND INSTITUTIONS CODE (W&IC) SECTIONS 11400(V), 366.26, 366.3(I), AND 366.31(F); ADOPTION USER'S MANUAL SECTIONS 35049-35063 AND 35071-35077; ALL COUNTY LETTER'S (ACL) 08-40, 09-40,10-17, 10-47, 11-69 , 11-86, AND 12-12; TITLE 42 OF THE UNITED STATES CODE SECTION 671(A)(20)(A) AND (C); FAMILY CODE 9300

This ACL is to provide county child welfare departments, county probation departments, licensed private adoption agencies, and the California Department of Social Services (CDSS) Adoption District Offices with instructions regarding the policies and procedures for the adoption of young adults age 18-20 that remain in Extended Foster Care (EFC) and are under the jurisdiction of the juvenile court. Young adults who remain in EFC are referred to as a Non Minor Dependent (NMD) as defined in W&IC section 11400(v). This definition includes NMDs served under an agreement between the state and tribes pursuant to W&IC section 10553.1 or supervised by probation.

Background

The signing of AB 12 into California law enacted California's implementation of optional provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. The AB 12, initially referred to as EFC and henceforth, known as the After 18 Program in this ACL. The primary goals of this program are to support youth who

are in care to achieve permanency, including adoption as well as to assist them in preparing for successful adulthood. The NMD adoption will allow for youth age 18-20 to be adopted in juvenile court while retaining the extension of benefits afforded to them under the After 18 program. Adoption Assistance Program (AAP) benefits will be available to families who complete a NMD adoption through the juvenile court provided all other eligibility criteria are met. The NMD must be eligible for After 18 benefits as outlined in ACL No. 11-69 in order to qualify for NMD adoption.

This ACL provides framework for the process and implementation of NMD adoption in the juvenile court. Case planning for the NMD should include, but not be limited to, assisting the NMD in identifying permanent connections, including facilitating contact with a relative or a prospective tribal customary adoptive parent, and documenting the NMD's desire to be adopted by an adult who has been established as the NMD's permanent connection.

The NMD adoptions have unique statutory requirements that are separate from agency adoptions provisions contained in Family Code section 8700 or adult adoption provisions contained in Family Code section 9300 et seq.

The process for the adoption of a NMD may be initiated by the NMD or the prospective adoptive parent(s) expressing their intent to pursue adoption as their permanent plan. No application is required to be submitted, and the request may be made verbally or in writing to the social worker, probation officer, or youth's attorney during a review hearing pursuant to W&IC section 366.3(d). Upon receipt of a request, an adoption case file will be created. Regulations restricting the collection, storage and release of information from an adoption case file shall apply pursuant to the Title 22 California Code of Regulations (CCR) sections 35049-35063, (with the exception of section 35050). Section 35050 is excluded as it pertains to the release of protected health information from an adoption case record (explained below).

### Disclosure

While full disclosure of a minor's medical and background history is mandated to be provided to a prospective adoptive parent, full disclosure is not mandated in NMD adoptions. Disclosure of background information is determined by the NMD. As an adult, NMDs have sole authority to disclose their historical, sensitive, and protected background and health information to a prospective adoptive parent. Once adoption is identified as a permanent plan, the social worker or probation officer must provide the NMD with specific advisement and instruction on the process to obtain their own background information including psychosocial and historical information located in case files.

The social worker or probation officer shall inform the prospective adoptive parent that any background information or placement history regarding the NMD cannot be shared without the consent of the NMD. This may include information related to the health, scholastic, emotional, and social functioning of the NMD.

The social worker or probation officer shall advise the NMD on the value of developing a mutual trusting relationship between themselves and their prospective adoptive parent. This includes the value of sharing background information and experiences that could potentially assist the prospective adoptive parent in meeting the specific needs and goals of the NMD.

Both the prospective adoptive parent and the NMD shall be advised that sharing background information may be additionally important to the negotiation of AAP benefits. The requirements for releasing background information are detailed on the Non-minor Dependent Adoption Mutual Disclosure Agreement form (AD 513NMD). The goal of this form is to provide information to the NMD and prospective adoptive parent about the process and value of sharing historical and protected health information with the prospective adoptive parent. The disclosure form must be co-signed by the NMD, prospective adoptive parent, and the responsible public agency representative. A summary of all records requested and released to the NMD shall be documented on the Psychosocial and Medical History of Non-Minor Dependent form (AD 512NMD). If the NMD declines receipt or release of information, the word "declined" should be written across each page of the form and signature lines completed.

A copy of the AD513NMD shall be attached to the court report submitted in accordance with W&IC section 366.31(f)(5). To avoid delays in negotiating AAP agreements, public agencies are encouraged to expedite all records requested by the NMD. The NMDs are to be advised that they are personally responsible for providing all information they choose to share directly to the prospective adoptive parent.

### Assessment

At a review hearing pursuant to W&IC section 366.3(d), the court may order adoption as the permanent plan for a NMD. At that time, the court will set a hearing within 60 days, at which time the social worker or probation officer shall prepare a report based on the assessment described per W&IC section 366.31(f)(5). The assessment may be completed prior to or following the review hearing ordering adoption. A guide containing assessment requirements is attached to this ACL (Attachment A).

The NMD's status as an adult requires the NMD to consent to the adoption; therefore, a hearing to terminate parental rights pursuant to W&IC section 366.26 is not required. The only exception to this is if the NMD is an Indian child and Tribal Customary

Adoption (TCA) is recommended as the permanent plan. In this situation, a W&IC section 366.26 hearing is required although parental rights are not terminated in a TCA adoption. Per W&IC section 366.3(i), NMD with TCA as a permanent plan must follow the process for TCA as outlined in ACLs 10-17 and 10-47.

The assessment shall be youth focused and should emphasize to all parties that adoption is a permanent relationship. The primary goal of the assessment is to:

- Evaluate the length and nature of the relationship between the NMD and the prospective adoptive parent;
- Evaluate the ability of the prospective adoptive parent to meet the specific needs of the NMD; and
- The prospective adoptive parent's motivation to adopt.

This information will be used to assist the court in determining whether the prospective adoptive parent shall be established as the NMD's permanent connection. Information gathered may contain protected health information, be sensitive in nature, and not known to the prospective adoptive parent or NMD.

The assessment process will gather specific information regarding the prospective adoptive parent and any adult residing in their home, excluding the NMD, which shall be submitted to the court prior to the finalization hearing. The prospective adoptive parent will be required to provide background information, including criminal background clearances in accordance with Family Code section 8712 and Title 42 United States Code section 671(a)(20) (Adam Walsh Child Protection and Safety Act). These clearances are required for the authorization of AAP benefits whether or not the NMD resides in the adoptive home.

The prospective adoptive parent must demonstrate suitability to meet the NMD's specific needs, including developmental and/or medical disabilities. The assessment shall require face to face interviews with the NMD, prospective adoptive parent, and any others deemed necessary. Every effort should be made to visit the parties in person. If their proximity creates undue travel hardships, alternate means of interviewing, such as web based live interviews (i.e. Skype), may be substituted; however, alternate means of interviewing may not be substituted for required monthly contacts with youth. The completed assessment must include a recommendation with a basis for the recommendation to the court as to whether adoption is in the best interests of the NMD and of the prospective adoptive parent. A summary of the assessment containing required information shall be included in the court report.

### Court Report

The report shall be written as described in W&IC section 366.31(f)(5) and include information gathered during the assessment process. The social worker or probation officer must file the report and provide a copy to all parties a minimum of ten calendar days prior to the hearing.

The court report must have the following completed documents attached:

- [Copy of Non-minor Dependent Mutual Disclosure Agreement Form \(AD 513NMD\)](#)
- [Copy of the Adoption Assistance Program Agreement \(AD 4320\)](#)
- [Judicial Council form Agreement of Adoption of Nonminor Dependent \(JV-475\)](#)
- [Judicial Council form Consent of Spouse or Registered Domestic Partner to Adoption of Nonminor Dependent \(JV-477\) \(if applicable\)](#)

### Ineligible Young Adults

In order to be adopted under the provisions of this ACL, youth must meet the criteria for NMD status as outlined in ACL 11-69. Non-qualifying youth may still pursue an adult adoption under Family Code section 9300. However, only NMD adoptions completed in juvenile court under W&IC section 366.31 are eligible for AAP benefits.

### Grievances

If the final assessment does not recommend that adoption is in the best interest of the NMD, the prospective adoptive parent or the NMD may file a written request for a grievance review pursuant to Title 22, CCR section 35219.

### AAP Benefits

A NMD adopted after the age of 18 may be eligible for AAP benefits if they meet the three parts special needs determination, the citizenship requirement, and one of the Title IV-E (federal) Eligibility Paths as described in Title 22, CCR section 35326.

It is the public adoption agency's responsibility to inform the prospective adoptive parent that the following may be available:

- AAP benefits,
- Reimbursement of non-recurring adoption expenses of up to \$400, and/or
- Potential for a state and federal tax credit (please consult a tax professional).

This requirement is met by the prospective adoptive parents review and signature of the AAP Statement of Acknowledgement (AAP 7) form.

The prospective adoptive parent of an AAP eligible NMD may receive AAP benefits on the NMD's behalf, if the adoptive parent and all other adults living in the prospective adoptive home have completed the criminal background check requirements pursuant to Title 42 United States Code section 671(a)(20) (Adam Walsh Child Protection and Safety Act). The AAP Agreement (AD4320) and all related AAP paperwork must be completed and signed prior to the final hearing as stated in W&IC section 366.31.

For AAP purposes, the responsible public adoption agency is in charge of determining the NMD's AAP eligibility, negotiating initial and subsequent AAP benefits and signing the AAP agreement with the adoptive parent. When negotiating the AAP benefits with the adoptive parent, documentation must be filed in the AAP case file demonstrating that the NMD meets one of the five participation criteria for AAP benefits to age 21:

1. Attending/completing high school or an equivalency program.
2. Enrolled in post-secondary or vocational school.
3. Participating in a program or activity that promotes or removes barriers to employment.
4. Employed at least 80 hours per month.
5. Is incapable of participating in one through four above due to a documented physical or mental condition.

For further information regarding the above five participation criteria and the extension of AAP benefits to age 21, refer to ACL No. 11-86.

The Adoptive Placement Agreement (AD 907) is not required to be signed for a NMD adoption. For NMD adoptees, AAP payments begin the date of the adoption finalization. A copy of the signed AAP agreement (AD 4320) will need to be provided to the social worker or probation officer to attach to the W&IC section 366.31 court report. It is important to note that the regulations and statutes specific to AAP, including the fair hearing procedures, continue to apply to this population.

#### Private Adoption Agency Reimbursement Program (PAARP)

The NMD adoptions are eligible for the maximum allowable PAARP reimbursement under existing regulations as stated in the Title 22 CCR sections 35071-35077 and ACL Nos. 08-40 and 09-40. The current process for filing PAARP claims remains intact with the exception that all NMD adoption PAARP claims (AD 4348) must be filed after finalization by the licensed private adoption agency. This form has been updated in

order to incorporate NMD adoption. Since no adoptive placement is required for NMD adoption, half payments typically allowed at adoptive placement will not be authorized.

### Forms

The following forms from the Judicial Council of California - Administrative Office of the Courts will be available online at

<http://www.courts.ca.gov/forms.htm?filter=JV&sortedby=form.id&order=&chunk=3>

The public agency worker, attorney for the prospective adoptive parent, and/or youth's attorney, as applicable, is responsible for ensuring forms are completed accurately, attached, and filed in the county of jurisdiction.

- [Judicial Council form \*Agreement of Adoption of Nonminor Dependent \(JV-475\)\*](#)
  - This form may be signed any time prior to the submission of the final court report and must be attached to the court report with original signatures.
- [Judicial Council form \*Consent of Spouse or Registered Domestic Partner to Adoption of Non-minor Dependent \(form JV-477\)\*](#) (if applicable)
  - This form must be used in accordance with all current regulations including those listed under WIC Section 366.31(f)(1)(A). If applicable, this form with original signatures shall be attached to the court report.
- [Judicial Council form \*Order of Adoption of Non-minor Dependent \(JV-479\)\*](#)
  - This form is to be filled out as indicated by the public agency and submitted to the court for signature at the finalization hearing.

The following forms are available online at <http://www.cdss.ca.gov/cdssweb/PG164.htm> Non-minor Dependent Adoption Mutual Disclosure Agreement (AD 513NMD) and Psychosocial and Medical History of Non-Minor Dependent (AD 512 NMD).

- [The Non-minor Dependent Adoption Mutual Disclosure Acknowledgement \(AD 513NMD\).](#)
  - A copy of this form must be included in the court report.
- [Psychosocial and Medical History of Non-minor Dependent \(AD 512 NMD\).](#)
  - This form is required and will be used to document all information released directly to the NMD from the case file and/or court records. If the NMD chooses to not request or release any information this must be documented on the form as well and signatures must still be obtained. This includes all protected information including medical and/or mental health information. All laws and

regulations restricting the release of identifying information apply to NMD adoption. A copy of the AD512 NMD must be in the adoption case file.

The Assessment Process for NMD Adoption (Attachment A) was created as a guide to assist public and private agencies in developing their internal assessment process, guidelines and forms. Agencies must adhere to all requirements included on the assessment guide until such time regulations are developed.

#### Issuance of State Identification Number

During the review hearing where NMD adoption is ordered as the NMD's permanent plan, and a hearing pursuant to W&IC section 366.31(f) has been set within 60 days, the adoption agency shall file with CDSS the following supporting information which pertains to the NMD and prospective adoptive parent:

- [The AD 90 \(Acknowledgement and Confirmation of Child Freeing Documents\)](#): This form is required for CDSS to issue the AD 4333 confirming receipt of documents and to issue a state identification number. Indicate at the top of the form: "Non-minor Dependent Adoption". Only sections one and two must be completed.
- [The AD 558 \(Notice of Placement\)](#): Indicate at the top of the form "Non-minor Dependent Adoption". Complete only the name and address section pertaining to the adoptee, adoptive parent, and required signature lines. No placement date is required.

The CDSS will issue an AD 4333 which confirms receipt of the documents, and will provide the agency with a state case number. "Non-minor Dependent Adoption" will be indicated in the comment section of the AD 4333. If, for any reason the adoption does not finalize, a [Notice of Removal \(AD 580\)](#) must be filed with CDSS.

### Training

Training on NMD adoptions will be incorporated into the Overview of California Child Welfare Adoptions developed, in collaboration with statewide partners, by the California Social Work Education Center (CalSWEC). The Adoptions curriculum is available here: <http://calswec.berkeley.edu/overview-ca-child-welfare-adoptions-practice>. The NMD adoptions curriculum will also be available on the CalSWEC website with current AB12 curriculum, available here: <http://calswec.berkeley.edu/curricula-social-workers-probation-officers-and-eligibility-workers>. The AB12 curriculum was developed, in collaboration, with Regional Training Academies and After 18 stakeholders.

If you have questions or concerns related to this ACL, please contact the Permanency Policy Bureau at (916) 657-1858 or email [concurrentplanningpolicyunit@dss.ca.gov](mailto:concurrentplanningpolicyunit@dss.ca.gov).

Sincerely,

***Original Document Signed By:***

GREGORY E. ROSE  
Deputy Director  
Children and Family Services Division

Attachment

## **ASSESSMENT PROCESS FOR NON-MINOR DEPENDENT (NMD) ADOPTION**

At a review hearing pursuant to Welfare and Institutions Code (W&IC) section 366.3(d), the court may order adoption as the permanent plan for a NMD. At that time, the court will set a hearing within 60 days, at which time, the social worker or probation officer shall prepare a report based on the assessment described below per W&IC section 366.31(f)(5).

This assessment may be completed prior to or following the review hearing ordering adoption.

A. To conduct the adoption assessment, the social worker or probation officer shall interview the NMD and prospective adoptive parent(s) individually and conjointly and any others as deemed appropriate. Interviews shall be face to face when possible but may occur through other means if the proximity of the subjects creates undue travel hardships (i.e. Skype).

B. The assessment, which is youth focused, shall be completed and address at minimum the following per W&IC section 366.31(f)(5).

(1) Information regarding the length and nature of the relationship between the NMD and prospective adoptive parent.

- a) Has the prospective adoptive parent been established as a permanent connection to the NMD?
- b) How do the prospective adoptive parent(s) understand their responsibility to provide support (i.e. emotional, financial, etc.) to the NMD?
  - i. How will they provide this support if the NMD resides outside the home?
- c) What are the NMD's and the prospective adoptive parent(s)' motivation for adoption?
- d) What are the NMD's and the prospective adoptive parent(s)' expectations resulting from their adoption?
- e) Have the prospective adoptive parent(s) demonstrated the commitment and ability to provide permanence to the NMD? If so, how? If not, why?

(2) A description, if any, of the NMD's developmental disability. The description should include what services and/or resources the NMD needs to assist them in their daily life.

- a) Indicate if NMD is a regional center client.

- i. If so, contact the regional center caseworker and discuss NMD's needs/services.
    - a. What is regional center caseworker's opinions regarding adoption?
  - ii. Is the prospective adoptive parent part of the regional center case plan? What are the prospective adoptive parent's abilities/experiences in working with the developmentally disabled?
- b) Does the NMD have a conservator or guardian ad litem?
  - c) Are the prospective adoptive parent(s) suitable to meet the needs of the NMD?
- (3) Information regarding the NMD's eligibility for the Adoption Assistance Program (AAP) and if a negotiated adoption assistance agreement has been signed by the prospective adoptive parent(s). The social worker or probation officer shall review the AAP 7 (Adoption Assistance Program Statement of Acknowledgement) with the prospective adoptive family and all parties shall sign the form. If an adoption assistance agreement was signed, it shall be attached to the report. To obtain this information for the court report, the social worker or probation officer shall:
- a) Refer the prospective adoptive parent(s) to the appropriate public adoption agency worker who shall discuss and negotiate an adoption assistance rate with the prospective adoptive parent(s). Once negotiated, the public adoption agency worker, with the prospective adoptive parent(s) shall sign agreement and provide a copy the agreement to the social worker or probation officer to attach to the court report.
    - i. The AAP agreement may be signed prior to the final W&IC section 366.31 hearing; however the AAP payments shall not begin until the day of the hearing where an adoption decree is issued.
- (4) Results of the criminal background clearances for prospective adoptive parent(s) and all adults residing in prospective adoptive parent(s) home. In order to receive AAP payments, the prospective adoptive parent(s) and all adults residing in the home of their home must be criminally cleared per Section 671(a)(2)(A) and (c) of Title 42 of the United States Code (Adam Walsh Child Protection and Safety Act).
- a) If prospective adoptive parent(s) have previously been licensed or certified for foster care or been approved for relative care through child welfare services and the clearances with subsequent arrest notifications are still active, the social worker or probation officer may obtain written verification from the appropriate agency that the prospective adoptive parent(s) license, certification or relative approval is current and active.

If it is active, prospective adoptive parent(s) have met federal requirements for criminal background clearances and will not need to be reprinted.

- (5) If the prospective adoptive parent(s) are still legally married and the spouse is not adopting the NMD, does the spouse consent to the adoption?
  - a) Consent may be signed prior to the hearing. The prospective adoptive parent and spouse should be informed of potential legal ramifications (i.e. inheritance issues) if consent is not obtained. If consent is not obtained, court report should describe efforts made to obtain consent.
  - b) Verification of marriage or dissolution is not required unless local rules state otherwise.
- (6) If the NMD and prospective adoptive parent(s) have mutually consented to the adoption. The signed mutual consent form will be attached to this report unless local rules state otherwise.
- (7) Determination of the social worker or probation officer if they have assessed that adoption is in the best interests of the NMD and the prospective adoptive parent(s).
  - a) In making this determination, the social worker or probation officer should be respectful and mindful of the NMD's legal status of an adult. Reasons to not recommend a NMD adoption may include non-exemptible criminal offenses under the Adam Walsh Safety and Protection Act; the NMD and prospective adoptive parent do not appear ready to assume a legal parent/child relationship; and/or the relationship between the NMD and prospective adoptive parent does not appear to be safe, healthy, or of an appropriate duration.
- (8) A copy of the assessment shall be provided to the social worker or probation officer prior to their preparation of the court report pursuant to W&IC section 366.31(f)(5).
- (9) When completing the court report, the social worker or probation officer shall include what their recommendations regarding the adoption are as well as the recommendations of the agency that completed the assessment.