



CDSS

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DEPARTMENT OF SOCIAL SERVICES

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GOVERNOR

REASON FOR THIS TRANSMITTAL

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

May 10, 2016

ALL COUNTY LETTER (ACL) NO. 16-38

TO: ALL COUNTY WELFARE DIRECTORS
 ALL ADOPTION REGIONAL AND FIELD OFFICES
 ALL COUNTY PLACEMENT SUPERVISORS
 ALL ADMINISTRATIVE LAW JUDGES
 ALL COUNTY ADOPTION AGENCIES
 ALL TITLE IV-E AGREEMENT TRIBES
 ALL PRIVATE ADOPTION AGENCIES

SUBJECT: ADOPTION ASSISTANCE PROGRAM (AAP): CHILDREN
 RELINQUISHED TO A PRIVATE ADOPTION AGENCY

REFERENCE: WELFARE AND INSTITUTIONS CODE SECTIONS (W&IC)
 SECTIONS 300, 16118, 16119, 16120 and 16120.1; CALIFORNIA
 CODE OF REGULATIONS (CCR) TITLE 22 CHAPTER 3
 SUBCHAPTER 7 SECTIONS 35325, 35326, 35333, 35337, 35339,
 35352 and 35352.1; CALIFORNIA RULES OF THE COURT
 DIVISION 3 SECTION 5.760(d)

The purpose of this ACL is to provide clarification to California Private Adoption Agencies regarding their role as it relates to AAP, and direction to counties regarding the administration of AAP when a child is relinquished to a private adoption agency. In California, the term “state agency” refers to a public child welfare agency which means a California county that is operating a Title IV-E program on behalf of the state, or the California Department of Social Services (CDSS) which provides services for a county that does not administer an adoption program. This means county adoptions or the CDSS is responsible for determining AAP eligibility, negotiation of benefits, signing of agreements and the completion of the reassessment process post finalization. All AAP related correspondence, including Notice of Action letters, are to be addressed to the adoptive parent(s) prior to the finalization and post finalization.

The private adoption agency's primary role as it relates to AAP is to inform prospective adoptive parents of the availability of AAP, assist the prospective adoptive parents with the process to request AAP benefits, the negotiation of benefits and how to claim reimbursement of nonrecurring adoption expenses. Although the private adoption agencies are licensed by the State of California, they do not have a Title IV-E agreement with the State to operate a Title IV-E program on behalf of the State. This means the agency is not authorized to act in the same capacity as a public child welfare agency and specifically, is not authorized to seek a contrary to the welfare finding from the juvenile court. Only a Title IV-E agency is authorized to seek such a finding from the juvenile court in an effort to establish AAP eligibility for a dependent child and only the juvenile court has the authority to make such a finding.

AAP OVERVIEW

At the time of application for a homestudy and prior to the adoption finalization, licensed California adoption agencies are required to inform prospective adoptive parents of the availability of AAP benefits, reimbursement of nonrecurring adoption expenses and the potential for federal and state adoption tax benefits. The distribution of the PUB 50A brochure to prospective adoptive parents and the completed and signed Adoption Assistance Program Statement of Acknowledgement (AAP 7) form by the prospective adoptive parents will meet this requirement. The PUB 50A brochure and the Adoption Assistance Program Statement of Acknowledgement (AAP 7) may be accessed through the CDSS website: <http://www.cdss.ca.gov/cdssweb/PG19.htm>

AAP benefits may include:

- A monthly negotiated rate
- Medical insurance through Title IX (Medicaid/Medi-Cal)
- Reimbursement of Nonrecurring adoption expenses (up to \$400 per child)
- Payment for an out-of-home placement
- Payment for Wraparound services
- AAP may continue in a subsequent adoption
- AAP benefits may continue regardless of the adoptive family's state or country of residence
- If eligible, AAP may continue beyond age 18 to age 21

The request for AAP benefits prompts the following steps: the determination of the child's AAP eligibility, if the child is eligible, the AAP benefit is negotiated and an AAP agreement or deferred agreement is signed. If the child meets specific criteria, the prospective adoptive parents may be eligible to receive a reimbursement up to \$400 for nonrecurring adoption expenses. All of these steps must be completed prior to the adoption finalization. The California Code of Regulations (CCR) Title 22 Sections

35325 through 35352.2 specific to AAP may be accessed through the CDSS website:
<http://www.cdss.ca.gov/ord/entres/getinfo/pdf/ad1101.pdf>

REQUEST FOR AAP

To request AAP benefits, it is the prospective adoptive parents responsibility to complete and sign the Request for Adoption Assistance Program Benefit (AAP 1) form and attach any documentation to support the request. The AAP 1 form may be accessed through the CDSS website:

<http://www.cdss.ca.gov/cdssweb/PG19.htm>

- If the child is relinquished to a private adoption agency and placed with prospective adoptive parents in the State of California, the completed AAP 1 form and any supporting documentation is to be submitted to the responsible public agency representing the prospective adoptive parents' county of residence.
- If the child is relinquished to a private adoption agency and placed with prospective adoptive parents who do not reside in California, the determination of eligibility and the payment of AAP benefits is the responsibility of the prospective adoptive parents' state of residence. The prospective adoptive parents will need to submit their request for AAP benefits to the appropriate representative in their state of residence.

AAP ELIGIBILITY

To be eligible to receive AAP benefits the child must meet the following three components:

I. Three Part Special Needs Determination

CCR Title 22 Section 35326(a) states the three part special needs determination. To determine if the child meets all three parts of the three part special needs determination, the following items must be included in the request for AAP benefits packet submitted to the responsible public agency:

- A copy of the signed relinquishment and/or court order terminating parental rights from the juvenile court (depending on the circumstances of the case).
- Documentation that the child has a specific factor or condition which makes it reasonable to conclude that the child cannot be adopted without

providing AAP benefits. Refer to CCR Title 22 Section 35326(a)(2)(A) for the definition of a factor or condition.

- Documentation stating the efforts made to search for prospective adoptive parents who do not require AAP benefits to meet the child's needs and/or the reasons for why it is against the child's best interest to be placed with prospective adoptive parents who do not require AAP benefits.

II. Citizenship

CCR Title 22 Section 35326(b) states the citizenship requirement. To determine if the child meets the citizenship requirement, the private adoption agency and/or the adoptive parent will need to include appropriate documentation in the AAP benefits request packet that is submitted to the responsible public agency.

III. Eligibility Pathway

Title IV-E (federal) Pathway:

To be eligible for Title IV-E/federal benefits, a child relinquished to a private adoption agency must meet one of two eligibility pathways:

1. The child has met the requirements to receive federal Supplemental Security Income (SSI) benefits as determined and documented by the federal Social Security Administration (SSA) per CCR Title 22 Section 35326(c)(4).
2. The child was eligible to receive AAP benefits with respect to a prior adoption that dissolved due to the adoptive parent(s) death or termination of parental rights per Title 22 Section 35326(c)(3).

The following Title IV-E eligibility pathway is not applicable to children relinquished to a private adoption agency in California. CCR Title 22 Section 35326(c)(1)(B) states at the time the child was removed from the home of the specified relative, the child would have been Aid to Families with Dependent Children (AFDC) eligible in the home of removal according to July 16, 1996 AFDC standards; the child was voluntarily relinquished to a licensed public or private adoption agency, or another public agency operating a Title IV-E program on behalf of the state (Tribes); and the following was obtained within six months of the time the child lived with a specified relative:

1. A petition to the court to remove the child from the home of a specified relative within six months of the date the child lived with the relative;
and
2. Subsequent judicial determination by the juvenile court that remaining in the home would be contrary to the child's welfare.

In regard to this specific eligibility pathway, provisions in California law do not allow for a licensed private adoption agency to petition the court to remove the child from a specified relative(s) and obtain a judicial determination that remaining in the home would be contrary to the child's welfare. For a judicial determination to be made that it is contrary to the child's welfare to remain in the home of removal, there needs to be a risk to the child's safety that supports the petition to the court to remove the child and in the first court ruling (judicial determination), even if it is temporary, a finding must be made that it is "contrary to the child's welfare" to remain in the home. This judicial determination must be made by the juvenile court who has jurisdiction over the child, in conjunction with the public child welfare agency. If there is no petition to remove the child from the home or no subsequent judicial determination, the child cannot be considered judicially removed for the purpose of meeting this eligibility pathway. Furthermore, if the court merely sanctions the voluntary relinquishment without making a determination that it is contrary to the child's welfare to remain in the home, this eligibility pathway will not be met.

Although a private adoption agency's motions to the Superior court to seek a court determination of the validity of a relinquishment and/or termination of parental rights is statutorily authorized, the private agency is not authorized by federal or state law to seek an AAP eligibility determination within a termination of parental rights petition. Moreover, this determination must be made in the juvenile court, not the family or probate court.

State/Non-Fed Eligibility Pathway:

If the child does not meet a Title IV-E eligibility pathway, they may be eligible for state/non-fed AAP benefits. To be eligible for state/non-fed AAP benefits, the child must be the subject of an agency adoption, relinquished to a California private or public adoption agency, and would have otherwise been at risk of dependency as certified by the responsible public child welfare agency. A child relinquished to a private adoption agency in another state and then placed with prospective adoptive parents in California will not meet this requirement. It is the private agency's responsibility to obtain the risk of dependency certification from the public child welfare agency, and this

documentation is to be included in the request for AAP benefits packet submitted to the responsible public agency. A risk of dependency determination made by an entity other than a public child welfare agency does not meet this requirement per California law and regulations.

The public child welfare agency has the discretion to make the risk of dependency determination. For a child to meet this determination, the child would need to have been at risk of dependency had the parent not made a plan for adoption by relinquishing their child to a licensed adoption agency or public child welfare agency, and there was substantial risk to the child to support a petition to the court to detain the child as a dependent of the court. Welfare and Intuitions Code (W&IC) Section 300 describes the circumstances under which a child would be considered to be at risk of dependency. A petition to the court based on W&IC 300(h) is only appropriate if a child is at risk and the county determines a need to intervene. The fact that the child is in a prospective adoptive home and no one has identified this child to be at risk for abuse or neglect indicates a petition based on W&IC 300(h) is not warranted and not simply the fact that a child has been freed for adoption more than 12 months due a relinquishment or termination of parental rights. A records search for the birth mother, father, and child for any referrals for child welfare services may assist the public child welfare agency in making the determination of whether the child was at risk of dependency.

The Federal Eligibility Certification for Adoption Assistance Program (FC 8) and the Eligibility Certification Adoption Assistance Program (AAP 4) forms are to be completed by the county and the responsible public agency. The submission of completed and/or signed FC 8 and AAP 4 forms by the private adoption agency are not valid and should be discarded by the responsible public agency.

AAP RATE NEGOTIATION

The AAP benefit is a negotiated rate based on the child's needs and the circumstances of the family. The circumstances of the family includes the family's ability to incorporate the child into the household in relation to their lifestyle, standard of living, and future plans and overall capacity to meet the child's immediate care and supervision needs and changes that may occur in the future. If the child's needs are greater and require a higher level of care and supervision, they may qualify for a Special Care Increment (SCI) in addition to the AAP basic rate. The SCI rate varies county to county as each county has their own SCI rate schedule. A child who is developmentally delayed and a current consumer of the California Regional Center may be eligible to receive the dual

agency rate. Refer to CCR Title 22 Section 35333 for the maximum eligible rate determination and negotiation process.

Prior to the adoption finalization, the private agency may assist the prospective adoptive parents with the negotiation of the AAP benefits with the responsible public agency. The completion and signing of the Adoption Assistance Program Negotiated Benefit Amount and Approval (AAP 6) form is to be done by the responsible public agency and the prospective adoptive parents. The submission of a completed and/or a signed AAP 6 form by the private adoption agency is not valid and should be discarded by the responsible public agency.

AAP AGREEMENT

The AAP agreement is a contract between the adoptive parents and the responsible public agency. Adoptive parents may not receive AAP benefits for their AAP eligible child prior to the signing of the Adoptive Placement Agreement (AD 907), submission of the request for AAP benefits, determination of eligibility and negotiation of benefits. The beginning date of payment stated on the AAP Agreement may be the actual date the agreement is signed, or the first day of the month following the signing of the agreement.

If the adoptive parents do not wish to receive AAP benefits, including Medi-Cal benefits, they have the option and should be encouraged to sign a deferred AAP agreement. The deferred AAP agreement will retain the child's AAP eligibility should the parents request benefits at an unspecified future date.

The submission of AAP agreements, including deferred agreements, completed and/or signed by the private adoption agency are not valid and should be discarded by the responsible public agency. In addition to the signatures of the adoptive parents and the responsible public agency, a private agency may also sign the initial AAP agreement per CCR Title 22 Section 35337(a)(2)(C).

NONRECURRING ADOPTION EXPENSES

Reimbursement for nonrecurring adoption expenses up to \$400 may be available to adoptive parents who adopt a child who meets the three part special needs determination and citizenship requirements. Nonrecurring adoption expenses means the reasonable and necessary adoption fees, court costs, attorney fees and other 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. Other expenses which are directly related to the legal adoption of a child with special needs means the costs of the

adoption incurred by or on behalf of the parents and for which parents carry the ultimate liability for payments. Such costs may include the adoption study, including health and psychological examinations, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

The private adoption agency may assist the prospective adoptive parents with the request process for the reimbursement of nonrecurring adoption expenses; however, the eligibility for the reimbursement and the signing of the AAP Nonrecurring Adoption Expenses Agreement (AAP 8) is to be completed by the responsible public agency. The request for the reimbursement of nonrecurring adoption expenses are to be submitted to the responsible public agency responsible for the determination of AAP eligibility, negotiation of benefits and the signing of the AAP agreement.

The AAP Nonrecurring Adoption Expenses Agreement (AAP 8) must be signed prior to the adoption finalization regardless if the adoptive parents submit a claim prior to the finalization or two years from the date of finalization. The submission of a Nonrecurring Adoption Expenses Agreement (AAP 8) completed and/or signed by the private adoption agency is not valid and should be discarded by the responsible public agency.

INQUIRIES

Please direct all AAP questions to the Adoptions Services Bureau, at (916) 651-8089.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division