

INFORMATION SHEET ON THE VIRGINIA ADOPTION ASSISTANCE PROGRAM

We are excited you are interested in adopting a child with special needs! Adoption provides children with loving families who are committed to helping them succeed in life. Stable families give children a place to call home, a daily life with a caring family, and lifelong relationships to share family traditions, special holidays, and important life events in childhood and adulthood.

While this document provides you with general information about Virginia's Adoption Assistance Program, you will probably have many questions about how this program applies to the specific child you want to adopt and your family's specific circumstances. We want you to have the information you need to make such important decisions. The service worker is happy to respond to all questions you may have. Please feel free to contact _____ at _____.

The service worker will share with you all known and relevant information about the child and about the child's birth family, without revealing the identity of the family. You will receive the Full Disclosure of Child Information Form for the child. The service worker will also help you plan how to integrate the child with special needs into your home and family.

Purpose of adoption assistance. Adoption assistance provides adoptive parents with the assistance they need to adopt and care for the child who has special needs and who meets eligibility criteria for adoption assistance. While adoptive parents assume primary financial responsibility for raising their adopted child, adoption assistance supplements the resources of the adoptive parents. It is not intended to cover the cost of raising the child.

Child's eligibility for adoption assistance. The child must meet specific criteria to be eligible for adoption assistance. The eligibility criteria is different depending on whether the application for adoption assistance is submitted before or after the adoption is finalized, and whether federal or state adoption assistance is appropriate. Adoptive parents will receive a copy of the Virginia Adoption Assistance Screening Tool that documents the child's special needs and eligibility for adoption assistance.

Types of adoption assistance. Adoptive parents may receive the following types of adoption assistance on behalf of the child who has special needs and who meets the eligibility criteria.

- 1) **Basic maintenance payments** are available to help the adoptive parents meet the child's needs for housing, food, clothing, transportation and/or personal incidentals. The payment is based on the child's age grouping for foster care maintenance rates. At no time shall the payment amount exceed what would have been paid had the child been in a foster family home. A supplemental clothing allowance over and above the basic maintenance payment is not an allowable payment in adoption assistance.
- 2) **Enhanced maintenance payments** may be available when the child requires additional supervision and support from the adoptive parents to ensure the safety and well-being of the child. When the local department determines there are indications that the child may require additional supervision and support from the adoptive parents, the local department shall use the Virginia Enhanced Maintenance Assessment Tool (VEMAT) to assess the child's behavioral, emotional, or physical/personal care needs. The child's VEMAT score does not determine the final payment for the child, but rather it is used during negotiation as the maximum allowable payment amount. The actual payment may range from no payment up to the maximum amount. At no time shall the amount of the enhanced maintenance payment exceed what would have been paid if the child was in foster care.
- 3) **Health insurance through the Medicaid program for an eligible child.** The local department shall inform the adoptive parents whether the child they are adopting is eligible for Medicaid in relation to the adoption assistance agreement. Medicaid eligibility continues for the child who is eligible for adoption assistance maintenance payments using:
 - Title IV-E funds.
 - State funds solely and the adoption assistance agreement documents the child has a special medical or rehabilitative need.

Medicaid shall not be included in the agreement when the application is made after the final order of adoption. When the child is not eligible for Medicaid in relation to the adoption assistance agreement, the child may be eligible for medical coverage under various Medicaid covered groups or under FAMIS (Family Access to Medical Insurance Security). FAMIS is a federal/state program that provides low-cost health insurance for children in families that earn too much for Medicaid, but do not have private health insurance.

- 4) **Non-recurring adoption expenses** help the adoptive parents pay expenses directly related to the legal adoption of the child. The total payment amount shall not exceed \$2,000 per child per adoptive placement. Such payments shall be made only when the adoption assistance agreement is executed prior to the final order of adoption. Types of expenses may include reasonable and necessary costs for:
- Court costs related to filing an adoption petition.
 - Attorney fees and other legal service fees directly related to finalizing the adoption.
 - Health and psychological examinations.
 - Supervision of the placement prior to adoption.
 - Transportation, lodging, and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process. Costs may be paid for more than one visit.
 - Adoption fees charged or home studies conducted by the licensed child placing agency.
 - Other costs necessary to complete the child placement or adoption process.
- 5) **Special service payments** help the adoptive parents provide special services and/or supports that are required to meet the documented special need(s) of the child. The local department may consider payments for special services when they:
- Help meet the child's physical, mental, emotional, or non-routine dental needs (does not include orthodontic treatment for cosmetic reasons).
 - Are directly related to the child's special needs, as documented by qualified professional(s).
 - Are time-limited based on the child's special needs.

Prior to considering special services payments, the local department and adoptive parents shall explore all available health insurance, extended family, community, government, and other resources to determine if other resources can be used to fully or partially pay for the services and/or supports required to meet the child's special need(s). Adoption assistance funds shall not be used to pay for services that can be provided through other resources. The adoptive parents may choose whether or not to use these other resources.

The local department and adoptive parents shall also determine whether the adoptive parents can financially afford the special service, as required by law. They shall consider this information as one factor when assessing and negotiating the special services payment. It shall not be the only factor considered in assessing family circumstances and in determining the special services payment.

The adoptive parents have the right and responsibility for selecting the provider they feel is most appropriate for their child and for ensuring provider qualifications. However, when using adoption assistance special services payments, the adoptive parents shall use the following specific types of providers, when applicable:

- Providers through Medicaid, FAMIS, private health insurance, the local school division, the state education agency, or early intervention supports and services. Adoption assistance funds shall not be used to pay other providers when the services are available, appropriate, and accessible through these avenues.
- Providers that are fully licensed, regulated, approved, or accredited. The local department should assist the adoptive parents in verifying the status of providers.

The adoptive parents may choose whether to use these providers or use their own or alternative resources to pay for other providers.

Federal Adoption Tax Credit. While not part of Virginia's Adoption Assistance Program, the adoptive parents may be eligible for a federal adoption tax credit when adopting a child in foster care, including a child with special needs. Adoptive parents should consult a tax professional to determine their eligibility for the tax credit and to address any questions they may have. The tax credit can help defray adoption costs for eligible taxpayers. The maximum credit amount is established by federal law. For more information about the tax credit:

- The Internal Revenue Service (<http://www.irs.gov/>) has eligibility information and forms required for filing at <http://www.irs.gov/taxtopics/tc607.html>.
- The North American Council on Adoptable Children (<http://www.nacac.org/>) has general information on the tax credit at <http://www.nacac.org/taxcredit/taxcredit.html>.

Deciding whether to apply for adoption assistance for the eligible child. When the adoptive parents understand the adoption assistance program to their satisfaction, they decide whether they want to:

- **Decline adoption assistance** by signing Section 8B of the Virginia Application for Adoption Assistance.
- **Enter into an adoption assistance agreement, but decline financial payments and services at this time until they are needed.** The adoptive parents complete, sign, and submit the Virginia Application for Adoption Assistance. An adoption assistance agreement is executed with a zero dollar payment. Medicaid may be included for an eligible child. The adoptive parents may request an addendum to the agreement at any time during the duration of the agreement to address the child's special needs and/or family circumstances of the adoptive parents.
- **Request adoption assistance on behalf of the child with special needs.** The adoptive parents complete, sign, and submit the Virginia Application for Adoption Assistance with all required documentation to the local department to begin the process.

Application process. The adoptive parents submit the Virginia Application for Adoption Assistance to request or decline adoption assistance on behalf of the child with special needs. The application is also a tool to help the adoptive parents:

- Plan how to integrate the child into their family.
- Evaluate financial resources, expenses, and health insurance coverage available for the child.
- Identify the payments, services, and/or supports they want to request.

The application should be completed by the adoptive parents with the service worker from either the local department or the licensed child placing agency when the child is in agency custody.

After receiving the complete application with all required documentation, the local department enters the information into the Virginia Worksheet for Assessing and Negotiating Adoption Assistance. This worksheet automatically calculates key information for the local department and the adoptive parents to use during the assessment and negotiation process.

How decisions about adoption assistance are made. The adoption assistance process is designed to provide consistent, fair, and equitable treatment of all requests from adoptive parents statewide. Adoption assistance is individually tailored to meet the unique special needs of the child and the family circumstances of the adoptive parents, using all available resources in the community. This process of individually tailoring adoption assistance for each family results in different amounts of adoption assistance for each child. The adoptive parents use this assistance, in addition to their own resources, to address their child's unique special needs.

The amount and terms for adoption assistance are assessed, negotiated, and agreed upon by the local department and the adoptive parents. The adoptive parents and local department share common goals of:

- Securing a safe, loving, and permanent family for the child.
- Meeting the child's special needs.
- Ensuring taxpayers' money for adoption assistance is used wisely and responsibly.

The assessment process involves respectful and confidential discussions of the adoptive parents' concerns, family circumstances, and finances. During this process, the adoptive parents have the right to determine

how they will use their financial resources. They also have the right and responsibility to raise their adopted child, with minimal government involvement.

The purpose of negotiation is to assess the child's needs for adoption assistance taking into account the family circumstances of the adoptive parents, and to determine the adoption assistance necessary for the adoptive parents to adopt and help care for the child's special needs. The goal is to determine the amount and timing of adoption assistance needed. The goal is not to minimize or maximize the amount of adoption assistance.

Negotiation focuses on what assistance is needed now, and what is known to be needed in the immediate future, to help meet the child's special needs. Future needs of the child and family circumstances of the adoptive parents are not negotiated at this time because these needs cannot be known with certainty and may change. At any time during the duration of the agreement, adoptive parents may request and negotiate an addendum to the adoption assistance agreement to address changes in the needs of the child and family circumstances of the adoptive parents.

Decisions on adoptive assistance are primarily based on the child's special needs and the family circumstances of the adoptive parents. The local department and adoptive parents work together and consider the following types of factors:

- The special need(s) of the child, as documented by qualified professional(s).
- The care the child requires (e.g., basic maintenance; additional supervision and support; health insurance; special services and/or supports).
- The family circumstances of the adoptive parents and how these circumstances impact their need for adoption assistance. Family circumstances include the adoptive parents' overall ability to meet the immediate and future needs of the child and to incorporate the child into their home, based on their current lifestyle, standard of living, and future plans.
- Other available resources that can be used creatively to help meet the child's special needs and help defray costs for the adoptive parents and the adoption assistance program. Resources may be from relatives, friends, neighbors, faith-based organizations, community centers, cultural and civic organizations, health insurance, and other community and government agencies.
- Legal requirements for adoption assistance.
- The type of adoption assistance that is important to the adoptive parents (e.g., financial assistance, health insurance, special services, and/or other supports).
- The amount, timing, and how long adoption assistance is needed.

Adoption assistance agreement. After the local department and the adoptive parents agree on the terms for adoption assistance, they sign the Virginia Adoption Assistance Agreement that documents the agreed upon terms. When the child is in the custody of a private licensed child placing agency, this agency also signs the agreement. The agreement shall be signed and executed within ninety (90) days from the date the local department received the completed application from the adoptive parents with all required documentation.

The signed agreement is legally binding on all parties beginning on the effective date stated in the agreement. Payments and services shall only be provided once the agreement is signed, dated, and the effective date reached. The local department is responsible for payments and/or services specified in the adoption assistance agreement, and any addendum in effect, regardless of where the adoptive parents and the child reside for the duration of the agreement.

Once the adoption assistance agreement is executed, the terms of the agreement shall be changed only when new terms are assessed, negotiated, and agreed upon by the adoptive parents and the local department. The new terms shall be documented in an addendum to the agreement.

Changing the adoption assistance agreement. The adoptive parents may request a change to the adoption assistance agreement at any time during the duration of the agreement based on changes in the child's special needs and/or in the family circumstances of the adoptive parents. Changes may be requested in basic maintenance, enhanced maintenance, and/or special services. Non-recurring adoption expenses are one time only expenses and cannot be reassessed.

The adoptive parents submit a Request for an Addendum to the Virginia Adoption Assistance Agreement to the local department with which they established the agreement. The adoptive parents and the local department assess, negotiate, and agree upon the terms of adoption assistance. The adoptive parents and local department sign an Addendum to the Virginia Adoption Assistance Agreement that documents the agreed upon terms.

Terminating payments or agreement. The local department shall only terminate payments or the agreement based on terms specified in the adoption assistance agreement, and/or the addendum in effect. The agreement shall only be terminated when the local department determines that any one of the following circumstances occurs:

- The youth with special needs reaches the age of 18 years, unless the local department determines the youth has a condition that warrants continuation of adoption assistance beyond age 18 years up to age 21 (i.e., the youth has a mental or physical disability, or an educational delay resulting from such disability; requires ongoing treatment and/or intervention; and continues to willingly cooperate and participate in the treatment and/or intervention).
- The youth with special needs reaches the age of 21 years, when the local department established that the youth has a condition that warrants the continuation of adoption assistance beyond the age of 18 years and up to 21 years of age.
- The adoptive parents:
 - Request in writing that the agreement ends.
 - Are no longer legally responsible for the child's care.
 - Are not providing any financial support for the child.
 - Have died.
- The adoptive parents and the local department agree in writing to terminate the agreement.

Appeals and fair hearing process. Any applicant or recipient of adoption assistance aggrieved by any decision of the local department in granting, denying, changing, or discontinuing adoption assistance may appeal the decision within thirty (30) days after receiving written notice of the decision. Any applicant or recipient aggrieved by the failure of local department to make a decision within a reasonable time may ask for a review of the process.

Appeals shall be processed in accordance with Virginia legal requirements and procedures established by the Virginia Board of Social Services. VDSS written procedures at the time of the appeal shall be used.

The adoptive parents may request a fair hearing within thirty (30) days after receiving written notice of the local department decision. A person acting on behalf of the adoptive parents (e.g., a relative, friend, or an attorney) may act as their authorized representative and request the hearing.

Requests for appeals must be submitted in writing to:

Appeals and Fair Hearings Unit
Virginia Department of Social Services
801 East Main Street
Richmond, VA 23219-2901

When the VDSS hearing officer determines the appeal request is valid, a formal Administrative Hearing is conducted by the hearing officer. The hearing officer is an impartial person charged by the Commissioner to hear appeals and decide if the local department followed policy and procedure in making a decision. The local department prepares a Summary of Facts and sends a copy to the adoptive parents, their representative if any, and the hearing officer prior to the hearing.

At the hearing, the adoptive parents and/or their authorized representative have the opportunity to:

- Examine all documents and records used at the hearing.
- Present the case.
- Bring witnesses.
- Establish pertinent facts and advance arguments.

- Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

The local department has the opportunity to:

- Clarify or modify its statements contained in the Summary of Facts.
- Question the adoptive parents and their witnesses on the salient issue(s).
- Examine all documents submitted by the adoptive parents or their authorized representative.

Only relevant evidence related to the issue(s) being appealed is admissible at the hearing.

There is a legal presumption that the local department acted in accordance with law and policy and the burden of proof is on the adoptive parents to demonstrate local department error.

The decision of the hearing officer shall be based exclusively on the evidence (i.e., documents or testaments) introduced at the hearing, and on all applicable laws, regulations, policies, and guidance manuals.

The hearing officer shall notify the local department and adoptive parents in writing of its decision on the appeal within sixty (60) days following the date the appeal request was received by the VDSS, except when a postponement was requested. If the hearing was postponed, the time limit will be extended for as many days as the hearing was postponed.

The decision of the hearing officer is final and binding when the decision is mailed to the local department and adoptive parents.

If the local department and adoptive parents resolve the issue at any time after the Appeals and Fair Hearings Unit receives the adoptive parents' request for an Administrative Review Hearing, the adoptive parents must provide a written statement withdrawing the appeal request. The withdrawal statement is sent to the hearing officer with a copy to the local department.

The adoptive parents aggrieved by the decision of the hearing officer may seek further review of the decision by the appropriate Circuit Court. The adoptive parents have thirty (30) days from the date of service (the date they actually received the hearing officer's decision or the date it was mailed to the adoptive parents, whichever occurred first) to provide notice of their intent to file an appeal with the circuit court. The adoptive parents must send written notice of intent to appeal the hearing officer's decision to:

Commissioner
Virginia Department of Social Services
801 East Main Street
Richmond, Virginia 23219-2901

In addition, the adoptive parents must file a written petition in Circuit Court in the locality where they live in order to perfect the appeal. The adoptive parents will not receive correspondence nor will their adoption assistance continue as a result of the adoptive parents sending written notice to VDSS of their intent to appeal, as the hearing officer's decision is the final administrative action.

Filing complaint of discrimination. If the adoptive parents believe they have been discriminated against by the VDSS or local department because of race, color, national origin, sex, age, or disability, the adoptive parents have the right to file a complaint of discrimination with the:

VDSS Civil Rights Program Administrator
801 E. Main Street, 8th Floor
Richmond, Virginia 23219
and/or

U.S. Department of Health and Human Services
Director, Office of Civil Rights
Region III 150 S. Independence Mall West – Suite 372
Philadelphia, Pennsylvania 19106-3499