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ADOPTION ASSISTANCE

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ADOPTION ASSISTANCE

2.1 Introduction

Section 2 on adoption assistance is effective October 15, 2013. The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs ([§ 63.2-1300](#)). For these children, adoption is unlikely within a reasonable period of time without adoption assistance. They often have experienced abuse and neglect as well as significant losses and disruptions in their lives. These traumatic events increase their risk for developmental, physical, emotional, and/or behavioral challenges.

Adoption provides the child with special needs a foundation for success in life. Adoption assistance supports:

- Safe, stable, and permanent family relationships to meet the child's special needs.
- Positive parenting to assist children in overcoming challenges and tapping into their resiliency.
- Lifelong connections for sharing family traditions, special holidays and important life events.

Adoption assistance provides the adoptive parents with the necessary assistance to adopt and care for the child who has special needs and who meets eligibility criteria. It is not intended to cover the full cost of raising the child. Rather, it supplements the resources of the adoptive parents.

The types of adoption assistance may include:

- Basic maintenance payments to help meet the child's needs for housing, food, clothing, transportation and/or personal incidentals. A supplemental clothing

allowance over and above the basic maintenance payment is not an allowable payment in adoption assistance.

- Enhanced maintenance payments to help address the child's additional supervision and support needs from the adoptive parents when necessary to ensure the safety and well-being of the child.
- Health insurance through the Medicaid program for an eligible child.
- Payment for non-recurring expenses directly related to the placement and legal adoption of the child.
- Special services payments to help meet the child's documented special needs.

Local departments of social services shall use a consistent application, assessment, and negotiation process statewide. This process individually tailors adoption assistance to meet the unique special needs of the child, family circumstances of the adoptive parents, and available resources in the community.

During the adoption assistance process, the local department of social services (LDSS):

- Determines the LDSS responsible for adoption assistance.
- Screens the child to determine whether the child has special needs and is eligible for adoption assistance.
- Discusses with the adoptive parents the child's special needs, eligibility for adoption assistance, and the Adoption Assistance Program when applicable.
- Assists the adoptive parents in completing the initial application requesting adoption assistance.
- Partners with the adoptive parents in identifying family, community, and government resources to help meet the child's special needs and defray the costs for the adoptive parents and the Adoption Assistance Program.
- Collaborates with the adoptive parents to assess, negotiate, and agree upon the components and amounts of adoption assistance.
- Executes an adoption assistance agreement with the adoptive parents that specifies the type, payment amount, duration, and terms for adoption assistance.
- Manages ongoing responsibilities for adoption assistance in partnership with the adoptive parents.

- Reviews requests from the adoptive parents for addendums to the adoption assistance agreement, based on changes in the child's special needs or in the family circumstances of the adoptive parents.
- Assesses, negotiates, and agrees upon types and amounts of adoption assistance to be provided due to these changes, executing addendums to the adoption assistance agreement with agreed upon terms.
- Terminates the agreement under circumstances delineated in the adoption assistance agreement.

2.2 Framework

The LDSS should use the following framework to help guide decision-making. The LDSS shall comply with federal and state legal requirements and should use the following sound practice principles and desired outcomes when making decisions.

2.2.1 Practice principles

Four fundamental principles in Virginia's Children's Services System Practice Model provide the philosophical basis and guide practice in adoption assistance.

First, we believe all children and communities deserve to be safe.

- Safety comes first. Ensuring safety requires a collaborative effort among family, agency staff, and the community.

Second, we believe all children need and deserve a permanent family.

- Children's needs are best served in a family that is committed to the child.
- Lifelong family connections are crucial for children and adults. It is our responsibility to promote and preserve kinship, sibling, and community connections for each child. We value past, present, and future relationships that consider the child's hopes and wishes.
- Permanency is best achieved through a legal relationship such as parental custody, adoption, kinship care or guardianship.

Third, we believe in partnering with others to support child and family success in a system that is family-focused, child-centered, and community-based.

- We take responsibility for open communication, accountability, and transparency.

- Our communication must reinforce the belief that children and youth belong in family and community settings and that system resources must be allocated in a manner consistent with that belief.

Fourth, we believe how we do our work is as important as the work we do.

- Relationships and communication among staff, children, families, and community partners are conducted with genuineness, empathy, and respect.
- As we work with children, families and their teams, we clearly share with them our purpose, role, concerns, decisions, and responsibility.
- We are focused on providing high quality, timely, efficient, and effective services.

2.2.2 Legal excerpts

The following citations for federal and excerpts from state law serve as a resource for LDSS on key legal provisions for adoption assistance. The complete language of these laws and regulations may be accessed by clicking on the citations.

2.2.2.1 Applicable Child

- [Social Security Act, Title IV, § 473 \(e\) \[42 USC 673\]](#).

2.2.2.2 Child with special needs

- [Social Security Act, Title IV, § 473 \(c\) \[42 USC 673\]](#).

(§ 63.2-1300). A child with special needs is a child who is a citizen or legal resident of the United States who is unlikely to be adopted within a reasonable period of time due to one or more of the following factors:

1. Physical, mental or emotional condition existing prior to adoption;
2. Hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability; or
3. Individual circumstances of the child related to age, racial or ethnic background or close relationship with one or more siblings.

A child with special needs will be eligible for adoption assistance if (i) the child cannot or should not be returned to the home of his parents and (ii) reasonable efforts to place the child in an appropriate adoptive home without the provision of adoption assistance have been unsuccessful. An exception may be made to the

requirement that efforts be made to place the child in an adoptive home without the provision of adoption assistance when the child has developed significant emotional ties with his foster parents while in their care and that the foster parents wish to adopt the child.

(§ [63.2-1301 B](#)). B. State-funded maintenance payments shall be made to the adoptive parents on behalf of an adopted child if it is determined that the child does not meet the requirements set forth in [§ 473 of Title IV-E of the Social Security Act \(42 U.S.C. § 673\)](#) but the child is a child with special needs. For this purpose of state-funded maintenance payments only, a child with special needs may include:

1. A child for whom the factors set forth in subdivision 1 or 2 of [§ 63.2-1300](#) are present at the time of adoption but are not diagnosed until after the final order of adoption, when no more than one year has elapsed from the date of diagnosis; or
2. A child who has lived with his foster parents for at least 12 months and has developed significant emotional ties with his foster parents while in their care, when the foster parents wish to adopt the child and state-funded maintenance payments are necessary to enable the adoption.

2.2.2.3 Title IV-E maintenance payments

- [Social Security Act, Title IV, § 473 \(a\) \(1\), \(a\) \(2\) \(A\) through \(a\) \(2\) \(C\), \(a\) \(3\), and \(a\) \(5\) \[42 USC 673\]](#).

(§ [63.2-1301 A](#)). Title IV-E maintenance payments shall be made to the adoptive parents on behalf of an adopted child placed if it is determined that the child is a child with special needs and the child meets the requirements set forth in [§ 473 of Title IV-E of the Social Security Act \(42 U.S.C. § 673\)](#).

(§ [63.2-1302 A1](#)). Adoption assistance payments may include: 1. Title IV-E or state-funded maintenance payments that shall be payable monthly to provide for the support and care of the child; however, Title IV-E or state-funded maintenance payments shall not exceed the foster care payment that would otherwise be made for the child;

([22 VAC 40-201-160](#)). E2a. A maintenance payment shall be approved for a child who is eligible for adoption assistance unless the adoptive parent indicates or it is determined through negotiation that the payment is not needed... The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home. a. The amount of the payment shall be negotiated with the adoptive parents

taking into consideration the needs of the child and circumstances of the adoptive parents.

([45 CFR 1356.40](#)). (c) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

2.2.2.4 State-funded maintenance payments

([§ 63.2-1301 B](#)). State-funded maintenance payments shall be made to the adoptive parents on behalf of an adopted child if it is determined that the child does not meet the requirements set forth in [§ 473 of Title IV-E of the Social Security Act \(42 U.S.C. § 673\)](#) but the child is a child with special needs. For this purpose of state-funded maintenance payments only, a child with special needs may include:

1. A child for whom the factors set forth in subdivision 1 or 2 of [§ 63.2-1300](#) are present at the time of adoption but are not diagnosed until after the final order of adoption, when no more than one year has elapsed from the date of diagnosis; or
2. A child who has lived with his foster parents for at least 12 months and has developed significant emotional ties with his foster parents while in their care, when the foster parents wish to adopt the child and state-funded maintenance payments are necessary to enable the adoption.

([§ 63.2-1302 A1](#)). Adoption assistance payments may include: 1. Title IV-E or state-funded maintenance payments that shall be payable monthly to provide for the support and care of the child; however, Title IV-E or state-funded maintenance payments shall not exceed the foster care payment that would otherwise be made for the child;

([22 VAC 40-201-160](#)). E2a. A maintenance payment shall be approved for a child who is eligible for adoption assistance unless the adoptive parent indicates or it is determined through negotiation that the payment is not needed... The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home. a. The amount of the payment shall be negotiated with the adoptive parents taking into consideration the needs of the child and circumstances of the adoptive parents.

2.2.2.5 Nonrecurring expense payments

- [Social Security Act, Title IV, § 473 \(a\) \(1\), \(a\) \(3\), \(a\) \(5\), and \(a\) \(6\) \(A\) \[42 USC 673\]](#).

(§ [63.2-1301 D](#)). Nonrecurring expense payments shall be made to the adoptive parents for expenses related to the adoption including reasonable and necessary adoption fees, court costs, attorney fees and other legal service fees, as well as any other expenses that are directly related to the legal adoption of a child with special needs including costs related to the adoption study, any health and psychological examinations, supervision of the placement prior to adoption and any transportation costs and reasonable costs of lodging and food for the child and the adoptive parents when necessary to complete the placement or adoption process for which the adoptive parents carry ultimate liability for payment and that have not been reimbursed from any other source, as set forth in [45 C.F.R. § 1356.41](#). However, the total amount of nonrecurring expense payments made to adoptive parents for the adoption of a child shall not exceed \$2,000 or an amount established by federal law.

([45 CFR 1356.41](#)). (a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the State agency administering the program. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

([45 CFR 1356.41](#)). (c) There must be no income eligibility requirement (means test) for adopting parents in determining whether payments for nonrecurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

([45 CFR 1356.41](#)). (d) For purposes of payment of nonrecurring expenses of adoption, the State must determine that the child is a “child with special needs” as defined in [section 473\(c\)](#) of the Act, and that the child has been placed for adoption in accordance with applicable State and local laws; the child need not meet the categorical eligibility requirements at [section 473\(a\)\(2\)](#).

2.2.2.6 State special services payments

(§ [63.2-1301 C](#)). State special services payments shall be made to the adoptive parents and other persons on behalf of a child in the custody of the local board or in the custody of a licensed child-placing agency and placed for adoption, pursuant to this chapter, if it is determined that:

1. The child is a child with special needs; and
2. The adoptive parents are capable of providing the permanent family relationships needed by the child in all respects except financial.

(§ [63.2-1302 A2](#)). Adoption assistance payments may include: 2. State special services payments to provide special services to the child that the adoptive parents

cannot afford and that are not covered by insurance or otherwise, including, but not limited to: a. Medical, surgical and dental care; b. Hospitalization; c. Individual remedial educational services; d. Psychological and psychiatric treatment; e. Speech and physical therapy; and f. Special services, equipment, treatment and training for physical and mental handicaps.

State special services payments may be paid to the vendor of the goods or services directly or to the adoptive parents.

([22 VAC 40-201-160](#)). E3. A special service payment is used to help meet the child's physical, mental, emotional, or nonroutine dental needs. The special service payment shall be directly related to the child's special needs. Special service payments shall be time limited based on the needs of the child.

([22 VAC 40-201-160](#)). E3c. Payments for special services are negotiated with the adoptive parents taking into consideration:

- (1) The special needs of the child;
- (2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and
- (3) The circumstances of the adoptive family. In considering the family's circumstances, income shall not be the sole factor.

2.2.2.7 Negotiating adoption assistance

([22 VAC 40-201-160](#)). D. Adoption assistance payments shall be negotiated with the adoptive parents taking into consideration the needs of the child and the circumstances of the family. In considering the family's circumstances, income shall not be the sole factor. Family and community resources shall be explored to help defray the costs of adoption assistance.

2.2.2.8 Adoption assistance agreement

- [Social Security Act, Title IV, § 475 \(3\) \[42 USC 675\]](#).

(§ [63.2-1302 C](#)). C. Adoption assistance payments shall be made on the basis of an adoption assistance agreement entered into by the local board and the adoptive parents or, in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency and the adoptive parents.

Prior to entering into an adoption assistance agreement, the local board or licensed child-placing agency shall ensure that adoptive parents have received information about their child's eligibility for adoption assistance; about their child's special needs and, to the extent possible, the current and potential impact of those special

needs. The local board or licensed child-placing agency shall also ensure that adoptive parents receive information about the process for appeal in the event of a disagreement between the adoptive parent and the local board or the adoptive parent and the child-placing agency and information about the procedures for revising the adoption assistance agreement.

([22 VAC 40-201-10](#)). "Adoption assistance agreement" means a written agreement between the child-placing agency and the adoptive parents of a child with special needs to provide for the unmet financial and service needs of the child.

([45 CFR 1356.40](#)). (b) The adoption assistance agreement for payments pursuant to section 473(a)(2) of the Act must meet the requirements of section 475(3) and must:

- (1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party;
- (2) Specify its duration; and
- (3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and
- (4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time.

2.2.2.9 Terminating agreement

- [Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \[42 USC 673\]](#)

(§ [63.2-1302 B](#)). Adoption assistance payments shall cease when the child with special needs reaches the age of 18 years. If it is determined that the child has a mental or physical handicap, or an educational delay resulting from such handicap, warranting the continuation of assistance, adoption assistance payments may be made until the child reaches the age of 21 years.

([22 VAC 40-201-160](#)). J. Adoption assistance shall be terminated when the child reaches the age of 18 unless the child has a physical or mental disability or an educational delay resulting from the child's disability which warrants continuation of the adoption assistance. If a child has one of these conditions, the adoption assistance may continue until the child reaches the age of 21.

([22 VAC 40-201-160](#)). K. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:

1. The child is not longer receiving financial support from the adoptive parents; or
2. The adoptive parents are no longer legally responsible for the child.

2.2.3 Outcomes

LDSS shall strive to achieve the following permanency outcomes required in the federal Child and Family Services Review:

- Increase the percentage of children adopted, based on all children in foster care who have the goal of Adoption and a final order terminating parental rights.
- Increase the timeliness of adoptions.

2.3 Determining LDSS responsibility for adoption assistance

Responsibility for adoption assistance is based on who has placement and care of the child or where the adoptive parents reside ([Federal Child Welfare Policy Manual, Subsection 8.2A.1](#)).

- The LDSS responsible for placement and care of the child is responsible for adoption assistance. The LDSS maintains responsibility for adoption assistance when placing the child in an adoptive home in another state.
- When a licensed child placing agency (LCPA) in Virginia has custody of the child, the public agency where the adoptive parents reside is responsible for adoption assistance:
 - When the adoptive parents reside in Virginia, the LDSS in the locality where the adoptive parents reside is responsible for adoption assistance.
 - When the child is placed in another state, the public child welfare agency where the adoptive parents reside is responsible.
- When the child is not in the placement and care of a public or private child placing agency (CPA) and meets all medical or disability requirements for Supplemental Security Income (SSI) benefits prior to the final order of adoption, the LDSS where the adoptive parents reside is responsible for adoption assistance.

The LDSS maintains its responsibilities for adoption assistance for the duration of the agreement when the adoptive parents move to another jurisdiction in Virginia or another state ([§ 63.2-1302 D](#)).

2.3.1 Required forms and documentation

The LDSS is required to use the following state forms for assessing, negotiating, and documenting adoption assistance. These forms ensure that all necessary information is collected and documented as required by state or federal law, regulation, policy, and guidance. They also provide consistent application of these requirements statewide, ensuring all requests from adoptive parents are handled equitably, while allowing adoption assistance to be individually tailored to address unique needs of the child and family circumstances of the adoptive parents.

Use of these forms as described in this guidance will ensure that the LDSS meets all federal and state requirements for adoption assistance. If the LDSS chooses to not use these forms, or to alter them in any substantive manner without VDSS approval, the LDSS may be held responsible for any financial pay backs as a result of lost appeals or unallowable payments discovered during adoption assistance case reviews.

- [Information Sheet on the Virginia Adoption Assistance Program](#) provides the same information about Virginia's adoption assistance program to adoptive parents across the state. It also ensures adoptive parents receive information as required by law, such as the availability of adoption assistance for eligible children, the Federal Adoption Tax Credit, and the appeals and fair hearing process.
- [Virginia Adoption Assistance Screening Tool](#) verifies that the LDSS evaluated all information necessary to appropriately determine the child's special needs and eligibility for federal and/or state funds. It summarizes the adoption assistance available for the child. The inclusion of this form in the adoption assistance paper case record, signed by the adoptive parent and the LDSS, documents the LDSS informed the adoptive parents of the child's eligibility for specific components of adoption assistance.
- [Full Disclosure of Child Information Form](#) documents that the LDSS provided the adoptive parents with full, factual information about the child's special needs in order to assist the family in making a fully informed decision regarding the adoption. The inclusion of this form in the adoption assistance paper case record, signed by the adoptive parents and the LDSS, indicates the LDSS and parents discussed all necessary information regarding the child's special needs.
- [Virginia Enhanced Maintenance Assessment Tool](#) (VEMAT) is the only allowable tool to be used to determine enhanced maintenance for eligible

children. Federal Title IV-E and state funds shall be used to fund enhanced maintenance payments only when the VEMAT is used to determine the maximum amount of enhanced maintenance allowable for the child. (Note: for adoption assistance agreements finalized prior to October 1, 2009 *and still in effect*, where a difficulty of care or other payment was made consistent with the purpose of enhanced maintenance and the reason for such payment is documented, the LDSS shall fund these payments through Title IV-E for the eligible child, if *they meet state criteria* (see [AART LASER Quick Reference Guide](#).)

- [Virginia Application for Adoption Assistance](#) is required from all adoptive parents requesting adoption assistance.
- [Virginia Worksheet for Assessing and Negotiating Adoption Assistance](#) assists the LDSS worker in calculating and summarizing key information from the application or addendum in a consistent manner to help inform the assessment and negotiation process for adoption assistance.
- [Virginia Adoption Assistance Agreement](#) specifies the payments, services, and terms for adoption assistance to be provided on behalf of the child. It is entered into and legally binding on the adoptive parents, the LDSS, and the LCPA when the child is in LCPA custody. It stipulates that the agreement shall remain in effect regardless of the State of residence of the adoptive parents.
- [Virginia Annual Affidavit for Adoption Assistance](#) is the required annual certification by the adoptive parents that the child continues to be eligible for adoption assistance. It informs the LDSS when the adoption assistance agreement needs to be renegotiated. It also documents school enrollment information required by federal law.
- [Request for VEMAT Administration Due to Change in Child's Behaviors](#) shall be submitted by the adoptive parent according to guidance in [Section 17.2](#) of the Foster Care Chapter.
- [Request for an Addendum to the Virginia Adoption Assistance Agreement](#) is completed by the adoptive parents when there are changes in the child's needs and/or their family circumstances and they request to renegotiate their adoption assistance agreement.
- [Addendum to the Virginia Adoption Assistance Agreement](#) is completed when the adoption assistance agreement is renegotiated. It specifies the payments, services, and terms for adoption assistance to be provided on behalf of the child. It is entered into and binding on the adoptive parents and the LDSS.

- [Checklist for Child's Virginia Adoption Assistance Paper Case Record](#) lists required documentation to be included in the child's adoption assistance case record to document compliance with federal and state adoption assistance requirements.

2.4 Screening child for adoption assistance

The LDSS screens the child to determine whether the child has special needs and is eligible for adoption assistance.

- Prior to the final order of adoption, the LDSS first evaluates the child's eligibility for Title IV-E adoption assistance maintenance payments. If the child is not eligible for Title IV-E maintenance payments, then the LDSS evaluates the child's eligibility for state adoption assistance maintenance payments. Regardless of fund source, the LDSS establishes whether the child has special needs and then applies appropriate eligibility criteria to determine whether the child is eligible for adoption assistance maintenance payments.
- After the final order of adoption when the adoptive parents request adoption assistance, the LDSS evaluates the child's eligibility for state adoption assistance maintenance payments. The LDSS establishes whether the child has special needs to determine whether the child is eligible for state adoption assistance maintenance payments.

State adoption assistance maintenance payments and special services shall not be available for children adopted through parental placements. This restriction does not apply to existing adoption assistance agreements ([Item 341F of the 2012 Appropriation Act](#)). Parental placement means the child's parent or legal guardian located or effected the placement of the child or placed the child in a family home for the purpose of adoption (§ [63.2-100](#)). Legal provisions for parental placement adoptions are delineated in the Code of Virginia.

After establishing the child has special needs and is eligible for adoption assistance maintenance payments using either Title IV-E or state funds, the LDSS then screens the child to determine eligibility for other types of adoption assistance.

The LDSS shall use the [Virginia Adoption Assistance Screening Tool](#) to establish and document the child's eligibility for adoption assistance.

This tool documents:

- Prior to the final order of adoption:
 - The child's eligibility for Title IV-E adoption assistance maintenance payments. Specifically, whether the child:

- Is an Applicable Child or Non-Applicable Child.
- Has special needs as either an Applicable Child or Non-Applicable Child.
- Meets at least one Title IV-E eligibility criteria for either an Applicable Child or Non-Applicable Child; **or**

Meets the criteria when the Applicable Child's or Non-Applicable Child's previous adoption dissolved or adoptive parents died and the child is subsequently being adopted.
- Is eligible for Title IV-E adoption assistance maintenance payments.
- The child's eligibility for state adoption assistance maintenance payments if the child is not eligible for Title IV-E adoption assistance maintenance payments. Specifically, whether the child:
 - Has special needs.
 - Meets both state eligibility criteria for adoption assistance.
 - Is eligible for state adoption assistance maintenance payments.
- The types of adoption assistance available for the child, which may include non-recurring adoption expense payments, maintenance payments, Medicaid in relation to the adoption assistance agreement, and/or state special services payments.
- After the final order of adoption:
 - The child's eligibility for state adoption assistance based on whether the child has special needs.
 - The types of state adoption assistance available for the child, which may include state maintenance payments and/or state special services payments.

The LDSS shall not use income eligibility requirements (means testing) for the adoptive parents in determining eligibility for adoption assistance maintenance payments ([45 CFR 1356.40](#)).

The LDSS should begin the [Virginia Adoption Assistance Screening Tool](#) as quickly as possible:

- After court termination of parental rights; or

- After execution of a valid permanent entrustment agreement; or
- In conjunction with the application process for adoption assistance.

This tool is completed for all children prior to executing an adoption assistance agreement whether the application is made before or after the final order of adoption.

After completing the tool, the LDSS gives the adoptive parents a copy of the [Virginia Adoption Assistance Screening Tool](#) for the child they wish to adopt. The LDSS discusses the information with the adoptive parents and responds to all questions they may have. The adoptive parents sign the completed tool to acknowledge that they were informed of the child's special needs and eligibility for adoption assistance, the funding source for maintenance payments, and the child's eligibility for all components of adoption assistance. The LDSS shall place the signed copy in the child's adoption assistance paper case record.

If the adoptive parents do not sign the tool, the LDSS shall document on the tool the date the tool was discussed with the adoptive parents and that the adoptive parents declined when asked to sign the tool.

2.5 Screening child prior to final order of adoption

When screening the child to determine whether the child has special needs and is eligible for adoption assistance prior to the final order of adoption, the LDSS shall first evaluate the child's eligibility for Title IV-E adoption assistance maintenance payments. If the child is not eligible for Title IV-E maintenance payments, then the LDSS shall evaluate the child's eligibility for state adoption assistance maintenance payments.

Regardless of fund source, the LDSS shall establish whether the child has special needs and then apply the appropriate eligibility criteria to determine whether the child is eligible for adoption assistance maintenance payments.

The LDSS shall fully consider all special needs the child may have that make it unlikely the child will be adopted within a reasonable period of time due to one or more special need factors. To use Title IV-E adoption assistance funds, the LDSS shall also determine that it is reasonable to conclude that the child cannot be adopted without providing Title IV-E adoption assistance and/or Medicaid because of this special need factor, as required.

After the LDSS establishes the child has special needs and is eligible for adoption assistance maintenance payments using either Title IV-E or state funds, then the LDSS determines and documents whether the child is eligible for different types of adoption assistance:

- Non-recurring adoption expenses, using Title IV-E funds only.

- Basic and enhanced maintenance, using either Title IV-E or state funds.
- Medicaid in relation to the adoption assistance agreement.
- Special services using state funds only.

The LDSS shall use the [Virginia Adoption Assistance Screening Tool](#) to evaluate, document, and summarize the child's eligibility for adoption assistance maintenance funds using either Title IV-E or state funds, and for the different types of adoption assistance (see [Section 2.4](#)).

2.5.1 Screening child for Title IV-E adoption assistance maintenance payments

This section provides an overview of the steps involved when screening the child for Title IV-E adoption assistance maintenance payments. The subsequent sections provide specific guidance on each step.

To determine whether the child is eligible for Title IV-E adoption assistance maintenance payments:

- The LDSS shall first establish whether the child is an Applicable Child (see [Section 2.5.2](#)). If the child is not, the child is a Non-Applicable Child.
- The LDSS shall then establish whether:
 - The Applicable Child has special needs as an Applicable Child (see [Section 2.5.3.1](#)) and either:
 - Meets at least one Title IV-E eligibility criteria for an Applicable Child (see [Section 2.5.3.2](#)); or
 - Meets the criteria when the child's previous adoption dissolved or adoptive parents died, and the child is subsequently being adopted (see [Section 2.5.3.3](#)).

When the Applicable Child has special needs and meets at least one of these criteria above, then the child is eligible for Title IV-E adoption assistance maintenance payments.

Or

- The Non-Applicable Child has special needs as a Non-Applicable Child (see [Section 2.5.4.1](#)) and either:
 - Meets at least one Title IV-E eligibility criteria for a Non-Applicable Child (see [Section 2.5.4.2](#)); or

- Meets the criteria when the child's previous adoption dissolved or adoptive parents died, and the child is subsequently being adopted (see [Section 2.5.4.3](#)).

When the Non-Applicable Child has special needs and meets at least one of these criteria above, then the child is eligible for Title IV-E adoption assistance maintenance payments.

Or

- The child does not meet the criteria above for either an Applicable Child or Non-Applicable Child. The child is not eligible for Title IV-E adoption assistance maintenance payments.

Note: The federal government expanded the population of children eligible for Title IV-E maintenance payments through revising the eligibility criteria for an "Applicable Child" in the [Fostering Connection to Success and Increasing Adoption Act of 2008](#). The expansion is being phased in over federal fiscal years 2010 through 2018. The revised eligibility criteria do not apply for a Non-Applicable Child and the eligibility criteria in place prior to October 1, 2009 continue to apply to these children. Beginning October 1, 2017, the Applicable Child criteria will be used for children of all ages. The criteria for the Non-Applicable Child will be eliminated ([Federal Program Instruction dated July 9, 2010](#) and [Federal Program Instruction dated August 26, 2009](#)).

The LDSS shall use the [Virginia Adoption Assistance Screening Tool](#) to evaluate, establish, and document the child's eligibility for Title IV-E adoption assistance (see [Section 2.4](#)).

When the LDSS determines that the child is eligible for Title IV-E adoption assistance maintenance payments as an Applicable Child or Non-Applicable Child, then the LDSS shall determine and document the child's eligibility for the different types of adoption assistance.

After screening the eligible child, the LDSS shall inform the adoptive parents of the results of the screening and shall discuss with them the child's special needs, eligibility for adoption assistance, and the Adoption Assistance Program.

The LDSS shall then assess and negotiate with the adoptive parents the amount of adoption assistance to be provided for the eligible child. A maintenance payment for the eligible child shall be approved unless the adoptive parents decline the payment in writing or the local department and adoptive parents agree through negotiation and in writing that the payment is not needed ([22 VAC 40-201-160 E2](#)).

The LDSS shall execute an adoption assistance agreement with the adoptive parents using Title IV-E funds for adoption assistance maintenance payments and

any other agreed upon adoption assistance using appropriate fund sources. An agreement shall be executed unless, in writing, the adoptive parents decline adoption assistance ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(A\) \[42 U.S.C. 673\]](#)). The agreement shall be signed and in effect prior to, or at the time of, the final order of adoption ([45 CFR 1356.40 \(b\) \(1\)](#)).

When the LDSS determines that the child does not meet the requirements for either an Applicable Child or a Non-Applicable Child, then the child is not eligible for Title IV-E adoption assistance maintenance payments. The LDSS shall screen the child for state adoption assistance maintenance payments (see [Section 2.5.5](#)).

2.5.2 Determining whether Title IV-E Applicable Child

To determine whether the child is eligible for Title IV-E adoption assistance maintenance payments, the LDSS shall first evaluate whether or not the child is an Applicable Child using the [Virginia Adoption Assistance Screening Tool](#) (see [Section 2.4](#)).

The child is an Applicable Child when he or she:

- Meets the age criteria during the federal fiscal year in which the adoption assistance agreement is executed; or
- Meets one of two exceptions to the age criteria, meaning the child is any age on the date the adoption assistance agreement is executed and the child meets the criteria of either:
 - Length of stay in foster care; or
 - Sibling status ([Social Security Act, Title IV, § 473 \(e\) \[42 U.S.C. 673\]](#); [Federal Program Instruction dated July 9, 2010](#)).

When the child does not meet the age criteria or exceptions to the age criteria for an Applicable Child, the child is a Non-Applicable Child.

Age criteria. To be an Applicable Child, the child shall attain the applicable age for that FFY at any time during the year in which the adoption assistance agreement is executed. The applicable age for a child begins at 16 years old in FFY 2010. For each subsequent FFY, the age for an Applicable Child decreases by two (2) years until a child of any age meets the applicable age requirements in FFY 2018

The chart below helps determine whether or not the child is an Applicable Child. To use the chart, the LDSS should identify in the first column the FFY in which the adoption assistance agreement is being executed. The second column in that row specifies the age the child must attain during that FFY in order for the child to be an Applicable Child. If the child does not attain the specified age during that FFY, the

child is a Non-Applicable Child unless the child meets one of the two exceptions to the age criteria described below.

Federal fiscal year in which adoption assistance agreement is executed	Applicable age for that federal fiscal year (FFY)
FFY 2013 (October 1, 2012 - September 30, 2013)	A child who reaches age 10 to 18 years old anytime between October 1, 2012 and September 30, 2013
FFY 2014 (October 1, 2013 - September 30, 2014)	A child who reaches age 8 to 18 years old anytime between October 1, 2013 and September 30, 2014
FFY 2015 (October 1, 2014 - September 30, 2015)	A child who reaches age 6 to 18 years old anytime between October 1, 2014 and September 30, 2015
FFY 2016 (October 1, 2015 - September 30, 2016)	A child who reaches age 4 to 18 years old anytime between October 1, 2015 and September 30, 2016
FFY 2017 (October 1, 2016 - September 30, 2017)	A child who reaches age 2 to 18 years old anytime between October 1, 2016 and September 30, 2017
FFY 2018 and beyond (after October 1, 2017)	Any child up to age 18 for whom an adoption assistance agreement is entered into after October 1, 2017.

An alternative chart illustrating these requirements for Applicable and Non-Applicable Children is available in the [Federal Program Instruction dated August 26, 2009](#).

Two exceptions to the age criteria. An Applicable Child is also the child of any age on the date the adoption assistance agreement is executed who meets one of the following two exceptions to the age criteria:

- 1) **Length of stay in foster care.** The child was under continuous placement and care responsibility of a CPA in Virginia for any 60 consecutive months prior to the final order of adoption.
- 2) **Sibling status.** The child is a sibling of a child who meets either the age criteria or length of stay exception criteria as an Applicable Child for that FFY. The sibling and the Applicable Child shall be placed in the same adoption placement, but the placements do not have to occur at the same time. The sibling may be adopted before the Applicable Child ([Federal Child Welfare Policy Manual, Subsection 8.2B #8](#)).

Note: When the child does not meet the age criteria or either of the two exceptions to the age criteria for an Applicable Child in the FFY in which the LDSS executes the

adoption assistance agreement, then there is no opportunity for the child to be determined eligible for Title IV-E maintenance payments as an Applicable Child during that adoption ([Federal Program Instruction dated July 9, 2010](#))

After the LDSS establishes whether the child is an Applicable Child or a Non-Applicable Child, then the LDSS shall continue screening the child's eligibility for Title IV-E adoption assistance maintenance payments based on the child's status:

- For the Title IV-E Applicable Child, see [Section 2.5.3](#).
- For the Title IV-E Non-Applicable Child, see [Section 2.5.4](#).

2.5.3 Screening Title IV-E Applicable Child

The Applicable Child is eligible for Title IV-E adoption assistance maintenance payments when the LDSS establishes that the child:

- Has special needs as an Applicable Child (see [Section 2.5.3.1](#)); **and**
- Meets at least one eligibility criteria for an Applicable Child (see [Section 2.5.3.2](#)); **or**
- Meets the criteria when the Applicable Child's previous adoption dissolved or adoptive parents died and the child is subsequently being adopted (see [Section 2.5.3.3](#)).

The LDSS shall use the [Virginia Adoption Assistance Screening Tool](#) to evaluate and document these criteria for an Applicable Child (see [Section 2.4](#)).

2.5.3.1 Establishing child has special needs as an Applicable Child

The LDSS shall establish that the Applicable Child has special needs based on the child meeting federal requirements for the Applicable Child ([Social Security Act, Title IV, § 473 \(c\) \(2\) \[42 USC 673\]](#)) and Virginia legal requirements ([§ 63.2-1300](#)).

The LDSS shall use the [Virginia Adoption Assistance Screening Tool](#) to establish and document the child has special needs as an Applicable Child. The LCPA shall collaborate with the LDSS in this process when the child is in LCPA custody.

To establish the child has special needs as an Applicable Child prior to the final order of adoption, the LDSS shall document that the Applicable Child meets all five (5) criteria listed below. Specific procedures for meeting each criterion are described in the sections identified in parenthesis.

1. The child is under 18 years of age (see [Section 2.5.7.1](#))

2. The child is a citizen or legal resident/qualified alien of the United States (see [Section 2.5.7.1](#)).
3. The child cannot or should not be returned home to his or her parents (see [Section 2.5.7.2](#)).
4. It is reasonable to conclude that the child cannot be placed with adoptive parents without providing Title IV-E adoption assistance and Medicaid because the child has a specific factor or condition. Federal law allows the states to define the specific factors or conditions.

Virginia law defines these factors for a child with special needs as the child is unlikely to be adopted within a reasonable period of time due to one or more of the factors below, based on the individual circumstances of the child:

- Physical, mental, or emotional condition existing prior to adoption (see [Section 2.5.7.3](#));
- Hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability (see [Section 2.5.7.4](#));
- Member of a minority group based on racial, multi-racial, or ethnic heritage (see [Section 2.5.7.5](#));
- Close relationship with one or more siblings (see [Section 2.5.7.5](#)); and/or
- Age six or older and has been in foster care for eighteen (18) months or longer¹ (see [Section 2.5.7.5](#)).

Or, in the alternative, federal law specifies that when the child meets all medical or disability requirements for SSI benefits, the child has special needs (see [Section 2.5.7.6](#)) ([Federal Child Welfare Policy Manual, Subsection 8.2B.11 #4](#)).

5. Reasonable efforts were made to place the child with appropriate adoptive parents without providing adoption assistance or Medicaid, but these efforts were unsuccessful (see [Section 2.5.7.8](#)). Such efforts are not required when they would be contrary to the child's best interest because of such factors as the existence of significant emotional ties with the

¹ The federal Child and Family Services Review requires states to achieve timely adoption of children within 24 months of entering foster care. Virginia data shows the likelihood of children in foster care achieving permanency decreased significantly for children remaining in foster care longer than two years.

adoptive parents while the child is in their care as foster parents (see [Section 2.5.7.9](#)).

When the LDSS establishes that the Applicable Child meets all five (5) criteria above, the child has special needs as an Applicable Child. The LDSS shall:

- Document how the child meets each criterion as described in [Section 2.5.7](#) in the child's adoption assistance paper case record.
- Determine if the child is eligible for Title IV-E adoption assistance maintenance payments by:
 - Applying the Title IV-E eligibility criteria for an Applicable Child (see [Section 2.5.3.2](#)); **or**
 - Determining if the Applicable Child meets the criteria when his or her previous adoption dissolved or adoptive parents died and is subsequently being adopted (see [Section 2.5.3.3](#)).

When the LDSS establishes that the Applicable Child does not meet all five (5) criteria in this section, the child does not have special needs as an Applicable Child and the child is not eligible for Title IV-E funding for adoption assistance. The LDSS shall evaluate the child's eligibility for state adoption assistance maintenance payments (see [Section 2.5.5](#)).

2.5.3.2 Applying Title IV-E eligibility criteria for Applicable Child

After the LDSS determines that the child is an Applicable Child (see [Section 2.5.2](#)) and has special needs as an Applicable Child (see [Section 2.5.3.1](#)), then the LDSS shall determine whether the child meets at least one eligibility criteria for an Applicable Child to be eligible for Title IV-E adoption assistance maintenance payments ([Social Security Act, Title IV, § 473 \(a\) \(2\) \(A\) \(ii\) \[42 U.S.C. 673\]](#) and [Federal Program Instruction dated August 26, 2009](#)). The LDSS shall document whether the child meets the criteria on the [Virginia Adoption Assistance Screening Tool](#).

Note: When the Applicable Child's previous adoption was dissolved or adoptive parents died and the child is subsequently being adopted, the LDSS shall determine whether the Applicable Child meets the criteria in [Section 2.5.3.3](#). If the child meets the criteria in [Section 2.5.3.3](#), the LDSS does not determine whether the child meets one of the Title IV-E eligibility criteria below.

To be eligible for Title IV-E adoption assistance maintenance payments, the Applicable Child who has special needs shall meet at least one of the following three eligibility criteria for an Applicable Child:

- 1) When the adoption assistance agreement is executed, the child is in the care of a CPA through a court-ordered removal or a permanent entrustment. In both situations, Title IV-E shall only be used when a petition was filed in court and a judicial determination is made that remaining at home is contrary to the child's welfare. The language of "contrary to the welfare" shall be:
 - For the court ordered removal, in the first court order within 60 days after removal.
 - For the permanent entrustment, in the first court order within 180 days after removal. **OR**
- 2) The child meets all medical or disability requirements for SSI benefits prior to the final order of adoption ([Federal Child Welfare Policy Manual, Subsection 8.2B.11 #4](#)). The child does not have to meet the financial need criteria of SSI nor does the child have to be receiving SSI payments. The child does not need to be in the placement and care of a LDSS or custody of a LCPA. The LDSS shall obtain appropriate documentation of the child's SSI eligibility from the SSA. **OR**
- 3) The child is a minor child of a youth who was in foster care and the child was placed with the youth (minor parent) in foster care at any point prior to the final order of adoption.

When the Applicable Child who has special needs does not meet at least one of the above criteria for an Applicable Child or the criteria in the next section for an Applicable Child subsequently adopted after the previous adoption dissolved or parents died (see [Section 2.5.3.3](#)), then the child is not eligible for Title IV-E adoption assistance. The LDSS shall screen the child for state adoption assistance maintenance payments (see [Section 2.5.5](#)).

2.5.3.3 Meeting criteria for subsequent adoption after previous adoption dissolved or parents died

After the LDSS determines that the child is an Applicable Child (see [Section 2.5.2](#)), and the child has special needs as an Applicable Child (see [Section 2.5.3.1](#)) and the child is subsequently being adopted after the child's previous adoption dissolved or adoptive parents died, then the LDSS determines whether the child meets the legal criteria in this section ([Social Security Act, Title IV, § 473 \(a\) \(2\) \(C\) \(ii\) \[42 U.S.C. 673\]](#) and [Federal Program Instruction dated August 26, 2009](#)).

Note: If the child with special needs as an Applicable Child met one of the Title IV-E eligibility criteria in [Section 2.5.3.2](#), then the child is eligible for Title IV-E

adoption assistance maintenance payments and the child does not need to meet the criteria in this section.

The Applicable Child who has special needs is eligible for Title IV-E adoption assistance maintenance payments when:

- The child was previously adopted with Title IV-E adoption assistance maintenance payments.
- The adoption dissolved and the adoptive parents' rights have been terminated, or the adoptive parents died.
- The child is subsequently being adopted.
- An agreement with Title IV-E adoption assistance maintenance payments was in effect in the prior adoption.

When the child meets the criteria in this section, the child does not need to meet at least one of the Title IV-E eligibility criteria in [Section 2.5.3.2](#). The child continues his or her eligibility for Title IV-E adoption assistance maintenance payments from the previous adoption in the subsequent adoption. The LDSS shall not redetermine the child's eligibility for Title IV-E adoption assistance maintenance payments. The child is treated as though the circumstances are the same as those prior to the previous adoption. Therefore, the manner of the child's removal from the adoptive home, including whether the child is voluntarily relinquished to an individual or private agency, is irrelevant. (For more information when an adoptive parent dies, see [Section 2.24.6](#)).

When the Applicable Child who has special needs does not meet the criteria in this section or at least one of the Title IV-E eligibility criteria for an Applicable Child in [Section 2.5.3.2](#), then the child is not eligible for Title IV-E adoption assistance maintenance payments. The LDSS shall screen the child for state adoption assistance maintenance payments (see [Section 2.5.5](#)).

The LDSS shall document whether the child meets the criteria in this section on the [Virginia Adoption Assistance Screening Tool](#).

2.5.3.4 Determination and action for Applicable Child

In summary, when the LDSS establishes that the following three requirements are met for the child, the child is eligible for Title IV-E adoption assistance maintenance payments. The child:

- Is an Applicable Child (see [Section 2.5.2](#)); **and**
- Has special needs as an Applicable Child (see [Section 2.5.3.1](#)); **and**

- Meets at least one Title IV-E eligibility criteria for an Applicable Child (see [Section 2.5.3.2](#)); **or**

Meets the criteria when the Applicable Child's previous adoption dissolved or adoptive parents died and is subsequently being adopted (see [Section 2.5.3.3](#)).

The LDSS shall document that the child meets these requirements on the [Virginia Adoption Assistance Screening Tool](#) (see [Section 2.4](#)). The LDSS shall then continue to use this tool to determine and document the child's eligibility for the different types of adoption assistance. The LDSS shall place a copy of the completed tool in the child's adoption assistance paper case record.

The LDSS shall give a copy of the completed tool to the adoptive parents and thoroughly discuss the child's eligibility and the adoption assistance program with the adoptive parents.

The LDSS shall then assess and negotiate with the adoptive parents the amount of adoption assistance to be provided for the child. A basic maintenance payment shall be approved for the eligible child unless the adoptive parents decline the payment in writing or the local department and adoptive parents agree through negotiation and in writing that the payment is not needed ([22 VAC 40-201-160](#)).

The LDSS shall execute an adoption assistance agreement with the adoptive parents using Title IV-E funds for adoption assistance maintenance payments and any other agreed upon adoption assistance using appropriate fund sources. An agreement shall be executed unless the adoptive parents decline adoption assistance ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(A\) \[42 U.S.C. 673\]](#)). The agreement shall be signed and in effect prior to, or at the time of, the final order of adoption ([45 CFR 1356.40 \(b\) \(1\)](#)).

Once the maintenance payment is established as Title IV-E and an adoption assistance agreement is executed, Title IV-E remains in effect as the funding source for the maintenance payment for the duration of the agreement except in limited circumstances (see [Section 2.24](#)).

The child is not eligible for Title IV-E adoption assistance maintenance payments when the LDSS establishes that the Applicable Child:

- Does not have special needs as an Applicable Child (see [Section 2.5.3.1](#)); **or**
- Does not meet at least one of the Title IV-E eligibility criteria for an Applicable Child in [Section 2.5.3.2](#); **or**

Does not meet the criteria when the Applicable Child's previous adoption dissolved or adoptive parents died and the child is subsequently being adopted in [Section 2.5.3.3](#).

The LDSS shall screen the child for state adoption assistance maintenance payments (see [Section 2.5.5](#)).

2.5.4 Screening Title IV-E Non-Applicable Child

The Non-Applicable Child is eligible for Title IV-E adoption assistance maintenance payments when the LDSS establishes that the child:

- Has special needs as a Non-Applicable Child (see [Section 2.5.4.1](#)); **and**
- Meets at least one eligibility criteria for a Non-Applicable Child (see [Section 2.5.4.2](#)); **or**
- Meets the criteria when the Non-Applicable Child's previous adoption dissolved or adoptive parents died and the child is being subsequently adopted (see [Section 2.5.4.3](#)).

The LDSS shall use the [Virginia Adoption Assistance Screening Tool](#) to evaluate and document these requirements for a Non-Applicable Child (see [Section 2.4](#)).

2.5.4.1 Establishing child has special needs as Non-Applicable Child

The LDSS shall establish the Non-Applicable child has special needs based on the child meeting federal requirements for the Non-Applicable Child ([Social Security Act, Title IV, § 473 \(c\) \(1\) \[42 USC 673\]](#) and Virginia legal requirements ([§ 63.2-1300](#)).

The LDSS shall use the [Virginia Adoption Assistance Screening Tool](#) to establish and document the child has special needs as a Non-Applicable Child. The LCPA shall collaborate with the LDSS in this process when the child is in LCPA custody.

To establish the child has special needs as a Non-Applicable Child prior to the final order of adoption, the LDSS shall document that the Non-Applicable Child meets all five (5) criteria listed below. Specific procedures for meeting each requirement are described in the sections identified in parenthesis.

1. The child is under 18 years of age (see [Section 2.5.7.1](#))
2. The child is a citizen or legal resident/qualified alien of the United States (see [Section 2.5.7.1](#)).

3. The child cannot or should not be returned home to his or her parents (see [Section 2.5.7.2](#)).
4. It is reasonable to conclude that the child cannot be placed with adoptive parents without providing Title IV-E adoption assistance or Medicaid because the child has a specific factor or condition. Federal law allows the states to define the specific factors or conditions.

Virginia law defines these factors for a child with special needs as the child is unlikely to be adopted within a reasonable period of time due to one or more of the factors below, based on the individual circumstances of the child:

- Physical, mental, or emotional condition existing prior to adoption (see [Section 2.5.7.3](#));
 - Hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability (see [Section 2.5.7.4](#));
 - Member of a minority group based on racial, multi-racial, or ethnic heritage (see [Section 2.5.7.5](#));
 - Close relationship with one or more siblings (see [Section 2.5.7.5](#)); and/or
 - Age six or older and has been in foster care for eighteen (18) months or longer² (see [Section 2.5.7.5](#)).
5. Reasonable efforts were made to place the child with appropriate adoptive parents without providing adoption assistance or Medicaid, but these efforts were unsuccessful (see [Section 2.5.7.8](#)). Such efforts are not required when they would be contrary to the child's best interest because of such factors as the existence of significant emotional ties with the adoptive parents while the child is in their care as foster parents (see [Section 2.5.7.9](#)).

When the LDSS establishes that the Non-Applicable Child meets all five (5) criteria above, the child has special needs as a Non-Applicable Child. The LDSS shall:

- Document how the child meets each criterion as described in [Section 2.5.7](#) in the child's adoption assistance paper case record.

² The federal Child and Family Services Review requires states to achieve timely adoption of children within 24 months of entering foster care. Virginia data shows the likelihood of children in foster care achieving permanency decreased significantly for children remaining in foster care longer than two years.

- Determine if the child is eligible for Title IV-E adoption assistance maintenance payments by:
 - Applying the Title IV-E eligibility criteria for a Non-Applicable Child (see [Section 2.5.4.2](#)); **or**
 - Determining if the Non-Applicable Child meets the criteria when his or her previous adoption dissolved or adoptive parents died and is subsequently being adopted (see [Section 2.5.4.3](#)).

When the LDSS establishes that the Non-Applicable Child does not meet all five (5) criteria in this section, the child does not have special needs as a Non-Applicable Child and the child is not eligible for Title IV-E funding for adoption assistance. The LDSS shall evaluate the child's eligibility for state adoption assistance maintenance payments (see [Section 2.5.5](#)).

2.5.4.2 Applying Title IV-E eligibility criteria for Non-Applicable Child

After the LDSS establishes that the child is a Non-Applicable Child (see [Section 2.5.2](#)) and has special needs as a Non-Applicable Child (see [Section 2.5.4.1](#)), then the LDSS shall determine whether the child meets at least one eligibility criteria for a Non-Applicable Child to be eligible for Title IV-E adoption assistance maintenance payments ([Social Security Act, Title IV, § 473 \(a\) \(2\) \(A\) \(i\) \[42 U.S.C. 673\]](#); and [Federal Child Welfare Policy Manual, Subsection 8.2B #1](#)). The LDSS shall document whether the child meets the criteria on the [Virginia Adoption Assistance Screening Tool](#).

Note: When the Non-Applicable Child's previous adoption was dissolved or adoptive parents died and the child is subsequently being adopted, the LDSS shall determine whether the Non-Applicable Child meets the criteria in [Section 2.5.4.3](#). If the child meets the criteria in [Section 2.5.4.3](#), the LDSS does not determine whether the child meets one of the Title IV-E eligibility criteria below.

To be eligible for Title IV-E adoption assistance maintenance payments, the Non-Applicable Child who has special needs shall meet at least one of the following three eligibility criteria for a Non-Applicable Child:

- 1) The child entered foster care through a court ordered removal and met all Title IV-E eligibility requirements at the time of removal. A Title IV-E Foster Care Notice of Action was completed by the eligibility unit and this notice indicates in Section I that the child is Title IV-E eligible. A copy of the completed form shall be included in the adoption assistance paper case record. (NOTE: The child is not required to have received a Title IV-E foster care maintenance payment prior to adoption and does not need to be continuously eligible for Title IV-E payments throughout the child's foster care episode.); **OR**

The child entered foster care through a court ordered removal, met all AFDC requirements at the time of removal (see [Title IV-E Foster Care Manual](#)), but was found ineligible for Title IV-E funds in foster care for the sole reason that there was not a court order issued within the first sixty (60) days of entering care containing the Reasonable Efforts language. Reasonable Efforts language is not required for adoption assistance. A child shall only be considered to meet this criteria when the service worker reviews the final Title IV-E Foster Care Notice of Action that was completed by the eligibility unit when the initial Title IV-E eligibility determination was made and that notice indicates in Section I that the child is Title IV-E ineligible and the only reason documented is reasonable efforts language was not obtained within sixty (60) days. A copy of the Title IV-E Foster Care Notice of Action shall be included in the child's adoption assistance paper case record. (NOTE: The child is not required to have received a Title IV-E foster care maintenance payment prior to adoption and does not need to be continuously eligible for Title IV-E payments throughout the child's foster care episode.); **OR**

The child was voluntarily relinquished to the LDSS or LCPA under a permanent entrustment agreement and all six of the following documents are included in the child's adoption assistance paper case record:

- i. A valid permanent entrustment agreement relinquishing the child to the CPA.
- ii. A petition filed in court within 180 days of when the child lived with the specified relative, that specifically requests approval of the permanent entrustment agreement removing the child from home.
- iii. A subsequent court order within the same 180 days, issued in response to the petition for approval of the entrustment agreement, that documents the court's determination that it is contrary to the child's welfare to remain in the home.
- iv. A completed Title IV-E Eligibility Application.
- v. A Title IV-E Foster Care Notice of Action completed by the Eligibility Unit which documents in Section I that the child met all AFDC requirements at the time of removal (see [Title IV-E Foster Care Manual](#)). Specifically, the notice indicates either:
 - The child is Title IV-E eligible; OR
 - The child is Title IV-E ineligible and the sole reason documented is Reasonable Efforts Language was not

obtained in a court order within sixty (60) days. Reasonable Efforts language is not required for adoption assistance.

Note: This Title IV-E determination is made by the LDSS eligibility unit responsible for determining Title IV-E eligibility in the locality that has responsibility for adoption assistance (see [Section 2.3](#)). It is the sole determination that this unit makes related to eligibility for adoption assistance. The LCPA shall submit the Title IV-E Eligibility Application to the LDSS service worker who then sends it to the eligibility unit. If the eligibility unit needs additional documentation to complete its Title IV-E determination, the service worker from the LCPA or the person holding custody of the child is responsible for providing this information.

- vi. At least one Title IV-E foster care maintenance payment was paid on behalf of the child pursuant to the permanent entrustment agreement when the child was in the custody of the child placing agency. **OR**
- 2) The child meets all medical, disability, and financial requirements for SSI benefits prior to the final order of adoption. The child does not have to be receiving SSI payments. The child does not need to be in the placement and care of LDSS or custody of a LCPA. The LDSS shall obtain appropriate documentation of the child's SSI eligibility from the SSA. **OR**
- 3) The child is a minor child of a youth who was in foster care and the youth (minor parent) received a Title IV-E foster care maintenance payment that covered both the minor parent and the child of the minor parent while the child was placed with the minor parent in foster care at any point prior to the final order of adoption.

When the Non-Applicable Child who has special needs does not meet at least one of the above criteria for a Non-Applicable Child or the criteria in the next section for a Non-Applicable child subsequently adopted after the previous adoption dissolved or parents died (see [Section 2.5.4.3](#)), then the child is not eligible for Title IV-E adoption assistance. The LDSS shall screen the child for state adoption assistance maintenance payments (see [Section 2.5.5](#)).

2.5.4.3 Meeting criteria for subsequent adoption after previous adoption dissolved or parents died

After the LDSS determines that the child is a Non-Applicable Child (see [Section 2.5.2](#)), and the child has special needs as a Non-Applicable Child (see [Section 2.5.4.1](#)) and the child is subsequently being adopted after the child's previous adoption dissolved or adoptive parents died, then the LDSS determines

whether the child meets the legal requirements in this section ([Social Security Act, Title IV, § 473 \(a\) \(2\) \(C\) \(i\) \[42 U.S.C. 673\]](#) and [Federal Child Welfare Policy Manual, Subsection 8.2B #1](#)).

Note: If the child with special needs as a Non-Applicable Child met one of the Title IV-E eligibility criteria in [Section 2.5.4.2](#), then the child is eligible for Title IV-E adoption assistance maintenance payments and the child does not need to meet the criteria in this section.

The Non-Applicable Child who has special needs is eligible for Title IV-E adoption assistance maintenance payments when:

- The child was previously adopted with Title IV-E adoption assistance maintenance payments.
- The adoption dissolved and the adoptive parents' rights have been terminated, or the adoptive parents died.
- The child is subsequently being adopted.
- An agreement with Title IV-E adoption assistance maintenance payments was in effect in the prior adoption.

When the child meets the criteria in this section, the child does not have to meet at least one of the Title IV-E eligibility criteria in [Section 2.5.4.2](#). The child continues his or her eligibility for Title IV-E adoption assistance maintenance payments from the previous adoption in the subsequent adoption. The LDSS shall not redetermine the child's eligibility for Title IV-E adoption assistance maintenance payments. The child is treated as though the circumstances are the same as those prior to the previous adoption. Therefore, the manner of the child's removal from the adoptive home, including whether the child is voluntarily relinquished to an individual or private agency, is irrelevant. (For more information when an adoptive parent dies, see [Section 2.24.6](#)).

When the Non-Applicable Child who has special needs does not meet the criteria in this section or at least one of the Title IV-E eligibility criteria for a Non-Applicable Child in [Section 2.5.4.2](#), then the child is not eligible for Title IV-E adoption assistance maintenance payments. The LDSS shall screen the child for state adoption assistance maintenance payments (see [Section 2.5.5](#)).

The LDSS shall document whether the child meets the requirements in this section on the [Virginia Adoption Assistance Screening Tool](#).

2.5.4.4 Determination and action for Non-Applicable Child

In summary, when the LDSS establishes that the following three requirements are met for the child, the child is eligible for Title IV-E adoption assistance maintenance payments. The child:

- Is a Non-Applicable Child (see [Section 2.5.2](#)); **and**
- Has special needs as a Non-Applicable Child (see [Section 2.5.4.1](#)); **and**
- Meets at least one Title IV-E eligibility criteria for a Non-Applicable Child (see [Section 2.5.4.2](#)); **or**

Meets criteria when the Non-Applicable Child's previous adoption dissolved or adoptive parents died and is subsequently being adopted (see [Section 2.5.4.3](#)).

The LDSS shall document that the child meets these requirements on the [Virginia Adoption Assistance Screening Tool](#) (see [Section 2.4](#)). The LDSS shall then continue to use this tool to determine and document the child's eligibility for the different types of adoption assistance. The LDSS shall place a copy of the completed tool in the child's adoption assistance paper case record.

The LDSS shall give a copy of the completed tool to the adoptive parents and thoroughly discuss the child's eligibility and the adoption assistance program with the adoptive parents.

The LDSS shall then assess and negotiate with the adoptive parents the amount of adoption assistance to be provided for the child. A basic maintenance payment shall be approved for the eligible child unless the adoptive parents decline the payment in writing or the local department and adoptive parents agree through negotiation and in writing that the payment is not needed ([22 VAC 40-201-160](#)).

The LDSS shall execute an adoption assistance agreement with the adoptive parents using Title IV-E funds for adoption assistance maintenance payments and any other agreed upon adoption assistance using appropriate fund sources. An agreement shall be executed unless the adoptive parents decline adoption assistance ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(A\) \[42 U.S.C. 673\]](#)). The agreement shall be signed and in effect prior to, or at the time of, the final order of adoption ([45 CFR 1356.40 \(b\) \(1\)](#)).

Once the maintenance payment is established as Title IV-E and an adoption assistance agreement is executed, Title IV-E remains in effect as the funding source for the maintenance payment for the duration of the agreement except in limited circumstances (see [Section 2.24](#)).

The child is not eligible for Title IV-E adoption assistance maintenance payments when the LDSS establishes that the Non-Applicable Child:

- Does not have special needs as a Non-Applicable Child (see [Section 2.5.4.1](#)); or
- Does not meet at least one of the Title IV-E eligibility criteria for a Non-Applicable Child in [Section 2.5.4.2](#); or

Does not meet the criteria when the Non-Applicable Child's previous adoption dissolved or adoptive parents died and the child is subsequently being adopted in [Section 2.5.4.3](#).

The LDSS shall screen the child for state adoption assistance maintenance payments (see [Section 2.5.5](#)).

2.5.5 Screening child for state adoption assistance

When the LDSS determines that the child is not eligible for Title IV-E adoption assistance maintenance payments, then the LDSS shall screen the child for state adoption assistance maintenance payments.

To be eligible for state adoption assistance, the LDSS shall establish, based on Virginia legal requirements ([§ 63.2-1300](#) and [§ 63.2-1301 B](#)), that:

- The child has special needs (see [Section 2.5.5.1](#)); and
- The child meets both eligibility criteria for state adoption assistance (see [Section 2.5.5.2](#)).

The LDSS shall use the [Virginia Adoption Assistance Screening Tool](#) to evaluate, establish, and document the child's eligibility for state adoption assistance maintenance payments (see [Section 2.4](#)).

Note: state adoption assistance maintenance payments and special services shall not be available for children adopted through parental placements. This restriction does not apply to existing adoption assistance agreements ([Item 341F of the 2012 Appropriation Act](#)). Parental placement means the child's parent or legal guardian located or effected the placement of the child or placed the child in a family home for the purpose of foster care or adoption ([§ 63.2-100](#)). Legal provisions for parental placement adoptions are delineated in the Code of Virginia.

2.5.5.1 Establishing child has special needs for state adoption assistance

The LDSS shall establish the child has special needs based on the child meeting Virginia legal requirements ([§ 63.2-1300](#); [§ 63.2-1301 B](#); and [22 VAC 40-201-160](#)).

The LDSS shall use the [Virginia Adoption Assistance Screening Tool](#) to establish and document the child has special needs. The LCPA shall collaborate with the LDSS in this process when the child is in LCPA custody.

To establish the child has special needs prior to the final order of adoption, the LDSS shall document that the child meets all three (3) of the special need factors listed below. Specific procedures for meeting each requirement are described in the sections identified in parenthesis.

1. The child is under 18 years of age (see [Section 2.5.7.1](#)).
2. The child is a citizen or legal resident of the United States (see [Section 2.5.7.1](#)).
3. The child is unlikely to be adopted within a reasonable period of time due to one or more of the special need factors below, based on the individual circumstances of the child:
 - Physical, mental, or emotional condition existing prior to adoption (see [Section 2.5.7.3](#));
 - Hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability (see [Section 2.5.7.4](#));
 - Member of a minority group based on racial, multi-racial, or ethnic heritage (see [Section 2.5.7.5](#));
 - Close relationship with one or more siblings (see [Section 2.5.7.5](#));
 - Age six or older and has been in foster care for eighteen (18) months or longer³ (see [Section 2.5.7.5](#)); and/or
 - The child has developed significant emotional ties with his or her foster parents while in their care for at least twelve (12) months, they are committed to adopting the child, and state adoption assistance maintenance payments are necessary to enable the adoption. (See [Section 2.5.7.7](#)).

When the LDSS establishes that the child meets all three (3) criteria above, the child has special needs based on Virginia requirements for adoption assistance. The LDSS shall:

³ The federal Child and Family Services Review requires states to achieve timely adoption of children within 24 months of entering foster care. Virginia data shows the likelihood of children in foster care achieving permanency decreased significantly for children remaining in foster care longer than two years.

- Document how the child meets each criterion as described in [Section 2.5.7](#) in the child's adoption assistance paper case record.
- Apply both eligibility criteria for state adoption assistance (see [Section 2.5.5.2](#)) to determine if the child is eligible for state adoption assistance.

When the LDSS establishes that the child does not meet all three (3) criteria above, the child does not have special needs based on Virginia legal requirements and is not eligible for state adoption assistance.

2.5.5.2 Applying state eligibility criteria for child who has special needs

After the LDSS establishes the child has special needs based on Virginia legal requirements (see [Section 2.5.5.1](#)), then the LDSS shall determine whether the child meets both of the following eligibility criteria to be eligible for state adoption assistance. The LDSS shall document whether the child meets the criteria on the [Virginia Adoption Assistance Screening Tool](#).

1. The child cannot or should not be returned to the home of his or her parents (see [Section 2.5.7.2](#)).
2. Reasonable efforts were made to place the child with appropriate adoptive parents without providing adoption assistance, but these efforts were unsuccessful (see [Section 2.5.7.8](#)). An exception may be made to the requirement that reasonable efforts be made to place the child in an adoptive home without the provision of adoption assistance when the child has developed significant emotional ties with his or her foster parents while in their care and the foster parents wish to adopt the child (see [Section 2.5.7.10](#)).

When the child has special needs based on Virginia legal requirements and the child does not meet both of the above criteria, then the child is not eligible for state adoption assistance.

2.5.5.3 Determination and action for state adoption assistance maintenance payments

When the LDSS establishes that the following two requirements are met for the child, the child may be eligible for state adoption assistance. The child:

- Has special needs based on Virginia legal requirements (see [Section 2.5.5.1](#)); and
- Meets both state eligibility criteria for adoption assistance (see [Section 2.5.5.2](#)).

This child is eligible for state adoption assistance maintenance payments only when the child is not eligible for Title IV-E adoption assistance maintenance payments. State funds shall not be used for adoption assistance maintenance payments when the child is eligible for such funding through Title IV-E.

The LDSS shall document the requirements that the child meets on the [Virginia Adoption Assistance Screening Tool](#) (see [Section 2.4](#)). The LDSS shall then continue to use this tool to determine the child's eligibility for the different types of adoption assistance. The LDSS shall place a copy of the completed tool in the child's adoption assistance paper case record.

The LDSS should thoroughly discuss the child's eligibility and the adoption assistance program with the adoptive parents.

The LDSS shall assess and negotiate adoption assistance with the adoptive parents. For the child who is eligible for state adoption assistance maintenance payments, an adoption assistance agreement shall be executed and a maintenance payment shall be made using state funds, unless the LDSS and adoptive parents agree through negotiation and in writing that maintenance payments are not needed ([22 VAC 40-201-160](#)). The agreement shall be signed and in effect prior to, or at the time of, the final order of adoption.

Once the maintenance payment is established as state funded and an adoption assistance agreement is executed, state funds remains in effect as the funding source for the maintenance payment for the duration of the agreement.

The child is not eligible for state adoption assistance when the LDSS establishes that the child:

- Does not have special needs based on Virginia's requirements; or
- Does not meet both state eligibility criteria.

2.5.6 Flow charts on determining child's eligibility prior to final order of adoption

The charts on the next three pages show the steps involved when determining a child's eligibility for adoption assistance prior to the final order of adoption. For steps in determining:

- The Applicable Child's eligibility for Title IV-E adoption assistance maintenance payments, see [Section 2.5.6.1](#).
- The Non-Applicable Child's eligibility for Title IV-E adoption assistance maintenance payments, see [Section 2.5.6.2](#).

- The child's eligibility for state adoption assistance maintenance payments after the LDSS has determined the child is not eligible for Title IV-E adoption assistance maintenance payments, see [Section 2.5.6.3](#).

2.5.6.1 Applicable Child's Eligibility for Title IV-E Adoption Assistance Prior to Final Order of Adoption

<p>Step 1</p> <p><u>Is child Title IV-E Applicable Child?</u></p> <p>Does child meet one criteria below?</p> <ul style="list-style-type: none"> • Age criteria during FFY in which AA agreement is executed; OR • Either exception below to age criteria: <ul style="list-style-type: none"> ○ Length of stay in foster care; OR ○ Sibling of child who meets either age criteria or length of stay exception criteria as Applicable Child for that FFY. 	<p><u>If YES to Step 1,</u></p> <p>Child is Applicable Child.</p> <p>Go to Step 2.</p> <p align="center">OR</p> <p><u>If NO to Step 1,</u></p> <p>Child is Non-Applicable Child.</p> <p>Go to Step 2 on Chart 2.5.6.2.</p>	<p>Step 2</p> <p><u>Does child have special needs as Applicable Child by meeting all 5 criteria below?</u></p> <ol style="list-style-type: none"> 1. Under 18 years of age at execution of AA agreement. 2. US citizen, legal resident/<u>qualified alien</u>. 3. Cannot or should not be returned home. 4. <u>Reasonable to conclude child cannot be placed with adoptive parents without providing Title IV-E AA and Medicaid because child has special needs factor(s) listed below. Child is unlikely to be adopted within reasonable time due to one or more of the following special needs factor(s):</u> <ul style="list-style-type: none"> • Physical, mental or emotional condition existing prior to adoption; • Hereditary tendency, congenital problem (including substance exposure), or birth injury leading to substantial risk of future disability; • Member of minority group based on racial, multi-racial, or ethnic heritage; • Close relationship with one or more siblings; and/or • Age 6 or older and has been in foster care for 18 months or longer. <p align="center">OR in the alternative</p> • <u>Child meets all SSI medical or disability requirements.</u> <ol style="list-style-type: none"> 5. Reasonable but unsuccessful efforts were made to place child with adoptive parents without AA or Medicaid. <u>Such efforts are not required when they would be contrary to child's best interest because of such factors</u> as the existence of significant emotional ties with the adoptive parents while the child is in their care as foster parents. 	<p><u>If YES to Step2</u></p> <p>Child has special needs as Applicable Child and <u>IS eligible for Title IV-E non-recurring adoption expense payments</u></p> <p align="center">AND</p> <p>Go to Step 3.</p> <p align="center">OR</p> <p><u>If NO, to Step2</u></p> <p>Child does not have special needs as Applicable Child and <u>IS NOT eligible for Title IV-E AA maintenance payments,</u></p> <p>LDSS shall screen child for state AA maintenance payments.</p> <p>Go to chart 2.5.6.3</p>	<p>Step 3</p> <p><u>Does child with special needs as Applicable Child meet:</u></p> <ol style="list-style-type: none"> 1. <u>At least one Title IV-E eligibility criteria below?</u> <ol style="list-style-type: none"> a. When AA agreement executed, child is in care of CPA through court-ordered removal or permanent entrustment. Petition filed in court and judicial determination made that remaining at home contrary to child's welfare within specified days. OR b. Child meets all SSI medical or disability requirements. OR c. Child is minor child of youth who was in foster care and child was placed with the youth (minor parent) in foster care at any point prior to final order of adoption. OR 2. <u>Criteria when child's previous adoption dissolved or adoptive parents died and child is subsequently being adopted?</u> 	<p><u>If YES to Step 3,</u></p> <p>Applicable Child <u>IS eligible for Title IV-E maintenance payments.</u></p> <p>Go to Step 4</p> <p align="center">OR</p> <p><u>If NO to Step 3,</u></p> <p>Applicable Child <u>IS NOT eligible for Title IV-E maintenance payments.</u></p> <p>LDSS shall screen child for state AA maintenance payments.</p> <p>Go to Chart 2.5.6.3.</p>	<p>Step 4</p> <p><u>LDSS shall:</u></p> <ol style="list-style-type: none"> 1. Use Title IV-E funds for AA maintenance payments unless in writing: adoptive parents indicate AA not needed; or it is determined through negotiation AA not needed. 2. Determine and document child's eligibility for types of AA. 3. Discuss with adoptive parents the child's eligibility & AA program. 4. Assess and negotiate AA with adoptive parents. 5. Enter into AA agreement with adoptive parents prior to, or at the time of, the final order of adoption, based on negotiated and agreed upon terms for AA.
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2.5.6.2 Non-Applicable Child's Eligibility for Title IV-E Adoption Assistance Prior to Final Order of Adoption

<p align="center">Step 1</p> <p><u>Is child Title IV-E Applicable Child?</u></p> <p>Does child meet one criteria below?</p> <ul style="list-style-type: none"> • Age criteria during FFY in which AA agreement is executed; OR • Either exception below to age criteria: <ul style="list-style-type: none"> ○ Length of stay in foster care; OR ○ Sibling of child who meets either age criteria or length of stay exception criteria as Applicable Child for that FFY. 	<p align="center">Step 2</p> <p><u>Does child have special needs as Non-Applicable Child by meeting all 5 criteria below?</u></p> <ol style="list-style-type: none"> 1. Under 18 years of age at execution of AA agreement. 2. US citizen, legal resident/<u>qualified alien</u>. 3. Cannot or should not be returned home. 4. <u>Reasonable to conclude child cannot be placed with adoptive parents without providing Title IV-E AA or Medicaid because child has special needs factor(s) listed below. Child is unlikely to be adopted within reasonable time due to one or more of the following special needs factor(s):</u> <ul style="list-style-type: none"> • Physical, mental or emotional condition existing prior to adoption; • Hereditary tendency, congenital problem (including substance exposure), or birth injury leading to substantial risk of future disability; • Member of minority group based on racial, multi-racial, or ethnic heritage; • Close relationship with one or more siblings; and/or • Age 6 or older and has been in foster care for 18 months or longer. 5. Reasonable but unsuccessful efforts were made to place child with adoptive parents without AA or Medicaid. <u>Such efforts are not required when they would be contrary to child's best interest because of such factors as the existence of significant emotional ties with the adoptive parents while the child is in their care as foster parents.</u> 	<p align="center">Step 3</p> <p><u>Does child with special needs as Non-Applicable Child meet:</u></p> <ol style="list-style-type: none"> 1. <u>At least one Title IV-E eligibility criteria below?</u> <ol style="list-style-type: none"> a. <u>Child met all Title IV-E and/or AFDC eligibility requirements</u> as described in #1 of Section 2.5.4.2; OR b. Child meets all SSI medical, disability, <u>and financial</u> requirements; OR d. Child is minor child of youth who was in foster care <u>and the youth (minor parent) received a Title IV-E foster care maintenance payment that covered both the minor parent and the child of the minor parent</u> while the child was placed with the minor parent in foster care at any point prior to final order of adoption. 2. <u>Criteria when child's previous adoption dissolved or adoptive parents died</u> and child is subsequently being adopted? 	<p align="center">Step 4</p> <p><u>LDSS shall:</u></p> <ol style="list-style-type: none"> 1. Use Title IV-E funds for AA maintenance payments unless in writing: adoptive parents indicate AA not needed; or it is determined through negotiation AA not needed. 2. Determine and document child's eligibility for types of AA. 3. Discuss with adoptive parents the child's eligibility & AA program. 4. Assess and negotiate AA with adoptive parents. 5. Enter into AA agreement with adoptive parents prior to, or at the time of, the final order of adoption, based on negotiated and agreed upon terms for AA. 	
	<p><u>If YES to Step 1, Child is Applicable Child.</u> Go to Step 2 On Chart 2.5.6.1.</p> <p align="center">OR</p> <p><u>If NO to Step 1, Child is Non-Applicable Child.</u> Go to Step 2.</p>	<p><u>If YES to Step 2</u> Child has special needs as Non-Applicable Child and <u>IS eligible for Title IV-E non-recurring adoption expense payments</u> AND Go to Step 3.</p> <p align="center">OR</p> <p><u>If NO, to Step 2</u> Child does not have special needs as Non-Applicable Child and <u>IS NOT eligible for Title IV-E AA maintenance payments,</u> LDSS shall screen child for state AA maintenance payments. Go to chart 2.5.6.3</p>	<p><u>If YES to Step 3, Non-Applicable Child IS eligible for Title IV-E maintenance payments.</u> Go to Step 4</p> <p align="center">OR</p> <p><u>If NO to Step 3, Non-Applicable Child IS NOT eligible for Title IV-E maintenance payments.</u> LDSS shall screen child for state AA maintenance payments. Go to chart 2.5.6.3.</p>	

2.5.6.3 Child's Eligibility for State Adoption Assistance Maintenance Payments Prior to Final Order of Adoption

Only determined when child is **not** eligible for Title IV-E AA maintenance payments.

<p>Step 1</p> <p><u>Did LDSS determine child IS NOT eligible for Title IV-E maintenance payments?</u></p>	<p>→</p> <p><u>If YES to Step 1</u> Child is <u>not</u> eligible for Title IV-E maintenance payments Go to Step 2.</p> <p>(Note: State AA payments shall not be available for children adopted through parental placements.)</p> <p><u>IF NO to Step 1,</u> LDSS shall first determine whether child is eligible for Title IV-E AA maintenance payments. Go to Chart 2.5.6.1 for an Applicable Child.</p> <p>OR</p> <p>Go to Chart 2.5.6.2 for a Non-Applicable Child.</p>	<p>Step 2</p> <p><u>Does child have special needs by meeting <u>all</u> 3 criteria below?</u></p> <ol style="list-style-type: none"> Under 18 years of age at execution of AA agreement. US citizen or legal resident. Unlikely to be adopted within reasonable period of time due to one or more special needs factors below: <ul style="list-style-type: none"> Physical, mental, or emotional condition existing prior to adoption; Hereditary tendency, congenital problem (including substance exposure), or birth injury leading to substantial risk of future disability; Member of minority group based on racial, multi-racial or ethnic heritage; Close relationship with one or more siblings; Age 6 or older and has been in foster care for 18 months or longer; and/or <u>Child has developed significant emotional ties with foster parents</u> while in their care for at least 12 months, they are committed to adopting child, and state AA maintenance payments are necessary to enable the adoption. 	<p>→</p> <p><u>If YES to Step 2</u> Child has special needs. Go to Step 3.</p> <p>OR</p> <p><u>IF NO, to Step 2</u> Child does not have special needs and IS NOT eligible for state AA (and child IS NOT eligible for Title IV-E non-recurring adoption expenses).</p>	<p>Step 3</p> <p><u>Does child with special needs meet both eligibility criteria for state AA maintenance payments below?</u></p> <ol style="list-style-type: none"> Cannot or should not be returned home. Reasonable efforts to place child with appropriate adoptive parents without AA were unsuccessful. <u>An exception may be made to this requirement</u> when child has developed significant emotional ties with foster parents while in their care <u>and foster parents wish to adopt the child.</u> 	<p>→</p> <p><u>If YES to Step 3,</u> Child with special needs IS eligible for state AA maintenance payments and IS eligible for Title IV-E non-recurring adoption expense payments. Go to Step 4</p> <p>OR</p> <p><u>If NO to Step 3,</u> Child with special needs IS NOT eligible for state AA and IS NOT eligible for Title IV-E non-recurring adoption expenses.</p>	<p>Step 4</p> <p><u>LDSS shall:</u></p> <ol style="list-style-type: none"> Use state funds for AA maintenance payments unless in writing: adoptive parents indicate AA not needed; or it is determined through negotiation AA not needed. Determine and document child's eligibility for types of AA. Discuss with adoptive parents the child's eligibility & AA program. Assess and negotiate AA with adoptive parents. Enter into AA agreement with adoptive parents prior to, or at the time of, the final adoption, based on negotiated and agreed upon terms for AA.
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2.5.7 Documenting child requirements for adoption assistance

The LDSS shall establish the child's special need factors and eligibility requirements for adoption assistance as described in the following sections and document in the child's adoption assistance paper case record.

2.5.7.1 Age and legal residency

The LDSS shall establish and document the child's age and legal residency as follows:

- The child shall be under age 18 at the execution of the adoption assistance agreement (e.g., child's birth certificate).
- The child shall be a United States citizen or legal resident. Documentation of legal residency may include, but is not limited to: child's birth certificate, social security card, adoption documentation, or Certificate of Citizenship or Naturalization.

For state adoption assistance funds, a qualified alien is not eligible unless that qualification makes the child a legal resident. For example, a Resident Alien Card may be used for documentation only when the child qualifies as a legal resident.

For Title IV-E funds only, a child may be a qualified alien. Resident Alien Cards may be used for documentation. In addition, it is highly improbable, if not virtually impossible, that the child adopted abroad by a United States citizen or brought into the United States from another country for the purpose of adoption is eligible for Title IV-E adoption assistance. The child may be eligible if the initial adoption of the child by adoptive parents failed and the child is subsequently placed into foster care (see [Federal Child Welfare Policy Manual, Subsection 8.2B.6 #1](#); and [Federal Program Instruction dated August 26, 2009](#)). Contact the local DSS attorney for assistance with a specific situation.

2.5.7.2 Cannot or should not return home

For the child in CPA custody, the LDSS shall establish and document that the child cannot or should not be returned home to his or her parents with:

- The initial removal court order containing a statement that continuation in the home is contrary to the welfare of the child or that removal is in the child's best interest;

or

- The valid permanent entrustment agreement relinquishing the child to the child-placing agency, signed by all legal parents and notarized.

AND for both situations above:

- The court order(s) terminating parental rights for all legal parents subsequent to the removal order or voluntary placement agreement(s).

For the child not in the custody of the CPA (e.g., the SSI eligible child; the child whose adoptive parent is deceased and who is subsequently adopted), the evidence that the child cannot or should not return home may consist of any of several different documents, consents, or court orders. The evidence presented as proof that the child cannot or should not return home should be reviewed with the LDSS attorney in order to ensure that the evidence is sufficient to meet the requirement that the child cannot or should not return home.

While documentation that the child is legally free for adoption clearly demonstrates that the child cannot or should not return home, the LDSS should not wait until the child is legally free to begin conversations with the adoptive parents about adoption assistance for an eligible child who cannot or should not return home.

2.5.7.3 Physical, mental, and/or emotional condition

To document that the child has a physical, mental, and/or emotional condition that makes it unlikely the child will be adopted within a reasonable period of time as a special need factor, the LDSS shall include:

- Statement(s) from qualified professional(s) documenting the child's condition.
- Relevant diagnostic and assessment reports.
- Evidence from the child's case record, including the [Full Disclosure of Child Information Form](#).
- Any other relevant documents (e.g., Report of Investigation; VEMAT and supporting documentation).

To use Title IV-E adoption assistance funds, the LDSS shall also document its determination that it is reasonable to conclude that because the child has this special need factor the child cannot be placed with adoptive parents without providing:

- For the Applicable Child, Title IV-E adoption assistance and Medicaid; or

- For the Non-Applicable Child, Title IV-E adoption assistance or Medicaid.

2.5.7.4 Hereditary tendency, congenital problem, or birth injury

To document that the child may have a hereditary tendency, congenital problem (including substance exposure), or birth injury leading to substantial risk of future disability that makes it unlikely the child will be adopted within a reasonable period of time as a special need factor, the LDSS shall provide evidence of such factors in the birth family's history. These special need factors may be documented by one or more of the following:

- Statement(s) from qualified professional(s) documenting the hereditary tendency, congenital problem (including substance exposure), and/or birth injury in the birth family's and/or child's history.
- Relevant diagnostic and assessment reports.
- Evidence from the child's case record, including the [Full Disclosure of Child Information Form](#) and the birth parents' self report.
- Any other relevant documents (e.g., Report of Investigation; VEMAT and supporting documentation).

To use Title IV-E adoption assistance funds, the LDSS shall also document its determination that it is reasonable to conclude that because the child has this special need factor the child cannot be placed with adoptive parents without providing:

- For the Applicable Child, Title IV-E adoption assistance and Medicaid; or
- For the Non-Applicable Child, Title IV-E adoption assistance or Medicaid.

When the child solely has the special need factors of hereditary tendency, congenital problem (including substance exposure), and/or birth injury, and when there is no evidence the child currently has a disability, then the adoptive parents and LDSS shall enter into an adoption assistance agreement with a zero dollar payment. The agreement shall be executed for the eligible child, unless the adoptive parents decline in writing.

Such an agreement allows the adoptive parents to obtain Medicaid for the child who is eligible for Title IV-E adoption assistance and for the child who is eligible for state (non-Title IV-E) special medical needs adoption assistance. It also allows the adoptive parents to request adoption assistance payments should the child's disability manifest in the future. At that time, the child may receive

basic maintenance, enhanced maintenance, and/or special services, consistent with applicable guidance, when the LDSS establishes and documents the child has a physical or mental disability/condition that is related to the hereditary tendency, congenital problem, or birth injury. Finally, such an agreement allows the use of Title IV-E funds in the future for maintenance payments when the child is Title IV-E eligible.

2.5.7.5 Minority group, close sibling relationship, and age

To document that a special need factor exists based on the individual circumstances of the child related to racial or ethnic heritage, close sibling relationship, or age that makes it unlikely the child will be adopted within a reasonable period of time, the LDSS shall document the following:

- The child is a member of a minority group based on racial, multi-racial, or ethnic heritage. Race and ethnicity should be self-identified by the child, or by the birth parents for a young child, based on the race and ethnicity with which the child most closely identifies.
- The child is a member of a sibling group and has a close relationship with one or more siblings. Sibling group means two or more children with at least one birth or adoptive parent in common. The siblings are placed with the same adoptive parents, but do not need to be placed at the same time. Documentation should include birth certificates of the sibling(s).
- The child is age six or older and has been in foster care for eighteen (18) months or longer. Documentation includes the child's birth certificate, and the dates and number of months the child has been in foster care.

To use Title IV-E adoption assistance funds, the LDSS shall also document its determination that it is reasonable to conclude that because the child has this special need factor the child cannot be placed with adoptive parents without providing:

- For the Applicable Child, Title IV-E adoption assistance and Medicaid; or
- For the Non-Applicable Child, Title IV-E adoption assistance or Medicaid.

2.5.7.6 SSI medical or disability requirements

To document that the special need factor exists for the Applicable Child for Title IV-E adoption assistance that the child meets all medical or disability requirements for SSI/SSA benefits, the LDSS shall include the award letter

from the Social Security Administration. The child may or may not be receiving an SSI payment due to financial eligibility criteria for SSI.

Meeting all SSI medical or disability requirements is not a special need factor for the Non-Applicable Child for Title IV-E adoption assistance or for state adoption assistance.

2.5.7.7 Special need factor of significant emotional ties

To establish the child has the special need of significant emotional ties for state adoption assistance, the LDSS shall clearly document in the child's case record that all three factors below exist:

- The child has lived with the foster parents for at least 12 months.
- The child has developed significant emotional ties with the foster parents while in their care.
- The foster parents are committed to adopting the child and state adoption assistance maintenance payments are necessary to enable the adoption ([§ 63.2-1301 B 2](#)).

Significant emotional ties is not a special need factor for Title IV-E adoption assistance. Title IV-E adoption assistance maintenance payments shall not be used for a child who only has this special need. When the child solely has this special need and is eligible for state adoption assistance, then state funds shall be used for maintenance payments. When the child has another special need factor in addition to this special need of significant emotional ties and the child is eligible for Title IV-E maintenance payments, then Title IV-E adoption assistance maintenance funds shall be used.

The CPA shall clearly demonstrate that significant emotional ties exist and provide documentation from the child's foster care paper case record throughout the child's placement in the foster home. This documentation is made as part of the ongoing assessment in determining the child's safety, well-being, and stability in the foster home. The agency shall also document diligent and consistent efforts to address any concerns related to emotional ties between the child and the foster parents. The agency should not wait to evaluate emotional ties immediately prior to considering whether to execute an adoptive home placement agreement with the foster parents.

Evaluating significant emotional ties should be based primarily on the special needs and best interest of the child and on the likelihood of a successful permanency outcome for the child. Factors that should be considered include, but are not limited to:

- The age and developmental level of the child.
- The length and quality of time the child has spent with the foster parents.
- The child's adjustment, safety, stability, and well-being during placement with the foster parents.
- The relationship and/or attachment of the child with the foster parents.

When the child's relationship with the foster parents is documented in the child's foster care paper case record and significant emotional ties are not clearly demonstrated and documented throughout the child's placement in the foster home as described above, then the child does not have significant emotional ties as a special need factor.

When the foster parents state that significant emotional ties exist and the CPA has not evaluated, documented, and discussed the child's relationship and significant emotional ties with the foster parents during the placement and prior to considering an adoptive home placement agreement, then the foster parents' documentation serves as the basis for establishing that the emotional ties are significant. The foster parents' documentation should be consistent with the factors above and demonstrate significant emotional ties throughout the child's placement.

2.5.7.8 Reasonable but unsuccessful efforts to place without assistance

The LDSS shall demonstrate either:

- Reasonable but unsuccessful efforts were made to place the child in an appropriate adoptive home without providing adoption assistance or Medicaid, as described in this section; **OR**
- To be eligible for Title IV-E adoption assistance maintenance payments, document that reasonable efforts to place the child are contrary to the child's best interest, as required by federal law (see [Section 2.5.7.9](#)); **OR**
- To be eligible for state adoption assistance maintenance payments, document that an exception is made to the reasonable efforts requirement to place the child without adoption assistance when the child has developed significant emotional ties with his or her foster parents while in their care and the foster parents wish to adopt the child (see [Section 2.5.7.10](#)).

To demonstrate that reasonable but unsuccessful efforts were made to place the child in an appropriate adoptive home without adoption assistance or Medicaid, the LDSS shall describe the combination of significant efforts used

and their results on the OASIS case contacts screen. Other documentation shall be placed in the child's adoption assistance paper case record.

Reasonable efforts may include, but are not limited to:

- Child specific recruitment efforts through a CPA. An individualized plan shall be developed and implemented with active involvement of the child, consistent with the child's development level. Documentation shall include the child's recruitment plan and materials used.
- Referral to a [VDSS contracted public or private agency](#) to assist with adoption services. Documentation shall include written correspondence between the LDSS and other child placing agencies documenting recruitment efforts.
- Use of an adoption exchange. Documentation shall include all applicable materials (e.g., copy of AREVA Child Registration Form).
- Targeted recruitment activities. Documentation shall include materials used.
- Heart Galleries, Wednesday's Child, and/or Wendy's Wonderful Kids. Activities shall be described in the OASIS case contacts.

When the LDSS has identified a family that they believe is the best placement for the child, it is not necessary to search more broadly for a family to demonstrate reasonable but unsuccessful efforts to place without adoption assistance. Once the LDSS determines that placement with a specific family is in the child's best interest, the LDSS shall fully disclose all known information about the child, including any potential problems. The LDSS shall discuss with the adoptive parents their family circumstances and capacity to adopt without adoption assistance. If the adoptive parents determine they cannot adopt the child without adoption assistance, the requirement for a reasonable, but unsuccessful, effort to place the child without providing adoption assistance has been met. The LDSS shall document the reasons why the adoptive placement is in the child's best interest on OASIS case contacts screen. The LDSS shall include the written statement of the adoptive parents that they cannot adopt the child without adoption assistance in the child's adoption assistance paper case record ([Federal Child Welfare Policy Manual, Subsection 8.2B.11 #1](#)).

The LDSS shall document the appropriateness of the adoptive home for the child by placing in the child's adoption assistance paper case record:

- The Mutual Family Assessment Report (previously called the family home study) and updates.

- The adoptive home placement agreement.

2.5.7.9 Reasonable efforts contrary to child's best interest (for Title IV-E)

To be eligible for Title IV-E adoption assistance maintenance payments, the LDSS may determine and document that reasonable efforts to place the child in an appropriate adoptive home without adoption assistance or Medicaid are contrary to the child's best interest because of such factors as the existence of significant emotional ties with the adoptive parents while the child is in their care as foster parents ([Social Security Act, Title IV, § 473 \(c\) \[42 U.S.C. 673\]](#)).

Reasonable efforts to place the child as described in [Section 2.5.7.8](#) are not required when it would not be in the child's best interest because:

- The child has significant emotional ties with the adoptive parents that developed over time while the child has been in their care as foster parents. Documentation shall include:
 - Narrative summary that demonstrates the nature of the child's relationship with the adoptive parents over time as foster parents, based on evidence documented in the child's foster care paper case record.
 - Assessment report(s) from qualified professional(s), when applicable.
- The child is being adopted by a relative.
- The child is a member of a sibling group and is being placed with sibling(s) ([Federal Child Welfare Policy Manual, Subsection 8.2B.11 #1](#)).

The LDSS shall also document:

- The reasons why the adoptive placement is in the child's best interest in the OASIS case contacts.
- The appropriateness of the adoptive home for the child in the child's adoption assistance paper case record with:
 - The Mutual Family Assessment Report (previously called the family home study) and updates.
 - The adoptive home placement agreement.
- The efforts the LDSS made with the adoptive parents to have the child adopted without adoption assistance or Medicaid. The LDSS shall

discuss with the adoptive parents their family circumstances and capacity to adopt the child without adoption assistance or Medicaid. The LDSS shall document the reasons the adoptive parents determine they cannot adopt the child without adoption assistance or Medicaid.

To clarify, the LDSS establishes whether a child has significant emotional ties to his or her foster parents for three different and separate purposes in adoption assistance. The LDSS evaluates significant emotional ties when:

- Assessing whether the child is eligible for Title IV-E adoption assistance maintenance payments and establishing whether reasonable efforts to place the child without adoption assistance or Medicaid are contrary to the child's best interest, as described in this section.
- Assessing whether the child is eligible for state adoption assistance and establishing whether an exception is made to the reasonable efforts requirement to place the child without adoption assistance when the child has developed significant emotional ties with his or her foster parents while in their care and the foster parents wish to adopt (see [Section 2.5.7.10](#)).
- The child has the special need factor of significant emotional ties (see [Section 2.5.7.7](#)).

2.5.7.10 Exception to reasonable efforts of significant emotional ties (state)

To be eligible for state adoption assistance, the LDSS may determine and document that an exception is made to the reasonable efforts requirement to place the child in an adoptive home without adoption assistance when the child has developed significant emotional ties with his or her foster parents while in their care and the foster parents wish to adopt the child ([§ 63.2-1300](#)).

Reasonable efforts to place the child as described in [Section 2.5.7.8](#) are not required when:

- The child has developed significant emotional ties over time with foster parents while in their care and the foster parents are committed to adopting the child. Documentation shall include:
 - Narrative summary that demonstrates the nature of the child's relationship with the foster parents over time, based on evidence documented in the child's foster care paper case record.
 - Assessment report(s) from qualified professional(s), when applicable.

The LDSS shall also document:

- The reasons why the foster placement is in the child's best interest in the OASIS case contacts.
- The appropriateness of the foster placement as an adoptive home for the child in the child's adoption assistance paper case record with:
 - The Mutual Family Assessment Report (previously called the family home study) and updates.
 - The adoptive home placement agreement.
- The efforts the LDSS made to have the child adopted without adoption assistance with these adoptive parents. The LDSS shall discuss with the adoptive parents their family circumstances and capacity to adopt the child without adoption assistance. The LDSS shall document the reasons the adoptive parents determine they cannot adopt the child without adoption assistance.

2.5.8 Eligibility for basic and enhanced maintenance payments

After the LDSS establishes the child has special needs and is eligible for adoption assistance maintenance payments using either Title IV-E or state funds, then the LDSS determines whether the child is eligible for two types of adoption assistance maintenance payments:

- Basic maintenance payments are available to help meet the child's basic needs (e.g., housing, food, clothing, transportation, and/or personal incidentals). A supplemental clothing allowance over and above the basic maintenance payment is not an allowable payment in adoption assistance.
- Enhanced maintenance payments may be available when the child has a clearly defined, ongoing need that requires the adoptive parents to provide increased supervision and support to ensure the child's safety and well-being.

When the LDSS determines there are indications that the child may require additional supervision and support from the adoptive parents, the LDSS shall use the [Virginia Enhanced Maintenance Assessment Tool](#) (VEMAT) to assess the child's behavioral, emotional, or physical/personal care needs. The LDSS shall administer the VEMAT to determine whether an enhanced maintenance payment is appropriate when:

- The child is receiving an enhanced maintenance payment in foster care based on the VEMAT; or

- The foster parents are receiving a special services stipend in foster care that is clearly related to the child's special needs for additional supervision and support; or
- The child is not receiving an enhanced maintenance payment or special services stipend in foster care and the LDSS has sufficient reason to believe the child requires additional supervision and support from the adoptive parents based on the frequency, duration, and intensity of the child's behavioral, emotional, and physical/personal care characteristics consistent with VEMAT guidance.

When the LDSS establishes that the child requires additional supervision and support based on the administration of the VEMAT in accordance with VDSS guidance, the LDSS shall then assess and negotiate an enhanced maintenance payment with the adoptive parents, unless the adoptive parents decline this assistance in writing. The enhanced payment amount may range from no payment up to the maximum amount allowed by law. At no time shall the amount of the enhanced maintenance payment exceed what would have been paid if the child was in foster care ([Social Security Act, Title IV, § 473 \(a\) \(3\) \[42 U.S.C. 673\]](#)). The VEMAT score for the child determines the maximum allowable payment. It does not determine the final payment amount.

When a VEMAT is not administered, the child is not eligible for an adoption assistance enhanced maintenance payment. *Note: the VEMAT is not required in order for the LDSS to continue making enhanced maintenance payments in accordance with adoption assistance agreements entered into prior to October 1, 2009 that are still in effect and meet state criteria (see [AART LASER Quick Reference Guide](#)).*

For procedures and guidance on:

- VEMAT, see [Section 17.2](#) in the Foster Care Chapter.
- Assessing the child's basic maintenance needs, see [Section 2.12](#).
- Assessing the child's needs for additional supervision and support, see [Section 2.13](#).

The LDSS shall assess and negotiate adoption assistance maintenance payments on behalf of the eligible child with the adoptive parents. Maintenance payments shall be included in the adoption assistance agreement, unless the adoptive parents decline such assistance in writing ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(A\) \[42 U.S.C. 673\]](#)), or the LDSS and adoptive parents agree through negotiation and in writing that maintenance payments are not needed ([22 VAC 40-201-160 E2](#)).

The funding source for basic and enhanced maintenance payments prior to the final order of adoption shall be Title IV-E funds when the child meets federal Title IV-E requirements for maintenance payments (see [Section 2.5.1](#) through [Section 2.5.4](#)). The funding source shall be state funds when the child does not meet the federal Title IV-E requirements and meets requirements for state adoption assistance maintenance payments (see [Section 2.5.5](#)).

2.5.9 Eligibility for Medicaid in relation to adoption assistance agreement

The LDSS 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:

- Title IV-E adoption assistance (see [Section 2.5.9.1](#)).
- State (non IV-E) special medical needs adoption assistance (see [Section 2.5.9.2](#)).

When the child is not eligible for Medicaid in relation to the adoption assistance agreement (i.e., the child is not eligible for special medical needs adoption assistance) (see [Section 2.5.9.3](#)), the LDSS should inform the adoptive parents:

- The child may be eligible for medical coverage under various Medicaid covered groups or 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. The family pays no enrollment costs, monthly premiums, and co-payments of \$2 or \$5 for some services.
- How to apply for Medicaid and FAMIS.

For more information on eligibility for Medicaid and FAMIS, contact a [Medical Assistance Program Consultant](#).

2.5.9.1 Child eligible for Title IV-E adoption assistance

When the child is eligible for Title IV-E adoption assistance maintenance payments, Medicaid shall be included in the adoption assistance agreement. Medicaid eligibility continues for the child when the agreement is executed. The child is eligible whether or not the final order of adoption has been executed or a Title IV-E adoption assistance maintenance payment is made on behalf of the child. As long as the adoption assistance agreement is in effect, the child meets the Title IV-E adoption assistance definition for Medicaid eligibility purposes ([Social Security Act, Title IV, § 473 \(b\) \[42 U.S.C. 673\]](#); [Federal Child Welfare](#)

[Policy Manual, Subsection 8.2B.8 #1](#); and the Virginia DSS Medicaid Eligibility Manual, [M0310.102](#)).

The adoptive parents are not required to submit a separate Medicaid application for the child. For children placed for adoption through the Interstate Compact for Adoption and Medical Assistance (ICAMA), the ICAMA form 6.01 verifies their Title IV-E eligibility for Medicaid and serves as the Medicaid application form (see the Virginia DSS Medicaid Eligibility Manual, [M120.200 C.4.a](#)).

2.5.9.2 Child eligible for state (non IV-E) special medical needs adoption assistance

When the child is eligible for adoption assistance maintenance payments solely using state funds, the child may be eligible for Medicaid under the Special Medical Needs covered group. The adoption assistance agreement must document the child has a special medical need in order for the child to be covered under this group.

In accordance with Medicaid policy, a child with special medical needs is defined as a child who was determined unlikely to be adopted because of:

- A physical, mental, or emotional condition that existed prior to adoption; or
- A hereditary tendency, genetic defect, congenital problem, or birth injury leading to a substantial risk of future disability (see the Virginia DSS Medicaid Eligibility Manual, [M0310.102 2b](#)).

Medicaid policy does not identify what conditions are considered special medical needs. The Virginia Department of Medical Assistance Services leaves this determination to VDSS. The child with a special medical or rehabilitative need may have, but is not limited to:

- A diagnosed medical condition that does not require immediate treatment, such as sickle-cell anemia.
- Medical or emotional conditions requiring regular medication, such as epilepsy, severe allergies, attention deficit disorders.
- Severe visual and dental problems requiring non-routine medical or dental treatment.
- Conditions that are medically determined by a medical practitioner.

The child's adoption assistance paper case record shall contain documentation by qualified professional(s) of the child's special medical need.

A Medicaid application is required for the child. The adoptive parents submit the application to the LDSS with which they entered into the adoption assistance agreement. They should submit the application as soon as possible after the adoption assistance agreement is executed. The child who meets all Medicaid financial eligibility requirements after the final order of adoption continues to be eligible for Medicaid with the adoptive parents from the date the adoption assistance agreement is executed.

When the child's adoption assistance agreement includes a special medical or rehabilitative need, the LDSS should inform the adoptive parents that only the child's own income and resources will be counted when determining the child's eligibility for Medicaid. Therefore, the child's income from employment or SSA may impact Medicaid eligibility. For example, while the child may initially be eligible for Medicaid, if the child becomes employed or begins receiving countable income, the child may no longer be eligible. The child's countable income shall not exceed the Medicaid Families and Children (F&C) 100% income limit for a single person. The income of the child's parents and siblings will not be counted.

For information on Special Medical Needs Adoption Assistance, see the Virginia DSS Medicaid Eligibility Manual, [M03 Medicaid Covered Groups](#).

2.5.9.3 Child eligible for state (non IV-E) adoption assistance, not special medical needs

When the child is eligible for adoption assistance maintenance payments only using state funds, and the agreement does **not** document that the child has a special medical and/or rehabilitative need, the child is **not** eligible for Medicaid as part of the adoption assistance agreement.

The LDSS should discuss the child's situation with the adoptive parents and explain that the child may be eligible for medical coverage under various Medicaid covered groups or under FAMIS.

The LDSS should inform the adoptive parents that a Medicaid application is required to determine the child's eligibility for Virginia medical assistance. The adoptive parents submit the application to the LDSS with which they entered into the adoption assistance agreement. They should submit the application as soon as possible after the adoption assistance agreement is executed.

The child who is currently enrolled in Medicaid will be reevaluated to determine whether the child meets eligibility requirements under various Medicaid covered groups or under FAMIS after the final order of adoption. The income of the

child's adoptive parents is counted when determining the child's eligibility. If the child is eligible for Virginia medical assistance, the child is enrolled in the covered group or program for which he is eligible and that is most beneficial to the child. If the child is not eligible due to the adoptive family's income, the child will be treated by Medicaid as a foster care child while in the adoptive placement until the final order of adoption (see the Virginia DSS Medicaid Eligibility Manual, [M0310.102](#)).

For information on Medicaid covered groups, see the Virginia DSS Medicaid Eligibility Manual, [M03 Medicaid Covered Groups](#).

For information on the FAMIS program, see <http://www.famis.org/> or the Virginia DSS Medicaid Eligibility Manual, [M21](#)

2.5.10 Eligibility for non-recurring adoption expense payments

The LDSS shall make payments of non-recurring adoption expenses when:

- The LDSS establishes:
 - The child has special needs as a Title IV-E Applicable Child (see [Section 2.5.3.1](#)). The child does not need to meet other Title IV-E adoption assistance requirements for an Applicable Child (see [Section 2.5.3.2](#) and [Section 2.5.3.3](#)) to receive these payments ([45 CFR 1356.41 d](#)). **OR**
 - The child has special needs as a Title IV-E Non-Applicable Child (see [Section 2.5.4.1](#)). The child does not need to meet other Title IV-E adoption assistance requirements for a Non-Applicable Child (see [Section 2.5.4.2](#) and [Section 2.5.4.3](#)) to receive these payments ([45 CFR 1356.41 d](#)). **OR**
 - The child has special needs and is eligible for state adoption assistance (see [Section 2.5.5](#)).
- The adoptive parents enter into an adoption assistance agreement, and do not decline this assistance.

These expenses shall be incurred by, or on behalf of, the parents and shall be directly related to the legal adoption of the child with special needs ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#)).

Federal Title IV-E funds shall be used for all non-recurring adoption expense payments for children receiving adoption assistance.

For procedures on assessing non-recurring adoption expenses, see [Section 2.15](#).

2.5.11 Eligibility for state special services payments

State special services payments help meet the child's physical, mental, emotional, or non-routine dental needs. They shall be directly related to the child's special needs. Special services payments shall be time limited, based on the child's special needs ([22 VAC 40-201-160 E3](#)). Only state funds shall be used to pay special services⁴.

The child may be eligible for state special services when the child has special needs and is eligible for either Title IV-E adoption assistance maintenance payments (see [Section 2.5.3](#) or [Section 2.5.4](#)) or for state adoption assistance (see [Section 2.5.5](#))
AND

- The child is in the custody of the CPA and placed for adoption.
- The adoptive parents are capable of providing the permanent family relationships needed by the child in all respects except financial ([§ 63.2-1301 C](#)).

The LDSS assesses the capability of the adoptive parents to meet the child's needs financially when assessing payment amounts for special services. The LDSS will assess whether:

- The adoptive parents can financially afford the special service.
- Health insurance and/or other resources will cover the service cost ([§ 63.2-1301 C](#) and [§ 63.2-1302 A 2](#)).

Income shall only be one factor considered when assessing the family circumstances of the adoptive parents for special services payments ([22 VAC 40-201-160 E3c \(3\)](#)).

For procedures on assessing special services, see [Section 2.16](#).

2.6 Screening child after final order of adoption

2.6.1 Establishing special needs and eligibility for adoption assistance

After the final order of adoption has been entered, the LDSS shall document that the child meets all three (3) criteria listed below to establish the child has special needs and is eligible for adoption assistance.

1. The child is under 18 years of age (see [Section 2.5.7.1](#)).

⁴ Note: the State uses federal Title XX, in addition to state funds, to pay for state special services.

2. The child is a citizen or legal resident of the United States (see [Section 2.5.7.1](#)).
3. The child has one or more special need factor(s) that was present at the time of adoption, the special need factor was not diagnosed until after the final adoption order, and no more than one year has elapsed from the date of diagnosis (see [Section 2.6.2](#)). Special need factors include:
 - o Physical, mental, or emotional condition (see [Section 2.5.7.3](#)); and/or
 - o Hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability (see [Section 2.5.7.4](#)) ([§ 63.2-1301 B 1](#)).

When the child meets all three (3) criteria above, the child has special needs and is eligible for adoption assistance after the final order of adoption. The LDSS shall clearly document how the child meets each criterion in the child's adoption assistance paper case record.

Note: state adoption assistance maintenance payments and special services shall not be available for children adopted through parental placements. This restriction does not apply to existing adoption assistance agreements ([Item 341F of the 2012 Appropriation Act](#)). Parental placement means the child's parent or legal guardian located or effected the placement of the child or placed the child in a family home for the purpose of foster care or adoption ([§ 63.2-100](#)). Legal provisions for parental placement adoptions are delineated in the Code of Virginia.

2.6.2 Documenting special need condition/disability after final order of adoption

To establish the child has the special need condition/disability after the final order of adoption, LDSS shall establish and document:

- Statement(s) from qualified professional(s) that shows all requirements below are met:
 - o The child has:
 - A physical, mental, and/or emotional condition (see [Section 2.5.7.3](#)); and/or
 - A hereditary tendency, congenital problem (including substance exposure), or birth injury leading to substantial risk of future disability (see [Section 2.5.7.4](#)).
 - o The condition/disability was present at the time of adoption.
 - o The date the child was first diagnosed with this condition/disability was:

- After the final order of adoption; and
 - Within twelve (12) months of the date the adoptive parents submitted the application for adoption assistance.
- Relevant diagnostic and assessment reports.

Other documentation may include:

- Evidence from the child's paper case record documenting the child may have a hereditary tendency, congenital problem (including substance exposure), or birth injury based on the birth family's and/or child's history (e.g., the [Full Disclosure of Child Information Form](#) or birth parents self-report).
- Any other relevant documents (e.g., Report of Investigation; VEMAT and its supporting documentation).

2.6.3 State funded maintenance payments

Only state adoption assistance maintenance funds shall be used when the agreement is entered into after the final order of adoption ([§ 63.2-1301 B 1](#) and [45 CFR 1356.40 \(b\) \(1\)](#)). Federal Title IV-E funds shall not be used when the adoption assistance agreement is entered into after the final order of adoption, even when the child was Title IV-E eligible while in foster care.

2.6.4 Flow Chart on Child's Eligibility for State Adoption Assistance After Final Order of Adoption Establishing child has special needs and is eligible for adoption assistance (AA)		
<p><u>Step 1</u></p> <p><u>Does child have special needs and is child eligible for AA by meeting all 3 criteria below?</u></p> <ol style="list-style-type: none"> 1. The child is under 18 years of age. 2. The child is US citizen or legal resident 3. The child has one or more special need factor(s) that was present at the time of adoption, it was not diagnosed until after the final adoption order, and no more than one year has elapsed from the date of diagnosis. Special need factors include: <ul style="list-style-type: none"> • Physical, mental, or emotional condition. • Hereditary tendency, congenital problem (including substance exposure), or birth injury leading to substantial risk of future disability. <p>Note: State AA payments shall not be available for children adopted through parental placements.</p>	<p>⇒</p>	<p><u>IF YES to Step 1,</u> Child has special needs and is eligible for state AA. Go to Step 2.</p> <p>OR</p> <p><u>IF NO to Step 1,</u> Child is not eligible for state AA.</p>
		<p><u>Step 2</u></p> <p><u>LDSS shall:</u></p> <ol style="list-style-type: none"> 1. LDSS shall use state funds for AA maintenance payments unless in writing: adoptive parents indicate AA not needed; or it is determined through negotiation AA not needed. 2. Determine and document child's eligibility for types of AA. 3. Discuss with adoptive parents the child's eligibility & AA program. 4. Assess and negotiate AA with adoptive parents. 5. Enter into AA agreement with adoptive parents, using state funds only, based on negotiated and agreed upon terms for AA

2.6.5 Eligibility for basic and enhanced maintenance payments

After the LDSS establishes the child has special needs and is eligible for state adoption assistance after the final order of adoption (see [Section 2.6.1](#)), then the LDSS determines whether the child is eligible for two types of adoption assistance maintenance payments.

- Basic maintenance payments are available to help meet the child's basic needs (e.g., housing, food, clothing, transportation, and/or personal incidentals). A supplemental clothing allowance over and above the basic maintenance payment is not an allowable payment in adoption assistance.
- Enhanced maintenance payments may be available when the child has a clearly defined, ongoing need that requires the adoptive parents to provide increased supervision and support to ensure the child's safety and well-being.

When the LDSS determines there are indications that the child may require additional supervision and support from the adoptive parents, the LDSS shall use the [Virginia Enhanced Maintenance Assessment Tool](#) (VEMAT) to assess the child's behavioral, emotional, or physical/personal care needs. The LDSS shall administer the VEMAT to determine whether an enhanced maintenance payment is appropriate when:

- The child received an enhanced maintenance payment in foster care based on the VEMAT; or
- The foster parents received a special services stipend in foster care that was clearly related to the child's special needs for additional supervision and support; or
- The child did not receive an enhanced maintenance payment or special services stipend in foster care and the LDSS has sufficient reason to believe the child requires additional supervision and support from the adoptive parents based on the frequency, duration, and intensity of the child's behavioral, emotional, and physical/personal care characteristics consistent with VEMAT guidance.

This tool shall be administered prior to assessing and negotiating payment.

When the LDSS establishes that the child requires additional supervision and support based on the administration of the VEMAT in accordance with VDSS guidance, the LDSS shall then assess and negotiate an enhanced maintenance payment with the adoptive parents, unless the adoptive parents decline this assistance in writing. The enhanced payment amount may range from no payment up to the maximum amount allowed by law. The amount of the enhanced maintenance payment shall not exceed the foster care enhanced maintenance

payment that would have been paid during the period if the child had been in a foster family home ([22 VAC 40-201-160](#) E2a). The VEMAT score for the child determines the maximum allowable payment. It does not determine the final payment amount.

When a VEMAT is not administered, the child is not eligible for an adoption assistance enhanced maintenance payment. *Note: the VEMAT is not required in order for the LDSS to continue making enhanced maintenance payments in accordance with adoption assistance agreements entered into prior to October 1, 2009 that are still in effect and meet state criteria (see [AART LASER Quick Reference Guide](#)).*

For procedures on:

- VEMAT, see [Section 17.2](#) in the Foster Care Chapter.
- Assessing the child's basic maintenance needs, see [Section 2.12](#).
- Assessing the child's needs for additional supervision and support, see [Section 2.13](#).

The funding source for basic and enhanced maintenance payments after the final order shall be state funds when the child meets requirements for state adoption assistance maintenance payments (see [Section 2.6.1](#)).

2.6.6 Eligibility for Medicaid

Medicaid shall not be included in the adoption assistance agreement when the application is made after the final order of adoption.

The LDSS should inform the adoptive parents that a Medicaid application is required to determine the child's eligibility. The adoptive parents submit the application to the LDSS with which they entered into the adoption assistance agreement. The child who is currently enrolled in Medicaid or FAMIS shall be reevaluated to determine whether the child meets eligibility requirements under various Medicaid covered groups or under FAMIS. The income of the child's adoptive parents is counted when determining the child's eligibility.

For information on Medicaid covered groups, see the Virginia DSS Medicaid Eligibility Manual, [M03 Medicaid Covered Groups](#).

For information on the FAMIS program, see <http://www.famis.org/> or the Virginia DSS Medicaid Eligibility Manual, [M21](#).

2.6.7 Non-recurring adoption expense payments not available

Non-recurring adoption expenses shall not be included in adoption assistance agreements entered into after the final order of adoption ([45 CFR 1356.41 b](#)).

2.6.8 Eligibility for state special services payments

State special services payments help meet the child's physical, mental, emotional, or non-routine dental needs. They shall be directly related to the child's special needs. Special services payments shall be time limited, based on the child's special needs ([22 VAC 40-201-160 E3](#)). Only state funds shall be used to pay special services⁵.

When the child has special needs and is eligible for state adoption assistance based on all Virginia legal requirements after the final order of adoption (see [Section 2.6.1](#)), the child may be eligible for state special services when:

- The child was in the custody of the CPA at the time of the adoption.
- The adoptive parents are capable of providing the permanent family relationships needed by the child in all respects except financial ([§ 63.2-1301 C](#)).

The LDSS assesses the capability of the adoptive parents to meet the child's needs financially when assessing payment amounts for special services. The LDSS will assess whether:

- The adoptive parents can financially afford the special service.
- Health insurance and/or other resources will cover the service cost ([§ 63.2-1301 C](#) and [§ 63.2-1302 A 2](#)).

Income shall only be one factor considered when assessing the family circumstances of the adoptive parents for special services payments ([22 VAC 40-201-160 E3c \(3\)](#)).

For procedures on assessing special services, see [Section 2.16](#).

2.7 Preparing for adoption assistance process

To prepare for the adoption assistance process, the LDSS shall:

- Review and ensure the [Full Disclosure of Child Information Form](#) is complete (see [Section 9.10.4](#) of the Foster Care Chapter).

⁵ Note: the State uses federal Title XX, in addition to state funds, to pay for state special services.

- Identify the services and/or supports the child is receiving, including the provider, frequency, and monthly cost, when applicable and known.
- Identify the amount of basic maintenance adoption assistance available for the child. The amount is based on the age rate for foster care basic maintenance payments for the child (See [Section 17.1.3](#) of the Foster Care Chapter). It is determined by the child's age at the time of placement in the adoptive home.
- Identify the maximum amount of enhanced maintenance payments for adoption assistance. This amount is based on the VEMAT score for the child. The VEMAT score does not determine the final payment for the child. Rather, it determines the maximum amount when negotiating the adoption assistance maintenance amount.
- Explore whether the child may be entitled to [Social Security benefits](#) due to the retirement, death, or disability of a birth parent after adoption. The child may continue to be eligible for benefits connected to the birth parents. Changing the child's social security number at the time of the adoption may prohibit the child's access to benefits.
- Explore whether the child may continue receiving [SSI](#) payments for the child's disability after the adoption through conversations with the LDSS eligibility worker. While the LDSS cannot determine with certainty whether payments will continue, the adoptive parents will need to decide whether to continue SSI payments for an eligible child and receive adoption assistance maintenance payments concurrently, or obtain payments solely from one program (see [Section 2.8.3](#)).
- Explore whether the child may be entitled to other retirement or disability benefits (e.g. [Veterans benefits](#), [Railroad Retirement benefits](#)), life insurance benefits, and/or trust fund payments related to a birth parent.
- Enter information on the child's special needs and resources in Section I of the [Virginia Application for Adoption Assistance](#) to be given to the adoptive parents.

2.8 Educating and partnering with adoptive parents

2.8.1 Collaborative partnership

When discussing adoption assistance with the adoptive parents, the LDSS should continue to strengthen the collaborative partnership by:

- Creating a supportive environment for conversations and building trust.
- Demonstrating open and transparent communication.

- Understanding and respecting the adoptive parents' strengths, concerns, and family circumstances.
- Searching to create win-win solutions that meet the child's special needs, address the family circumstances, and use adoption assistance funds wisely.

2.8.2 How adoption assistance applies to the child

The LDSS should discuss with the adoptive parents how adoption assistance applies to the specific child they wish to adopt and their family circumstances. The LDSS should continue to discuss and respond to all concerns and questions the adoptive parents may have. Conversations should include:

- The child's background and special needs.
 - All known information about the child, including the child's documented special needs and non-identifying information about the birth family on the [Full Disclosure of Child Information Form](#) (see [Section 9.10.4](#) in the Foster Care Chapter).
 - The long term needs of children who have experienced trauma.
 - The supervision, services, and supports the child currently requires, and to the extent possible, the services the child will need.
- The child's eligibility for adoption assistance. The purpose and types of adoption assistance and/or supports that may be available to help address the child's special needs.
- The family circumstances of the adoptive parents to begin identifying what they need to successfully integrate the child into their home, lives, and future (see [Section 2.11](#)).
- The options of the adoptive parents to:
 - Decline adoption assistance;
 - Request an adoption assistance agreement, but decline financial assistance at this time; or
 - Request an adoption assistance agreement with financial assistance.
- The application process (See [Section 2.9](#)).
- The purpose of negotiation (see [Section 2.10](#)).

- The agreement must be executed within ninety (90) days after the LDSS receives the completed application with all supporting documentation.
- The process for adoptive parents to request changes to the adoption agreement based on changes in the child's special needs and/or their family circumstances (see [Section 2.23](#)).
- When and how adoption assistance payments and agreements are terminated (see [Section 2.24](#)).
- The adoptive parent's right to appeal decisions made by the LDSS and information on the fair hearing process.

During these conversations, the agency should ensure the adoptive parents have copies of the following documents and respond to any questions they may have:

- [Full Disclosure of Child Information Form](#) (see [Section 9.10.4](#) in the Foster Care Chapter).
- [Virginia Adoption Assistance Screening Tool](#) (see [Section 2.4](#)).
- [Information Sheet on the Virginia Adoption Assistance Program](#).
- [Virginia Application for Adoption Assistance](#) with Section I completed by the service worker.

When the adoptive parents sign the [Full Disclosure of Child Information Form](#) and the [Virginia Application for Adoption Assistance](#), they confirm that they received these documents, the program was explained to their satisfaction, and they understand the process. The LDSS shall maintain a copy of these signed documents in the child's adoption assistance paper case record.

Failure of the CPA to provide the adoptive parents information on all relevant and known facts about the child and the availability of adoption assistance for an eligible child prior to finalizing the adoption may constitute the LDSS denying adoption assistance. The adoptive parents may request an appeal of the agency's decision ([Federal Child Welfare Policy Manual, Subsection 8.4G #2](#)).

2.8.3 Information on continuing SSI payments for eligible child

When the service worker identifies through conversations with the LDSS eligibility worker that the child is likely to continue receiving [SSI](#) payments after the final adoption, the LDSS should encourage the adoptive parents to contact a Social Security representative at 1-800-772-1213 to discuss their situation. They may also visit the Social Security Administration (SSA) website at <http://www.socialsecurity.gov>.

The LDSS should inform the adoptive parents that they may choose to apply for SSI payments for an eligible child and receive adoption assistance maintenance payments concurrently, or to obtain payments solely from one program.

In determining the amount of SSI the child is entitled to receive, the SSA counts the income and resources of the adoptive parents. If these resources exceed an established maximum level, the child is no longer eligible for SSI payments.

If the income and resources of the adoptive parents do not affect the child's eligibility for SSI and the adoptive parents receive concurrent payments from both programs on behalf of the child, the SSA will reduce the SSI amount, dollar for dollar, for any Title IV-E adoption assistance maintenance payment paid to the adoptive parents. In this situation, the adoptive parents may choose to:

- Reduce the Title IV-E adoption assistance basic maintenance payment they receive based on the amount of SSI the child is entitled to receive.
- Decline the basic maintenance payment and receive only SSI for the child. However, if the adoptive parents do not execute an adoption assistance agreement prior to the final order of adoption, the child will no longer be eligible for Title IV-E adoption assistance payments. The child also may not be eligible for state adoption assistance after the final order of adoption. The LDSS should encourage the adoptive parents to enter into an adoption assistance agreement with a zero or minimal dollar payment, if the adoptive parents are not receiving other adoption assistance. This agreement allows the adoptive parents to submit a [Request for an Addendum to the Virginia Adoption Assistance Agreement](#) if they want to receive basic maintenance payments in the future. It also allows the LDSS to use Title IV-E funds to pay for these maintenance payments when appropriate.
- Receive only the adoption assistance basic maintenance payment and not continue SSI payments for the child. However, if the child does not receive SSI benefits for twelve (12) months, the child is no longer eligible for SSI. The adoptive parents may reapply for SSI benefits in the future, or the child may apply for Social Security Disability Insurance (SSDI) benefits after age 18 as an adult disabled since childhood. The child will need to meet all eligibility requirements in order to receive benefits.

The LDSS should serve as a resource for the adoptive parents on the adoption assistance program as the adoptive parents make this decision. Because there are many complexities and financial implications, it is important that the adoptive parents discuss all aspects of combining SSI and adoption assistance with a representative from the SSA and the LDSS eligibility staff prior to negotiating the adoption assistance agreement ([Federal Child Welfare Policy Manual, Subsection 8.4D #1](#)).

2.8.4 Information on survivor and disability benefits

The adopted child can receive adoption assistance concurrently with survivor benefits (due to death of child's birth parent) and/or disability benefits (due to the disability of the child's birth parent) from the Social Security Administration (SSA) for an eligible child. The adoptive parents should contact a Social Security representative at 1-800-772-1213 or visit the SSA website at <http://www.socialsecurity.gov>.

If the child is solely receiving disability and/or survivor benefits, not SSI, the SSA will not reduce the amount of disability and/or survivor benefits based on the child receiving adoption assistance. (Note: If the child is receiving SSI, survivor benefits, and adoption assistance, then the SSI will be reduced dollar for dollar (see [Section 2.8.3](#)). SSI is the only benefit the SSA will reduce based on other benefits the child is receiving.)

The LDSS should not reduce adoption assistance due to the child receiving these benefits. However, such benefits should be considered as part of the overall resources the adoptive parents have available to help support the child when the LDSS and adoptive parents negotiate adoption assistance.

2.8.5 Information on Federal Adoption Tax Credit

While not part of the adoption assistance program, the LDSS shall inform the adoptive parents of their potential eligibility for a federal adoption tax credit when adopting a child in foster care, including a child with special needs ([Social Security Act, Title IV, § 471 \(a\) \(33\) \[42 USC 671\]](#)).

The LDSS should encourage adoptive parents to consult a tax professional to determine their eligibility for the tax credit and to address any questions they may have. The LDSS should also refer the adoptive parents to the following websites for information about the tax credit:

- The [Internal Revenue Service](#) has eligibility information and forms required for filing on its [Adoption Credit and Adoption Assistance Programs](#) website page.
- The [North American Council on Adoptable Children](#) (NACAC) has general information on the [federal tax credit](#).

The LDSS should inform the adoptive parents:

- The tax credit can help defray adoption costs for eligible taxpayers.
- The maximum credit amount is established by federal law and is based on the year the adoption was finalized. For 2013, this amount is \$12,970 based on

current law. (See NACAC website for the maximum credit amount available each year.)

2.8.6 Responsibility for school attendance

The LDSS shall inform the adoptive parents of their responsibility for ensuring the child complies with applicable law regarding compulsory age school attendance in ([Social Security Act, Title IV, § 471 \(a\) \(30\) \[42 USC 671\]](#)). In Virginia, state law requires compulsory school attendance when the child was age five (5) on or before Sept 30 of the current school year through his or her 18th birthday as defined in [§ 22.1-254 A](#)).

- The adoptive parents shall report information on the status of the school aged child or youth on the annual affidavit (e.g., full time student, completed secondary school).
- The adoption assistance agreement includes a provision for the adoptive parents to authorize the LDSS and VDSS to use the child's State Testing Identification (STI) number, when applicable. The purpose of the STI number is to document the child's enrollment in school and to obtain educational information from the Virginia Department of Education on children who receive adoption assistance funds. Only non-identifying aggregate educational information on children with adoption assistance will be reported publicly.
- The STI number is located on the child's SOL Student Report for the Standards of Learning assessments. If the LDSS does not have the STI number in OASIS, the LDSS or LCPA that has custody of the child may contact the person responsible for student records at the child's school to obtain the number. The STI number shall be maintained as confidential information by LDSS, as is all confidential child and youth information ([§ 63.2-104](#)).

2.8.7 Independent living services for youth adopted at age 16 and over

The LDSS shall inform the adoptive parents and the youth of independent living services available for youth who were adopted from foster care at age 16 and over (up to age 21). Independent living services for youth may be accessed through [Project LIFE](#) when needed services are requested by the family or the youth and include a plan for services using the [Ansell-Casey Life Skills Assessment](#) tool. Independent living services may also be available through the LDSS responsible for providing services to the family, based on the availability of Independent Living funds awarded to the LDSS. Services include a broad range of activities, educational support, job preparation, and training to help the youth prepare for adulthood. For information on types of services, see [Section 14.10](#) of the Foster Care Chapter.

Project LIFE coordinates and enhances the provision of independent living services to youth who are age 14 and older and who are about to transition out of foster care. [Regional Independent Living Consultants](#) are available to collaborate with the adoptive parents, the youth, and other stakeholders to provide support, training, and technical assistance to help prepare youth for adulthood. Funded by VDSS, Project LIFE also provides free or low-cost regional and statewide activities for eligible youth.

2.8.8 Youth participation in National Youth in Transition Database (NYTD)

When the adoptive parents adopt a youth who exits foster care within 45 days after reaching his 17th birthday in federal fiscal years 2014, 2017, or any third year thereafter, the LDSS shall inform the adoptive parents that:

- The LDSS is required to ask the youth to participate in a survey during the 45 days after the youth's 17th birthday to collect and report baseline information on the youth as part of NYTD.
- The youth may then be selected to participate in an outcomes survey when the youth turns age 19, and then again when the youth turns age 21.
- The purpose of the survey is to assess the foster care system with regards to life outcomes for youth (e.g., increasing youth financial self-sufficiency, improving youth educational attainment, increasing youth connections with adults, reducing homelessness among youth, reducing high risk behavior among youth, and improving youth access to health insurance).

For more information on NYTD, see [Section 14.15](#) of the Foster Care Chapter.

2.9 Application process

After the LDSS and adoptive parents have fully discussed the child's special needs and the adoption assistance program, the LDSS and the adoptive parents should begin the application process.

2.9.1 Application and required documentation

The LDSS shall provide the adoptive parents with the [Virginia Application for Adoption Assistance](#). The worker should complete Section 1 on the child's special needs and resources prior to giving the document to the adoptive parents. This tool helps the adoptive parents identify the payments, services, and/or supports they want to request. The application should be completed by the adoptive parents with the LDSS and/or the LCPA when the child is in the LCPA's custody.

The adoptive parents either:

- **Decline adoption assistance** by signing Section 8B of the application. The LDSS should review the completed Adoption Assistance Screening Form with the adoptive parents and discuss the circumstances under which the child may or may not be eligible for adoption assistance after adoption.
- **Request to enter into an adoption assistance agreement, but decline financial assistance and services until they are needed.** The agreement is executed with a zero dollar payment. Medicaid may be included for an eligible child. This agreement enables the adoptive parents to request an addendum to the agreement during the duration of the agreement to address the child's special needs and family circumstances of the adoptive parents.
- This agreement shall be used when the child solely has the special need factors of hereditary tendency, congenital problem (including substance exposure), and/or birth injury and there is no evidence the child currently has a disability. The adoptive parents may request assistance if the child's problem and/or disability manifest in the future.
- **Request adoption assistance** on behalf of the child with special needs by completing the [Virginia Application for Adoption Assistance](#).

The LDSS must have all documentation necessary to complete the screening and application process for adoption assistance. When the LDSS has placement and care responsibility for the child, the child's foster care paper case record contains the necessary information. When the LCPA has custody of the child, the adoptive parents shall work with the LCPA to provide the documentation.

The adoptive parents shall sign and submit the completed application and all necessary documentation to the LDSS. Letters, other written requests, and verbal requests for adoption assistance do not constitute an application and do not initiate the required time frames for processing the application.

2.9.2 Initial review and notice of application receipt

Within fourteen (14) days after receiving the application for adoption assistance, the LDSS should:

- Review the application to determine whether the application is complete with all required documentation.
- Notify the adoptive parents in writing that the application was received and its status:
 - **The application is complete.** The notification shall include the date the application was received. It shall state that the LDSS and adoptive parents have ninety (90) days to execute an adoption assistance

agreement, unless the adoptive parents decline assistance or the LDSS and adoptive parents agree through negotiation and in writing that assistance is not needed.

- **Additional information is needed.** The notification shall state the specific information necessary to complete the application. It should request the adoptive parents submit the information by email, phone, or in person within thirty (30) days from the notice date.
- **The application is denied** when it is clearly evident that the child is not eligible for adoption assistance (e.g., the child is 19 years old). The notification shall clearly state the reason(s) for the denial, provide information on the adoptive parents' right to appeal within thirty (30) days of receiving the notice of denial, and provide information on the fair hearing process. No further action is required by the LDSS on the application.

2.9.3 Screening child when not previously completed

Screen the child for adoption assistance, if the child's eligibility was not previously established. Use procedures either prior to, or after, the final order of adoption (see [Section 2.5](#) or [Section 2.6](#) respectively).

For children in the custody of the LDSS, the child's eligibility should be established prior to the application process. However, the screening process may need to be completed when the application is for a child:

- After the final order of adoption and state adoption assistance is requested.
- In the custody of a LCPA.
- Who may be eligible for adoption assistance due to SSI eligibility and who is not in CPA custody.

For all children, eligibility for adoption assistance should be established by the time an application is received or immediately upon receipt of an application. It should be completed before starting the assessment and negotiation process.

If the child does not meet the criteria for special needs and is not eligible for adoption assistance, the LDSS shall notify the adoptive parents in writing. The notification shall clearly state the reasons for the denial, provide information on the adoptive parents' right to appeal within thirty (30) days of receiving the notice of denial, and provide information on the fair hearing process. No further action is required by the LDSS on the application.

2.9.4 Timeframe for acting on completed application

Once the LDSS receives the completed application and all required documentation:

- The LDSS should immediately enter the information from the application into the [Virginia Worksheet for Assessing and Negotiating Adoption Assistance](#). This worksheet automatically calculates key information for the LDSS and the adoptive parents to use during the assessment and negotiation process.
- The LDSS and the adoptive parents should begin the assessment and negotiation process as quickly as possible.
- The LDSS and adoptive parents shall complete, and all parties shall sign and execute, the adoption assistance agreement within ninety (90) days from the date the LDSS received the completed application and all required documentation ([22 VAC 40-201-160 F](#)).
- All parties shall sign and execute the agreement prior to the final order of adoption, except for the application submitted and agreement entered into after the final order of adoption ([45 CFR 1356.40 \(b\) \(1\)](#)).

Failure to execute an agreement prior to the final order of adoption will prevent the child from receiving adoption assistance, unless the child's eligibility can be established using the policies and procedures for establishing eligibility after the final order of adoption (see [Section 2.6](#)). In addition, Title IV-E funds cannot be used to support the adoption assistance agreement for a Title IV-E eligible child when the agreement is executed after the final order of adoption.

When the failure to complete the adoption assistance agreement prior to the final order of adoption is due to LDSS failure to act on the application within a reasonable time, the adoptive parents may ask for a review of the process (see [Section 2.25](#)) ([§ 63.2-1304](#)). Prior to making a final determination on the application, the LDSS should attempt to rectify the situation as an administrative error, when applicable. The LDSS should inform the adoptive parents of its actions to resolve the situation. However, it must not prejudice the adoptive parents from requesting a review of the process. The LDSS should document the reasons the LDSS failed to properly process the application and how the child met all eligibility criteria for Title IV-E funding prior to, or at the time of, the final adoption order. The LDSS should submit this documentation to the Permanency Regional Consultant with a written request to allow execution of the adoption assistance agreement using Title IV-E funds. The VDSS Permanency Program Manager determines whether the situation can be corrected as an administrative error. If the VDSS Permanency Program Manager approves the request in writing, the LDSS shall execute the adoption assistance agreement using Title IV-E funds.

When the adoption assistance agreement is not executed within ninety (90) days due to the failure of the adoptive parents to provide any additional required information, the LDSS should deny the application. The adoptive parents may reapply for adoption assistance. Once the adoptive parents submit the complete application with all required documentation, then a new ninety (90) day period begins.

2.10 Negotiating adoption assistance

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 care for the child's special needs.

The goal of negotiation is to determine the amount and timing of adoption assistance needed, based on the child's special needs and the family circumstances of the adoptive parents. The goal is not to minimize or maximize the amount of adoption assistance.

The following principles should guide negotiations:

- The LDSS, adoptive parents, and LCPA when applicable have common goals of securing a safe, loving, and permanent family for the child and meeting the child's special needs.
- The adoptive parents have the legal right and responsibility to raise their child, with minimal government involvement.
- 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 help address the unique special needs of the child and the family circumstances of the adoptive parents, utilizing all available resources in the community.
- Adoption assistance is provided when the adoptive parents need it to adopt the child and help meet the child's documented special needs.
- Adoption assistance supplements the resources of adoptive parents to help them care for the child's special needs that they have difficulty providing for without adoption assistance. It is not intended to cover the full cost of raising the child.
- The assessment process involves respectful and confidential discussions of the adoptive parents' concerns, family circumstances, and finances.

- 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, the 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 are based on:
 - Child's special needs.
 - Family circumstances of the adoptive parents.
 - Availability of other resources to meet the child's needs and help defray costs for the adoptive parents and the adoption assistance program.
 - Legal requirements for adoption assistance.
- The adoptive parents have the right to determine how they will use their financial resources.
- Taxpayers' money for adoption assistance shall be used wisely and responsibly.

2.11 Assessing family circumstances

The LDSS should begin the assessment and negotiation process by facilitating conversations with the adoptive parents about the child's special needs, the services the child requires, 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, in relation to their current lifestyle and standard of living, as well as their future plans.

During these conversations, the LDSS should summarize the conversations to ensure the LDSS fully understands the perspectives and family circumstances of the adoptive parents, including:

- The strengths of the family.
- The ways the family can contribute to meeting the child's special needs.

- Their concerns and interests related to the child's special needs and their family circumstances.
- Their specific requests for adoption assistance and reasons for these requests.

The LDSS should ask and discuss with the adoptive parents the following types of questions:

- What is your understanding of the child's special needs? What concerns do you have?
- What resources are available to help you meet the child's needs from your relatives, friends, and neighbors? your family's connections with community groups (e.g., faith-based organizations, community centers, cultural and civic organizations)? your health insurance? other community and government agencies? (see [Section 2.17](#)) How can these resources be used creatively to meet the needs?
- How do you plan to integrate the child into your family and your future plans? What concerns do you have? For a sibling group, what concerns do you have about meeting the children's needs (e.g., furniture, supplies, space)?
- In what ways do you feel you can meet the child's special needs? How can you share in the costs in meeting the child's needs?
- How do you plan to provide for any special accommodations (e.g., specialized food, equipment, ramps, lifts, remodeling the home) that the child requires due to a physical disability or chronic health condition?
- What type of assistance is important to you so you can adopt and care for the child as a member of your family? Do you need financial assistance, health insurance, special services, and/or other support?
- How much assistance do you need? When do you need it? How long do you need it? How will this assistance help you adopt the child and meet the child's special needs?

The adoptive parents also provide information on their family circumstances in the adoption assistance application. The purpose of this information is to assist the adoptive parents in:

- Planning for integrating the child into their family.
- Evaluating:

- The total funds they have available for the child, taking into account their financial resources and expenses for the child.
- Other resources available to help address the child's special needs (e.g., family, neighbors, faith-based community, health insurance, schools, other government resources).
- The financial assistance they may need in order to adopt and meet the child's special needs.
- Negotiating with the LDSS on the terms for the adoption assistance agreement.

This information is also used to assist the LDSS and adoptive parents in assessing whether the adoptive parents can financially afford the special services necessary to meet the child's documented special needs ([§ 63.2-1302 A 2](#)) (see [Section 2.16.4](#)).

The LDSS shall not use this information in determining the child's eligibility for adoption assistance maintenance payments ([45 CFR 1356.40](#)), nor as the sole factor in assessing family circumstances or in determining adoption assistance payments.

The LDSS should review the information that the adoptive parents provide on the [Virginia Application for Adoption Assistance](#) and clarify any information as needed. The LDSS should assure the adoptive parents that they will keep the information confidential.

The LDSS shall enter the information into the [Virginia Worksheet for Assessing and Negotiating Adoption Assistance](#). The worksheet calculates a monthly average for:

- The financial resources the adoptive parents have available to support the child.
- The total expenses for the child as a member of the adoptive parents' family, based on their current lifestyle and future plans and based on the child's needs.
- Any remaining funds the adoptive parents have available to care for the child (i.e., subtracting the child's expenses from the financial resources available for the child).

The LDSS shares this information with the adoptive parents. The LDSS should discuss with the adoptive parents:

- If the adoptive parents anticipate any changes in the near future that will increase or decrease the financial resources they have available to support the child (e.g., different financial resources, different people to support on a regular basis).
- In what ways the adoptive parents feel this information reflects their family circumstances.

- What additional information the adoptive parents can share to better understand their family circumstances.
- Whether the adoptive parents can spend any funds differently to help meet the child's needs.

The LDSS makes any adjustments to the worksheet that the adoptive parents identify and shares information from the worksheet calculations with the adoptive parents. This process helps the adoptive parents assess and understand the resources they have available to care for the child. The adoptive parents also refer to this information during the negotiation process.

2.12 Assessing basic maintenance needs of child

After the LDSS discusses with the adoptive parents the child's special needs, the family circumstances, and how these circumstances impact the need for adoption assistance, the LDSS shall discuss with the adoptive parents the basic maintenance available to help them address the child's basic needs for housing, food, clothing, transportation and/or personal incidentals. A basic maintenance payment shall be approved unless adoptive parents decline the payment in writing or the local department and adoptive parents agree through negotiation and in writing that adoption assistance is not needed ([22 VAC 40-201-160](#)). A supplemental clothing allowance over and above the basic maintenance payment is not an allowable payment in adoption assistance and shall not be considered.

The LDSS should discuss the following factors with the adoptive parents:

- The basic maintenance payment is based on the child's age rate for foster care maintenance rates (See [Section 17.1.3](#) of the Foster Care Chapter). The LDSS should explain that at no time shall the payment amount exceed what would have been paid had the child been in a foster family home ([Social Security Act, Title IV, § 473 \(a\) \(3\) \[42 U.S.C. 673\]](#)).
- When the child is likely to continue receiving SSI after the adoption and these payments provide a higher benefit level than the basic maintenance payment, the adoptive parents may want to use the SSI payments to help meet the child's needs. The adoptive parents may want to:
 - Reduce the basic maintenance payment they receive based on the amount of SSI the child is entitled to receive; or
 - Decline the basic maintenance payment and choose to receive SSI only for the child. The LDSS should encourage the adoptive parents to enter into an adoption assistance agreement with a zero or minimal dollar payment, if the adoptive parents are not receiving other adoption assistance.

Because there are many complexities and financial implications when combining SSI and adoption assistance, it is important that the adoptive parents discuss their situation with a representative from the SSA and the LDSS eligibility worker as appropriate (see [Section 2.8.3](#)).

- The amount of funds the adoptive parents identify they have available to care for the child (see [Section 2.11](#) and the worksheet calculation #3 for any remaining funds the adoptive parents have available for the child). For example, the LDSS worker should inform the adoptive parents that based on the information they provided, they have “x” dollars available to help care for the child after subtracting the child’s expenses from the financial resources they have available for the child. The LDSS should ask the adoptive parents, given the resources you have available for the child, what amount do you need on a monthly basis to help address the basic maintenance needs for the child.
- The amount of basic maintenance the adoptive parents request, if they choose to receive less than the amount available.
- The length of time the adoptive parents request to receive the basic maintenance payment, if they choose a time before the child turns age 18. For example, the LDSS should ask the adoptive parents how long and for what time period they request this payment?

The LDSS shall inform the adoptive parents:

- The basic maintenance rate shall be automatically increased under two circumstances in the future:
 - When the child reaches a higher age grouping in state foster care policy (see [Section 17.1.3](#) of the Foster Care Chapter), to help address the increased costs of caring for an older child.
 - When statewide increases are approved, to help address increased costs of living.

If the adoptive parents choose to receive less basic maintenance than the maximum available rate, the agreed upon payment amount will be increased by the same percentage amount used to calculate the increase in the maximum foster care maintenance payments. The LDSS will notify them in writing when automatic increases occur.

- If the adoptive parents request and the LDSS agrees to a time-limited payment, the LDSS shall notify the adoptive parents in a certified letter two months prior to the scheduled end date for the basic maintenance payment.

- The child shall continue to receive the basic maintenance payment specified in the adoption assistance agreement, or the addendum in effect, until one of the following actions occur:
 - The adoptive parents decline the basic maintenance payment in writing.
 - The adoptive parents indicate they need a different payment amount. The new amount, up to the maximum allowable amount, is specified in an addendum to the agreement that is signed and executed by the adoptive parents and the LDSS.
 - The agreement is terminated based on terms in the adoption assistance agreement for terminating payments or the agreement (see [Section 2.24](#)).

After discussing all relevant factors, the LDSS shall document the adoptive parents' decisions about basic maintenance payments and the agreed upon terms in the adoption assistance agreement and in any addendum containing basic maintenance payments.

When the LDSS places the child in another state, the LDSS shall follow procedures in this section to determine the terms for basic maintenance payments.

2.13 Assessing additional supervision and support needs of child

After assessing the child's basic maintenance needs, the LDSS and adoptive parents should assess the child's needs for additional supervision and support when appropriate for the child. An enhanced maintenance payment may be paid when the child requires additional supervision and support from the adoptive parents to ensure the child's safety and well-being (see [Section 2.5.8](#) for eligibility determined prior to the final order of adoption and [Section 2.6.5](#) after the final order of adoption).

When the LDSS establishes that the child requires additional supervision and support based on the administration of the VEMAT according to VDSS guidance, the LDSS shall assess and negotiate an enhanced maintenance payment with the adoptive parents, unless the adoptive parents decline such assistance. See [Section 2.10](#) on the purpose, goal, and principles to use when negotiating adoption assistance.

During the assessment and negotiation process, the LDSS should discuss the following factors with the adoptive parents, as well as any other relevant factors:

- The child's needs for additional supervision and support from the adoptive parents, as documented by the VEMAT for the child.
- Available resources to help meet the child's special needs and defray the costs for adoption assistance and the adoptive parents (see [Section 2.17](#)). When the adoptive parents plan to add the child to their health insurance policy, they shall

provide a copy of the full explanation of covered benefits to help identify services that are covered by their health insurance.

- The family circumstances of the adoptive parents.
- The amount of funds the adoptive parents identify they have available to care for the child (see [Section 2.11](#) and the worksheet calculation #3 for any remaining funds the adoptive parents have available for the child.) For example, the LDSS worker should inform the adoptive parents that based on the information they provided, they have “x” dollars available to help care for the child after subtracting the child’s expenses from the financial resources they have available for the child. The LDSS should ask questions such as, given the resources you have available for the child: how much financial assistance do you need to provide this supervision and support for this child? How can we share in meeting the child’s special needs?
- The adoptive parents’ request for enhanced maintenance and their reasons.
- The length of time for the enhanced maintenance payment. For example, the LDSS should ask: how long do you need this payment to provide additional supervision and support for the child? what time period do you need this payment?
- The enhanced payment amount may range from no payment up to the maximum amount allowed by law. At no time shall the amount of the enhanced maintenance payment exceed what would have been paid if the child was in foster care ([Social Security Act, Title IV, § 473 \(a\) \(3\) \[42 U.S.C. 673\]](#)). The VEMAT score for the child determines the maximum allowable payment. It does not determine the final payment amount.

The maximum allowable amount is based on the child’s VEMAT score when the LDSS first negotiates an adoption assistance enhanced maintenance payment with the adoptive parents. The maximum amount remains the same for any subsequent negotiations on adoption assistance enhanced maintenance for the duration of the adoption assistance agreement. The only exception is when a new VEMAT is administered and the child’s VEMAT score increases based on the new VEMAT. In this situation, the maximum allowable amount for negotiations is increased, based on the child’s higher VEMAT score, for the duration of the agreement. When the new VEMAT score is lower than the maximum allowable amount, the maximum allowable amount is not reduced to reflect the child’s new score.

The new VEMAT score for the child provides the LDSS and the adoptive parents current information for the assessment and negotiation process on the additional supervision and support the child requires from the adoptive parents, based on

the frequency, duration, and intensity of the child's behavioral, emotional, and physical/personal care characteristics.

When the adoptive parents and the LDSS agree to a time-limited enhanced maintenance payment, the LDSS shall inform the adoptive parents that the LDSS shall notify the adoptive parents in a certified letter two months prior to the scheduled end date for the payment.

The child shall continue to receive the enhanced maintenance payment specified in the adoption assistance agreement, or the addendum in effect, until one of the following actions occurs:

- The adoptive parents decline an enhanced maintenance payment in writing.
- The adoptive parents and the LDSS negotiate and agree upon a different payment amount, based on the child's needs as documented by the VEMAT and the family circumstances of the adoptive parents. The agreed upon terms are documented in an addendum to the agreement.
- The agreement is terminated based on terms in the adoption assistance agreement for terminating payments or the agreement (see [Section 2.24](#)).

The LDSS shall not reduce the enhanced maintenance payment in the adoption assistance agreement unless the adoptive parents agree in writing.

After discussing all relevant factors, the LDSS negotiates with the adoptive parents to determine the agreed upon enhanced maintenance payment amount. The LDSS shall document the agreed upon terms in the adoption assistance agreement and in any addendum to the agreement containing enhanced maintenance payments.

2.14 Assessing child's health insurance needs

After assessing the maintenance needs of the child, the LDSS and adoptive parents should identify health insurance coverage for the child. The adoptive parents should:

- Add the child to their health insurance policy (e.g., employer-based, TRICARE, CHAMPVA, and self-purchased plans) in accordance with the insurance policy requirements (§ [38.2-3432.3](#)). The child may be added at the time of the adoptive placement.
- Add the child to their health insurance policy and use Medicaid or FAMIS as secondary health insurance if the child is eligible ([Virginia DSS Medicaid Eligibility Manual](#), M1510.301).
- Use Medicaid or FAMIS if the child is eligible.

When the adoptive parents do not have health insurance coverage for the child, the adoptive parents should search available options and provide health insurance coverage for the child.

- When the adoptive parents want special services payments to help pay for health insurance premiums or for benefits potentially covered under Medicaid or FAMIS, and if the child may be eligible for state medical assistance, the adoptive parents shall apply for Medicaid ([§ 63.2-1302 A 2](#)).
- The LDSS may assess and negotiate a special services payment to help pay for health insurance premiums in the adoption assistance agreement. The decision to help with health insurance costs shall be based on the unique circumstances of the adoptive parents. These costs shall not be automatically paid for all children. When the child becomes eligible for other health insurance coverage, including Medicaid or FAMIS, the special services payment for these premiums shall end.

Whenever the child has health insurance coverage available, special services payments shall not be used to pay for health insurance premiums nor covered benefits.

2.15 Assessing non-recurring adoption expenses

After assessing the health insurance needs of the child, the LDSS and adoptive parents should assess non-recurring adoption expenses. These payments shall be made only when the adoption assistance agreement is signed and executed prior to the final order of adoption ([45 CFR 1356.41](#)).

Types of expenses include reasonable and necessary costs directly related to the legal adoption of the child, including:

- 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. These costs may be paid for more than one visit.
- Adoption fees charged or home studies conducted by the licensed child placing agencies.

- Other costs necessary to complete the child placement or adoption process ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#); [45 CFR 1356.41](#); [§ 63.2-1301 D](#); and ([22 VAC 40-201-160 E1c](#)).

In estimating and determining payment amounts, the LDSS and adoptive parents shall meet the following requirements:

- Payment amounts shall be determined through agreement between the adoptive parents and the LDSS. They do not need to be negotiated.
- The adoptive parents' income shall not be used as an eligibility requirement (means test) to determine whether payments shall be made.
- The total payment amount shall not exceed \$2,000 per child per adoptive placement.
- Each child of a sibling group placed and adopted, either separately or together, shall be reimbursed up to the \$2,000 maximum, or an amount established by federal law.
- Caps or limits shall not be set for any type of non-recurring expenses.
- Adoptive parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#); [45 CFR 1356.41](#); [§ 63.2-1301 D](#); and [Federal Child Welfare Policy Manual, Subsection 8.2D.3](#)).

The agreed upon payment amounts for specific types of non-recurring adoption expenses shall be documented in the initial [Virginia Adoption Assistance Agreement \(45 CFR 1356.41 and 22 VAC 40-201-160 E1b\)](#). Reasonable estimates may be used when service costs are not known. It is not necessary to amend the agreement when the actual costs differ from the estimated costs.

Payment and reimbursement shall be for expenses:

- Incurred by, or on behalf of, adoptive parents for which the adoptive parents have ultimate liability for payment.
- Not incurred in violation of State or Federal law.
- Paid directly to service providers or to adoptive parents.
- Not reimbursed from any other sources or funds ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#); [45 CFR 1356.41](#); and [§ 63.2-1301 D](#)).

2.16 Assessing services to meet child's special needs

After assessing non-recurring adoption expenses, the LDSS and adoptive parents should assess the special service needs of the child.

2.16.1 Basic requirements

The LDSS may consider payments for special services and/or supports through state adoption assistance 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 a qualified professional.
- Are time-limited based on the child's special needs [22 VAC 40-201-160 E3](#).

When the LDSS determines that special services payments may be appropriate for the child, the LDSS shall determine whether:

- The services are covered by health insurance or any other resources (see [Section 2.16.3](#)).
- The adoptive parents can financially afford the special services (see [Section 2.16.4](#)) ([§ 63.2-1302](#)). This information shall be considered as one factor when assessing and negotiating the special services payment.

Special services payments should be an exception rather than the rule in adoption assistance agreements.

The VEMAT shall not be used to assess the child's behaviors or conditions for special services payments.

2.16.2 Types of special services

Special services and/or supports shall be directly related to the child's documented special needs ([22 VAC 40-201-160 E3](#)). They may include, but are not limited to:

- Medical, surgical, and dental care.
- Hospitalization.
- Individual remedial educational services, including tutoring or remedial educational sessions, books, or equipment.

- Psychological and psychiatric treatment.
- Speech, physical, and occupational therapy.
- Special services, equipment, treatment, and training for physical and mental handicaps.
- Equipment, such as prosthetics, body braces, crutches, and hearing aids.
- Premiums for a major health insurance policy for the child, when a family policy is not available for the child.
- Respite care when the child's condition requires extreme difficulty of care.
- Therapeutic child day program, including but not limited to therapeutic recreation program, that is a specialized program exclusively serving children with special needs and an individual service, education, or treatment plan is developed and implemented with the goal of improving the functional abilities of the child.
- Therapeutic summer camp that is directly related to the child's special needs and is not solely for recreational or caretaking purposes.
- Child care when it directly addresses the documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness and requires special health surveillance or specialized programs, interventions, technologies, or facilities.
- Case management provided by a qualified professional.
- Residential treatment (see [Section 2.16.6](#)).

Services payments shall not be used for legal fees and nonrecurring adoption expenses. They shall also not be used for placements in group homes, independent living arrangements, treatment/therapeutic foster care (TFC) homes, boarding schools, or private school placements.

Special services payments may be used to address the following types of situations:

- The child has specific and shorter term special needs for assessment or time limited services.
- The behaviors or conditions of the child are likely to decline and/or be resolved over time, based on the documented opinion of a qualified professional.

- The duration of the child's behaviors or conditions has not yet been determined.
- Recent changes in the child's behaviors or conditions are due to clearly identified reasons that may be resolved through time limited services and/or supports.

2.16.3 Determining whether services are covered by other resources

Prior to considering special services payments, the LDSS shall determine whether the requested services and/or supports are covered by health insurance or other resources ([§ 63.2-1302 A 2](#)).

The LDSS 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 needs (see [Section 2.17](#)). The resources explored and the results shall be documented on the OASIS contact screens.

When the LDSS determines that health insurance benefits or other resources are appropriate, available, and accessible for the child, these resources shall be utilized prior to considering adoption assistance special services. Adoption assistance funds shall not be used to pay for services that can be provided through these resources. The adoptive parents may choose whether or not to use these resources.

- **Health insurance.** Prior to considering special services payments, the LDSS shall determine whether health insurance will cover the needed services and/or supports for the child:
 - For a Medicaid eligible child, the adoptive parents shall first seek out Medicaid providers for the needed and covered services. Special services payments may only be used when qualified Medicaid providers are not available and accessible. The adoptive parents shall provide documentation that they sought services from Medicaid providers and the services were not available and accessible.
 - For the child who is not eligible for Medicaid in relation to the adoption assistance agreement, the LDSS should determine if it is likely that the child will qualify for Medicaid under another covered group or FAMIS after the final order of adoption. When it appears that the child may be eligible for Medicaid or FAMIS, the adoptive parents shall submit a Medicaid application and obtain coverage for an eligible child. If the child is not eligible for Medicaid or FAMIS, the LDSS may consider special services payments.

- For the child covered through other health insurance, the adoptive parents shall provide the LDSS a copy of the full explanation of covered and non-covered benefits. The LDSS and adoptive parents shall ensure all applicable and covered benefits are utilized prior to considering special services payments.
- **Educational and related services.** Prior to considering special services payments, the LDSS shall determine whether the needed services and/or supports for the child are provided through the public school system (See [Section 2.17.5](#)). The LDSS, working collaboratively with the adoptive parents, shall determine whether the service is available for the child through:
 - Remedial education.
 - The child's [Individualized Education Program \(IEP\)](#).
 - The child's [Section 504](#) Educational Plan.
 - A financial responsibility of the local school division, state education agency, or special education services funded through the [Comprehensive Services Act for at Risk Youth and Families \(CSA\)](#).
- **Early intervention supports and services.** Prior to considering special services payments, the LDSS shall determine whether the needed services and/or supports are available for an eligible child through the [Infant & Toddler Connection of Virginia](#) in the child's Individualized Family Service Plan (See [Section 2.17.3](#)).
- For more information on these resources and other resources for defraying the cost, see [Section 2.17](#).

2.16.3.1 Determining whether residential treatment services are covered

When exploring all available resources, the LDSS and adoptive parents shall determine whether the following resources are available to fund necessary residential treatment services prior to considering a special services payment:

- When the child's IEP *requires* placement in a residential *treatment program* for educational purposes, the CSA in the locality where the adoptive parents reside *is responsible for all placement costs*.
- *When the child's IEP does not require placement in a residential treatment program and the child is placed in residential treatment for non-educational purposes, the local school division in the locality where the adoptive parents reside is legally responsible for assuring the child's access to a "free and appropriate public education" (FAPE). In such*

circumstances, the school division is responsible for determining and providing the services necessary for FAPE while the child is in the residential placement.

- When the child is Medicaid eligible, Medicaid may cover residential treatment for the child who meets Medicaid medical necessity criteria and is in a Medicaid-enrolled facility. The adoptive parents, with assistance from the LDSS, shall follow all requirements for Medicaid funding for placement in a children's residential facility.
- When the child is not Medicaid eligible and the child is placed in a psychiatric residential treatment facility for thirty (30) days or longer, the adoptive parents shall apply for Medicaid on behalf of the child to help cover the costs. For purposes of Medicaid eligibility, the child is considered to be not living with the adoptive parents and a family of one at thirty (30) days or more. The adoptive parents submit the application to the LDSS with which they entered into the adoption assistance agreement.

After assessing all other resources available to help pay for residential treatment and when there are remaining costs, the LDSS and adoptive parents shall then determine whether the adoptive parents can financially afford the remaining costs for the requested special service (see [Section 2.16.4](#)). Note: If solely Medicaid funds or adoption assistance special services payments are used, any documentation sent to the provider must specify that the placement is a non-CSA placement.

2.16.4 Determining whether adoptive parents can financially afford services

Prior to considering special services payments, the LDSS and adoptive parents shall determine whether the adoptive parents can financially afford the special services ([§ 63.2-1302 A 2](#)).

To assess the amount of special services the adoptive parents can financially afford to pay, the LDSS identifies any remaining funds the adoptive parents have available that may be used for special services and/or supports. The [Virginia Worksheet for Assessing and Negotiating Adoption Assistance](#) calculates this amount by subtracting all expenses for the child from all available resources the adoptive parents have for the child (worksheet calculation #4) based on information provided by the adoptive parents.

This amount shall be considered as one factor when assessing and negotiating the special services payment. It shall not be the only factor considered in assessing family circumstances ([22 VAC 40-201-160 E3c\(3\)](#)) and in determining the special services payment.

The LDSS shares with the adoptive parents the worksheet calculation #4 on any remaining funds they have available that may be used for special services payments (i.e., the amount they can afford to pay) based on the information they provided. The LDSS should explain that this amount takes into account their total financial resources available for the child, their total expenses for the child as a member of their family based on their current lifestyle and future plans, and all other expenses they identified for the child. The LDSS should discuss with the adoptive parents:

- In what ways the adoptive parents feel this amount reflects their family circumstances.
- What additional information the adoptive parents can share to better understand the child's special needs and/or their family circumstances.

The LDSS makes any adjustments to the worksheet that the adoptive parents identify and shares the remaining amount of funds with the adoptive parents based on the worksheet calculation #4. This process helps the adoptive parents identify the funds they have available that may be used to help pay for special services during the negotiation process.

2.16.5 Negotiating special services payments

When the LDSS determines that the requested special services meet all requirements delineated in [Section 2.16.1](#) through [Section 2.16.4](#), the LDSS shall assess and negotiate with the adoptive parents to determine agreed upon terms for time-limited services and/or supports to meet the child's special needs. See [Section 2.10](#) on the purpose, goal, and principles to use when negotiating adoption assistance. During this process, the LDSS and adoptive parents should discuss the following factors, as well as any other relevant factors:

- How the special service is directly related to the child's documented special needs, including the impetus, duration, severity, and impact of the child's behaviors.
- The amount, duration, and cost of the special service and/or support the child requires, and the anticipated impact on the child's special needs and/or behaviors, as documented by a qualified professional.
- The adoptive parents' request for a special services payment and their reasons.
- Available resources to help meet the child's special needs and defray the costs for adoption assistance and the adoptive parents ([see Section 2.17](#)).
- The family circumstances of the adoptive parents ([see Section 2.11](#)).

- Their strengths, challenges, and capacity in meeting the child's special needs.
- Their contributions (e.g., participation, transportation) to help facilitate the success of the special service.
- The remaining funds the adoptive parents identify they have available that may be used for special services and supports (i.e., the amount they can financially afford to pay). (See [Section 2.16.4](#) and the worksheet calculation #4.) For example, the LDSS worker should inform the adoptive parents that based on the information they provided, they have "x" dollars available that may be used for special services and supports after taking into account all available resources for the child and all expenses for the child.

The LDSS should ask the adoptive parents how much they will pay from the funds they have available that may be used for special services for the child. If the adoptive parents have alternative plans for using these funds, the LDSS should ask questions such as: how do you suggest we share in the costs of meeting the child's special needs? how much will you contribute for this service? and/or how much assistance do you need for this service? The LDSS and adoptive parents should discuss options for sharing in the cost and determine an agreed upon amount, taking into other factors listed in this section.

- Requirement that the LDSS payment shall not exceed the prevailing community rate for the service ([22 VAC 40-201-160 E3d](#)).
 - For child care, the VDSS policy on maximum reimbursable child care rates should be considered, based on the type of provider, number of hours the child is in care, and the age of the child (see [Section 13.5](#) in the Foster Care Chapter).
 - For residential care, the VDSS may consider the maximum rates identified by providers in the [CSA service fee directory](#).
- The length of time for the special services payment. For example, the LDSS should ask: how long do you need this payment? what time period do you need this payment? or when will you no longer need this assistance?
- How the adoptive parents will monitor the effectiveness of the service and/or support and the progress in meeting the child's special needs, when appropriate, based on information from service providers.
- How the adoptive parents will keep the LDSS informed of progress. This information allows the LDSS and adoptive parents to assess whether to

increase, extend, reduce, and/or terminate the service based on the child's needs. When appropriate, arrangements should include, but are not limited to, the adoptive parents:

- Providing copies of periodic progress reports from service providers to the LDSS.
 - Signing consent(s) for release of information for the LDSS to obtain information from service providers (e.g., the school, therapist, residential treatment provider, intensive care coordinator).
 - Arranging and/or participating in regular meetings and/or conference calls with service providers and the LDSS.
- When the LDSS and the adoptive parents will reassess the child's service needs, if appropriate. During the reassessment, the LDSS shall ensure that all requirements for the special services payment continue to be met.

After discussing and negotiating all relevant factors for each special service, the LDSS and the adoptive parents agree upon the time-limited services and/or supports to be provided, the amount of payments, the duration of payments with beginning and end dates, and any other terms. The LDSS shall document the agreed upon terms in the adoption assistance agreement and any addendum adding special services to the agreement.

2.16.6 Additional requirements for residential treatment services

When the adoptive parents request adoption assistance funds for residential treatment services for the child, the LDSS should follow procedures for assessing special services (see [Section 2.16](#)) and requests for addendums to the adoption assistance agreement (see [Section 2.23](#)). In addition, the LDSS should follow procedures delineated in this section.

2.16.6.1 Requirements for residential treatment services

Special services payments may be used to pay for residential treatment when the LDSS determines the following requirements are met:

- Documentation from qualified professional(s) demonstrate:
 - Less restrictive services (i.e., wraparound, family-based, in-home, and community-based services) were utilized and not effective, or are clearly not appropriate at this time.
 - Residential treatment services are:

- Directly related to the child's documented special needs of the child.
- Required to provide crisis stabilization and/or intensive treatment on a time-limited basis.
- The most appropriate, least restrictive, and most effective services to meet the child's documented special needs.
- Measurable outcomes to be achieved with residential treatment in addressing the child's special needs.
- Services and/or supports that can be used to effectively transition and return the child home at the earliest appropriate time consistent with the child's special needs.
- Recent child and family assessment(s) are consistent with the child's need for residential treatment services. The assessment shall include, but is not limited to, the [Virginia Child and Adolescent Needs and Strengths Assessment \(CANS\)](#) administered within the last ninety (90) days.
- The wishes and concerns of the child about residential placement are being considered, consistent with the development level of the child.
- The adoptive parents are using residential treatment as a temporary placement for crisis stabilization or intensive treatment on a short term basis. They have developed specific plans for actively planning and participating in the child's treatment and services (see [Section 2.16.6.4](#)).
- Plans to transition and return the child home at the earliest appropriate time consistent with the child's special needs are being developed by the adoptive parents and the residential treatment provider (see [Section 2.16.6.5](#)). Adoption assistance funds shall be used only when the child is to return to the adoptive home. The only exception is when the LDSS determines the child's special needs prohibit return home and the adoptive parents demonstrate continued involvement in the child's life as a permanent member of their family (see [Section 2.16.6.4](#)).
- The FAPT or approved multidisciplinary team in the locality where the adoptive parents reside:
 - Determines less restrictive services (e.g., wraparound, family, and/or community services) are not appropriate in meeting the child's special needs at this time.

- Recommends that time-limited residential treatment is the most appropriate, least restrictive, and most effective service in meeting the child's special needs.
- Recommends services and/or supports to successfully transition and return the child home at the earliest appropriate time consistent with the child's special needs.

If the FAPT does not recommend residential treatment, special services payments cannot be used for the placement. The adoptive parents may choose whether to place the child using their own or alternative resources.

After the FAPT makes its recommendations, the FAPT no longer needs to provide additional assessments, conduct utilization reviews, or make service recommendations, unless required by CSA law/policies, or the LDSS and FAPT agree such actions will be beneficial for the child and should be conducted, consistent with CPMT policies.

- An independent physician certifies that outpatient care does not meet the child's special needs, appropriate treatment of the child's special needs requires services on an inpatient basis under the direction of a physician, and services can reasonably be expected to improve the child's special needs to prevent further regression. The FAPT may sign this independent certification. For the child who is not funded partly by CSA, the community services board in the locality where the adoptive parents reside provides the independent team certification.

2.16.6.2 Convening Family Partnership Meeting

When special services payments may be used for residential treatment, the LDSS should convene a Family Partnership Meeting to engage the family, other significant adults, service providers, and community members (see [Section 2.7](#) of the Foster Care Chapter). The purpose of the meeting is to identify wraparound, family, and community services and/or supports that may prevent the residential placement and/or facilitate return home at the earliest appropriate time consistent with the child's needs. The LDSS should schedule this meeting when it is most beneficial for the child during the process:

- At the first indication the child is at risk of residential placement.
- Prior to, or concurrently with, the FAPT or approved multidisciplinary team meeting.
- When assessing the child's needs initially for residential treatment services.

- When reassessing the child's needs for continued residential treatment.
- When planning the child's transition and return home.

2.16.6.3 Negotiating residential treatment services

When the LDSS determines the child meets the requirements for residential treatment services (see [Section 2.16.6.1](#)), the LDSS shall negotiate special services with the adoptive parents and determine agreed upon terms using the factors listed in [Section 2.16.5](#). In addition, the LDSS and adoptive parents should also discuss the following factors:

- The specific services and supports that meet the child's special needs to be provided, including:
 - Residential treatment services.
 - Wraparound, family, and/or community services and/or supports necessary to successfully transition the child home.
 - Appropriate educational services for the child. The adoptive parents should discuss with the child's local school the child's educational needs and the most appropriate ways to meet those needs.
 - Intensive care coordination services arranged or provided by the community services board, when appropriate (see Virginia Department of Behavioral Health and Development Services' [website](#)).
- The plans of the adoptive parents to actively participate in the child's treatment and return home at the earliest appropriate time that addresses the child's needs (see [Section 2.16.6.4](#)).
- Services payments for residential treatment services should be made for no longer than three (3) months at a time. The LDSS and adoptive parents should assess the child's situation on a monthly basis, and more frequently when required for the child's special needs. The purpose is to assess progress, continued need for residential treatment, and any changes in needed services and/or supports.
- When the adoptive parents are receiving an enhanced maintenance payment on behalf of the child, the LDSS and adoptive parents assess the additional supervision and support the child requires from the adoptive parents when the child is placed outside of the home receiving residential treatment services (see [Section 2.13](#)).

After discussing all relevant factors, the LDSS negotiates with the adoptive parents to determine the agreed upon terms for special services payment. The LDSS shall document the agreed upon terms in the adoption assistance agreement and in any addendum.

2.16.6.4 Responsibilities of adoptive parents

When special services payments are used for residential treatment services, the adoptive parents are responsible for actively planning, supporting, and participating in service delivery to help facilitate positive outcomes. The adoptive parents should:

- Provide the child emotional support during the transition, treatment, and services.
- Participate in treatment planning, including:
 - Researching the most appropriate residential placement for the child.
 - Obtaining pre-admission screening materials and providing all required information to meet Medicaid requirements when applicable.
 - Providing the residential treatment program relevant background and service history information about the child.
 - Arranging and participating in a pre-placement visit with the child.
 - Negotiating rates and entering into a placement agreement with the service provider. The adoptive parents shall provide the LDSS a copy of the agreement for the child's adoption assistance paper case record.
 - Arranging trial home visits to prepare for the child returning home.
 - Transitioning and returning the child home at the earliest appropriate time that addresses the child's needs.
- Participate actively in treatment and services at the residential treatment program, at home, and in the community.
 - Visit the child frequently and regularly based on the child's best interests and treatment plan. The adoptive parents shall visit the child at least once each month and should visit more frequently.

- Communicate frequently and continuously through phone calls, email, social media, and/or letters.
- Help maintain important relationships for the child through arranging visits and frequent communication with family, friends, school, religious, spiritual, and other cultural and community connections.
- Provide funds for the child's use during the placement (e.g., allowance, clothing, personal incidentals, and recreational activities).

The agreed upon terms for specific responsibilities of the adoptive parents shall be documented in the addendum to the adoption assistance agreement.

2.16.6.5 Discharge and aftercare planning

The LDSS and adoptive parents should begin planning the child's return home before the child is placed in the residential treatment program and continue throughout the placement. The goal is to successfully return the child home at the earliest appropriate time that addresses the child's special needs.

Transition services and/or supports designed to successfully re-integrate the child home should be implemented concurrently with the residential treatment services when appropriate. Aftercare services and/or supports should be provided to ensure the child is stable in the adoptive home as needed.

The LDSS should actively engage the adoptive parents, the child, other members of the adoptive family as appropriate, treatment and service providers, the LDSS in the locality where the adoptive parents reside, and any other appropriate community members in this process.

When necessary, the LDSS should determine whether the adoptive parents are committed to the child returning home, based on the following and other relevant factors. The adoptive parents are:

- Demonstrating commitment to maintaining a life-long relationship with the child as a permanent member of their family.
- Using residential placement consistent with the child's special needs (e.g., crisis stabilization, short-term intensive treatment), not as a permanent placement for the child.
- Participating actively in the residential treatment, family, and community services.

- Maintaining regular and frequent communication and visits with the child (see [Section 2.16.6.4](#)).
- Planning actively for the child to return home at the earliest appropriate time based on the child's needs.

When the LDSS determines that the adoptive parents do not want the child to return home, the LDSS should, as appropriate:

- Assess the child's permanency and special needs.
- When appropriate, provide special services payments to prevent the adoption from dissolution and/or foster care prevention services to prevent the child from coming into foster care and strengthen the adoptive family. If the adoption dissolves, the LDSS in the locality where the adoptive parents reside may be ordered to assume the child's custody. This LDSS may also provide foster care prevention services when appropriate. The LDSS with responsibility for adoption assistance and the LDSS where the adoptive parents reside should collaborate closely.
- Diligently search for relatives and significant adults, actively engage adoptive and birth family members and other significant individuals. Convene a Family Partnership Meeting to brainstorm solutions and/or find a permanent home and lifelong connections for the child (see [Section 2](#) of the Foster Care Chapter).
- Explore all available community resources to ensure appropriate services are provided, including services for older youth who have significant disabilities (see [Section 2.17](#)).

2.16.7 Selecting providers

The adoptive parents have the right and responsibility for selecting the provider they feel is most appropriate for their child. However, adoption assistance special services payments shall be used to pay for specific types of providers delineated below, when applicable. The adoptive parents may choose whether to use these providers or use their own or alternative resources to pay for other providers.

The adoptive parents:

- Shall use providers through 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 (see [Section 2.16.3](#)).

- Shall use fully licensed, regulated, approved, or accredited providers. The LDSS should assist the adoptive parents in verifying status:
 - For child day care facilities, including therapeutic child day care programs:
 - See information on types of [child day care facilities](#).
 - See [search for a facility](#).
 - For residential treatment programs:
 - See [VDSS website](#) or contact the Child Welfare Unit of the Division of Licensing Programs at (804) 662-7053.
 - See [VDBHDS website](#) or contact the Office of Licensing at 786-1747.
 - To obtain a current listing of licensed child caring institutions, contact the Child Welfare Unit of the Division of Licensing Programs at (804) 662-7053. These facilities licensed under the VDSS Minimum Standards for Licensed Child Caring Institutions are statutorily prohibited from receiving public funds ([§ 63.2-1737](#)).
- Shall not place children in a residential facility when its licensure status is lowered to provisional as a result of multiple health and safety or human rights violations, until the violations and deficiencies are completely remedied and full licensure status is restored ([§ 2.2-5211.1](#)).
- Shall use therapeutic summer camps that are fully accredited by an external organization for achieving safety and professional industry standards in serving individuals with special needs.

The LDSS should discuss with the adoptive parents factors they may want to consider when selecting a provider.

- For child care providers, see factors listed in [Section 13.5.1](#) in the Foster Care Chapter.
- For residential treatment programs, see characteristics correlated with long-term positive outcomes for children in [Section 6.15.1](#) of the Foster Care Chapter.

The LDSS may refer the adoptive parents to providers. The adoptive parents are responsible for ensuring provider qualifications.

2.17 Assessing resources to defray costs

When assessing and negotiating maintenance and special services payments for adoption assistance, the LDSS and adoptive parents should consider all relevant resources in this section as well as other applicable resources.

The LDSS and the adoptive parents shall assess all available family, health insurance, community, government, and other resources to help meet the child's special needs and defray the costs for adoption assistance and the adoptive parents ([22 VAC 40-201-160 D](#)) and [§ 63.2-1302 A](#)). The LDSS shall document the resources explored and the results in the OASIS case contacts.

When these resources are appropriate and available to meet the child's special needs, adoption assistance funds shall not be used for services. The adoptive parents may choose whether or not to use the resources.

2.17.1 Child's health insurance

The LDSS shall explore all services covered by the child's health insurance before using adoption assistance funds and shall document the results in the OASIS case contacts.

- [Medicaid](#) or [FAMIS](#). For example, Medicaid provides:
 - Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) (see [Section 13.8.3.6](#) in Foster Care Chapter).
 - Medicaid services (see [Section 13.8.3.5](#) in Foster Care Chapter).
 - Dental services (see [Section 13.8.3.7](#) in Foster Care Chapter).
 - Mental health treatment and intellectual disability services (see [Section 13.8.3.8](#) in Foster Care Chapter).
 - Long-term care services (see [Section 13.8.3.9](#) in Foster Care Chapter), including:
 - Intellectual Disability (ID) Waiver.
 - Home and Community-Based Care Waivers
 - Individual and Family Developmental Disabilities Support (IFDDS or DD) Waiver
 - Elderly or Disabled with Consumer Direction (EDCD) Waiver

For more information on waivers, see DMAS website on [Waiver Services](#) and its resource, "[A Guide for Long-Term Care Services in Virginia](#)."

- For a complete listing and description of covered and non-covered services, see the [Medicaid and FAMIS-Plus Handbook](#).
- For questions, contact a [Regional Medical Assistance Program Consultant](#).
- [TRICARE](#) provides health care coverage for families of Uniformed Service members and retirees through several health plan options, a pharmacy benefit, dental options and other special programs. See [TRICARE Benefits Explained](#).
- The [Civilian Health and Medical Program of the Department of Veterans Affairs \(CHAMPVA\)](#) provides health care for certain dependents and survivors of Veterans and eligible Reservists and National Guard members.
- Employer-based health plan.
- Self-employed health plan.

2.17.2 Family preservation services for adoptive families

- The [Adoption Family Preservation \(AFP\) Program](#) provides case management, counseling, crisis intervention, parent support groups, and children's support/activity groups through regional sites at no cost for any adoptive family in Virginia. The adoptive parents access this program funded by VDSS by calling toll-free 1-888-821-HOPE.

2.17.3 Children's special needs

- The [Infant & Toddler Connection of Virginia](#) provides early intervention supports and services to infants and toddlers from birth through age two who are not developing as expected or who have a medical condition that can delay normal development. To determine eligibility, the child's development is evaluated by at least two professionals from different professions or areas of development. When eligible, the family and professionals develop an Individualized Family Service Plan (IFSP).
- The [Children with Special Health Care Needs \(CSHCN\) Program](#) by the Virginia Department of Health promotes optimal health and development of Virginia's children with special health care needs by working in partnership with families, service providers, and communities.
 - [Care Connection for Children](#) is a statewide network of Centers of Excellence for children with special health care needs. The [centers](#)

provide access to specialty medical services; assistance coordinating care and services; assistance in obtaining health insurance for the child; information and referral to community resources; family-to-family support; and training and consultation with community providers.

- [Child Development Services Program](#) is a specialized program for children and adolescents who are suspected of having developmental and behavioral disorders. A professional team, with a pediatrician, nurse, social worker, educational consultant, and psychologist, provides services. Core services of the [child development clinics](#) include diagnostic assessment and care planning, follow-up care coordination and referral.
- The [Comprehensive Services Act for at Risk Youth and Families \(CSA\)](#) provides child-centered, family-focused, and community-based services for eligible youth and their families in the least restrictive environment that protects the welfare of children and maintains public safety. The state and localities are required to provide special education and foster care services for specific children listed below ([§ 2.2-5211 C](#)). When funds are available, localities may serve other children who have emotional or behavioral problems and multiple agency involvement.
 - Children who are placed for purposes of special education in approved private school educational programs ([§ 2.2-5211 B1 and C](#)).
 - Children with disabilities placed by LDSS or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities ([§ 2.2-5211 B2 and C](#)).
 - Children who are abused or neglected, and children in need of services, and their families are eligible for mandated foster care services when the children:
 - Have been identified as needing services to prevent or eliminate the need for foster care placements; or
 - Have been placed through an agreement between either the LDSS or the public agency designated by the CPMT and the parents or guardians who retain legal custody; or
 - Have been committed or entrusted to an LDSS or licensed child-placing agency by the court ([§ 2.2-5211 B3 and C](#) and [§ 63.2-905](#)).

- Forty (40) [Community Services Boards](#) (CSBs) provide the point of entry for the publicly-funded system of mental health, intellectual disability, and substance abuse services.

2.17.4 Older youth with significant disabilities

- **Vocational Rehabilitation (VR) Transition Services** with the Virginia Department for Aging and Rehabilitative Services (DARS) help youth with significant disabilities develop skills and formulate plans to move from high school to an adult life, including opportunities for employment, higher education, independent living, and community involvement. Referrals of students for DRS services often come from school personnel to the VR Counselor assigned to their school district. Referrals should be made three years prior to the youth leaving school and written into the student's Individual Education Plan (IEP). See [DARS Transition Services](#) and [DARS office locations](#).
- **LDSS Adult Services** are provided to impaired adults age 18 or older, and to their families when appropriate. The adoptive parents should talk with an LDSS Adult Services worker at the first indication the youth may require long-term services and supports and may not have the resources or adequate assistance from other sources to meet his or her needs. For information on referring and transitioning older youth, assessing benefits and other resources, and general information on Adult Services, see [Section 14.14](#) in the Foster Care Chapter. For more complete information, see the [Adult Services Manual webpage](#).

2.17.5 Educational and related services needs

The LDSS shall explore all educational and related services provided by the public school system before using adoption assistance funds. According to the Virginia Department of Education based on its statutes and regulations:

- **Remedial education** is a program designed to remedy, strengthen, and improve the academic achievement of students who demonstrate substandard performance. Some remedial services may be available from the child's public school in the local school division.
- **Special education.** Local school divisions are mandated by law to provide, without cost, instruction specifically designed to meet the unique needs of children with disabilities, ages 2 through 21 ([§ 22.1-214](#)).

Special education means specially designed instruction, at no cost to the parent(s), to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes

each of the following if it meets the requirements of the definition of special education:

- Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards.
- Vocational education.
- Travel training ([§ 22.1-213](#); [34 CFR 300.39](#)); and [8 VAC 20-81-10](#)).

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes.

Related services also include school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education.

Nothing in this section:

- Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE;
- Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
- Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly ([§ 22.1-213](#); [34 CFR 300.34](#) (a) and (b); and [8 VAC 20-81-10](#)).

Local school divisions are responsible for paying for services and placement identified on the child's [Individualized Education Plan \(IEP\)](#) when the child is placed within the school system or regional special education program.

If the adoptive parents have any concerns or disagreements about the child's special education program or implementation of the special education procedures, they should first contact the director of special education in the local school division for resolution. If resolution is not achieved at the local level, the adoptive parent may contact the Virginia Department of Education's Dispute Resolution and Administrative Services unit in the [Division of Special Education and Related Services](#) for more information about mediation, complaints, and due process hearings.

- **Section 504** means the section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance (29 USC § 701 et seq.; [8 VAC 20-81-10](#)).

Students with disabilities or eligible students mean any student who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment ([34 CFR §104.3](#) (j)).

Section 504 does not include a specific list of categories of disabilities with strict eligibility criteria. Rather, the categories are very broad. Specific physical or mental impairments are not listed in the 504 regulations, because there is difficulty...ensuring the comprehensiveness of any such list. Section 504 impairments may include: ADD, ADHD, allergies, diabetes, multiple chemical sensitivity, obesity, pregnancy, social maladjustment, and specific learning disability.

Both IDEA and Section 504 require that children with disabilities (or who are suspected of having a disability) be evaluated. Which assessments are completed must be determined based on the child's suspected disability. The evaluation process must be nondiscriminatory in nature, and it must be comprehensive, reviewing information from a variety of sources. The test must be validated (appropriate for intended use), administered by trained personnel, more than general IQ tests, and administered so that handicapping condition does not impair test accuracy. A Section 504 Education Plan must be developed for an eligible child to incorporate services and accommodations needed in the educational setting.

For additional information, see the Virginia Department of Education's [Section 504: Keys to Implementation in Virginia's Schools](#). Adoptive parents should discuss with the child's school whether or how Section 504 may apply.

- The [Parent Educational Advocacy Training Center \(PEATC\)](#) assists families of children with disabilities by providing education, information, and training. PEATC builds respectful, collaborative partnerships between schools, professionals and the community to promote success in school and community life for children with disabilities.
- The [Virginia Department of Education's Transition Services website](#) provides support, information and resources designed to improve the outcomes of students with disabilities in transition from middle/secondary education to postsecondary education and employment.

Private education. While payment for private school placements is not provided through adoption assistance, the adoptive parents may seek out private school options using alternative funds.

2.17.6 Post secondary education and training

The adoptive parents may consider the costs of post secondary education and training when assessing the child's needs for adoption assistance. The LDSS should inform the adoptive parents about the following resources that can help defray costs.

- [Tuition Assistance Grant Program](#) assists Virginia residents who attend accredited private, non-profit colleges and universities in Virginia, for purposes other than religious training or theological education.
- [Education and Training Vouchers \(ETV\) Program](#) assists eligible youth adopted at age 16 and older with post-secondary education and training expenses. It is designed to help youth aging out of foster care with the education, training, and services needed for employment and self sufficiency. Funding for the program is supplied through vouchers that can be applied toward, but not limited to, colleges, universities, community colleges, and one-year training institutions. Youth shall first use the [Free Application for Federal Student Aid \(FAFSA\)](#) website and utilize the [FAFSA tip sheet](#) when completing the application.
- Virginia Community College System:

- Great Expectations Program provides transitional support to teens in foster care to help them complete high school and gain access to a community college education. This program is offered in several community colleges across the state. Coaches and mentors can provide assistance, offer encouragement, and help youth reach their goals. The [online resource directory and website](#) serves as a central clearinghouse for current and former foster youth, LDSS staff, counselors and career coaches, and foster and biological parents, giving them easy access to all services provided. The website provides additional information on and links to [funding and scholarship opportunities](#).
- [Tuition Grant Program](#) assists with tuition and fees at any Virginia Community College for youth who graduated from high school or completed their general education development (GED) and who are considered special needs adoption, based on financial need.
- [Foster Care To Success](#) provides college funding and support for college-bound youth in foster care. It administers [scholarships and grants](#) for former youth in foster care to achieve a meaningful postsecondary education. They provide tuition grants, book money, living stipends, and emergency funding for unexpected expenses. They also provide academic coaches, personal mentors, care packages and internship opportunities.
- [Federal Student Aid](#) provides free information on the website from the U.S. Department of Education on preparing for and funding education beyond high school.
- [SmartStudent Guide to Financial Aid](#) is a website with comprehensive annotated collections of information about student financial aid, including a financial aid calculator for determining costs.

2.18 Resolving issues during negotiation

When the LDSS and adoptive parents cannot reach consensus during the assessment and negotiation process, the LDSS should make every attempt to resolve the issues.

The LDSS should listen carefully to the concerns, needs, and reasons of the adoptive parents to understand their perspectives. The LDSS should identify opportunities for correcting misunderstandings, brainstorming options, and/or developing reasonable solutions. The LDSS should examine, as applicable to the specific situation:

- Federal and state legal requirements (see [Section 2.2](#) and links to specific laws, regulations, and policies located in relevant sections).
- The purpose and principles of negotiation (see [Section 2.10](#)).

- Information the adoptive parents provided in their [Virginia Application for Adoption Assistance](#) and/or from the [Virginia Worksheet for Assessing and Negotiating Adoption Assistance](#).
- Factors considered in assessing and negotiating the specific component of adoption assistance (see [Section 2.11](#) through [Section 2.16](#)).

As appropriate and when beneficial, the LDSS should involve the LCPA, the LDSS supervisor, another LDSS designee, a neutral third party mediator, and/or any other appropriate persons to meet with the adoptive parents and the LDSS staff person responsible for negotiations to help resolve the issues.

The adoptive parents may choose to involve other person(s) to help resolve the issues during discussions.

Through these efforts, when the LDSS and adoptive parents agree on the final negotiated terms, the LDSS documents the agreed upon terms in the [Virginia Adoption Assistance Agreement](#).

When the LDSS and the adoptive parents still cannot reach consensus after the LDSS makes concerted efforts to resolve the issues, the LDSS should make its determination using relevant information examined above. The LDSS should document the issues using the Summary of Facts (see [Section 2.25.3](#)). This summary must be developed if the adoptive parents appeal the decision. The LDSS should include the request of the adoptive parents, the determination of the LDSS, the basis for its determination, and the adoptive parents' stated reasons for the lack of consensus. Detailed information is critical should the adoptive parents appeal the LDSS decision.

The LDSS should meet with the adoptive parents and summarize the issues in which they agreed and did not agree. The LDSS should explain its determination on the issues in which they did not agree.

The LDSS shall offer the adoptive parents an adoption assistance agreement based on the agreed upon terms and inform the adoptive parents how to exercise their right to appeal LDSS decisions on issues they did not reach consensus (see [Section 2.25](#)). The adoptive parents may choose to execute the agreement. They may also appeal if they are aggrieved by the LDSS decisions.

The LDSS shall provide a written notice of action to the adoptive parents documenting LDSS action on the adoptive parents' application for adoption assistance. This notice shall be provided within ninety (90) days from the date the LDSS received the completed [Virginia Application for Adoption Assistance](#) with all required documentation. It shall include information about the adoptive parents' right to appeal any LDSS decisions within thirty (30) days of their receiving written notice of the decisions and their right to a fair hearing.

The LDSS shall place copies of the Summary of Facts and the notice of action in the child's adoption assistance paper case record.

2.19 Adoption Assistance Agreement

2.19.1 Developing the agreement

When the LDSS and the adoptive parents agree on the terms of payments and/or services for adoption assistance, the LDSS prepares the adoption assistance agreement.

The LDSS shall use the [Virginia Adoption Assistance Agreement \(22 VAC40-201-160 A\)](#). The agreement includes, but is not limited to:

- The child's documented special needs.
- The agreed upon terms of adoption assistance, including the type, duration, and amount of assistance to be provided.
- Process for requesting changes through an addendum to the agreement.
- Requirements that the adoptive parents:
 - Document that a school age child is enrolled full-time in school or that the child has completed secondary school.
 - Submit an annual affidavit.
 - Submit written notification of changes when:
 - Their address changes.
 - The child is incapable of participating in school full-time due to a medical condition documented by a qualified professional.
 - There are changes in the child's special needs and/or family circumstances of the adoptive parents that may change the amount of adoption assistance received.
 - The child is no longer eligible for adoption assistance.
- Circumstances for terminating services, funding, and the agreement.
- Process for appealing decisions.
- Process for continuing adoption assistance when the adoptive parents and the child move to another jurisdiction in Virginia or to another state.

- Effective and expiration dates of the agreement.
- Signatures of all parties and dates.

The agreement shall include the following components, when appropriate for the child who is eligible for adoption assistance maintenance payments through:

- Title IV-E funds prior to the final order of adoption:
 - Maintenance (basic and/or enhanced) paid from Title IV-E funds.
 - Title IV-E Medicaid.
 - Non-recurring adoption expenses paid from Title IV-E funds.
 - Special services payments paid from state funds.
 - The agreement shall be signed and in effect prior to, or at the time of, the final order of adoption ([45 CFR 1356.40](#)).
- State funds prior to the final order of adoption:
 - Maintenance (basic and/or enhanced) paid from state funds.
 - Indication that the child has a special medical or rehabilitative need for Medicaid purposes.
 - Non-recurring adoption expenses paid from Title IV-E funds.
 - Special services payments paid from state funds.
 - The agreement shall be signed and in effect before the final order of adoption ([22 VAC40-201-160 F](#)).
- State funds after the final order of adoption:
 - Maintenance (basic and/or enhanced) paid from state funds.
 - Special services payments paid from state funds.

2.19.2 Executing the agreement

When the local board, or its designee, approves the agreement, all parties sign the document. The local board does not have authority to deny an adoption assistance agreement for an eligible child. Signatures shall include the local board representative, or designee, the adoptive parents, and the LCPA when the child is in

LCPA custody. The signed agreement is legally binding on all parties ([Social Security Act, Title IV, § 475 \(3\) \[42 USC 675\]](#); and [§ 63.2-1302 C](#)).

The agreement shall be signed and in effect prior to, or at the time of, the final order of adoption when federal Title IV-E adoption assistance funds are used ([45 CFR 1356.40](#)).

The agreement shall state the effective date. This date shall not be earlier than the date when all parties signed the agreement. This date shall be no later than the date the final order of adoption is signed by the judge when the agreement is entered prior to adoption finalization. The agreement is executed on behalf of the child on the effective date stated in the agreement. The LDSS shall only provide payments and services after all parties have signed and dated the agreement and when the agreement is in effect.

The LDSS shall give the parents a copy of the signed agreement. The LDSS shall keep the original agreement and all supporting documents in the child's adoption assistance paper case record.

The LDSS shall discuss with the adoptive parents how they may request changes at any time during the duration of the agreement (see [Section 2.23](#)). The LDSS shall give the adoptive parents a copy of the [Request for an Addendum to the Virginia Adoption Assistance Agreement](#).

2.20 Payment and services

Payments and services shall only be provided to parents who have entered into a written, signed, and executed adoption assistance agreement on behalf of an adopted child with special needs.

Once the adoption assistance agreement is executed and the child is adopted, the adoptive parents have the right to make decisions on behalf of the child without further LDSS approval or oversight. Once an adoption assistance agreement is in effect, the parents may use adoption assistance funds as they determine appropriate ([Federal Child Welfare Policy Manual, Subsection 8.2D.1 #1](#)). The only exception to these two statements is when state special services payments are made. While parents continue to have the right to make decisions related to the child, state special services payments shall be used and monitored in accordance with the negotiated and agreed upon terms delineated in the signed adoption assistance agreement and any addendum in effect.

2.20.1 Beginning payments and services

- For the child who is in foster care with the LDSS or LCPA, payments and/or services may begin as soon as the adoptive home placement agreement and the adoption assistance agreement are signed by all parties and in effect. A

final order of adoption is not necessary to begin making payments or reimbursing expenses.

- For the child who is not in foster care with the LDSS or LCPA, payments shall begin after the adoption assistance agreement is signed by all parties and on the date the final order of adoption is signed by the judge. For example, this includes the child who is being subsequently adopted after the adoptive parents die; close relative adoptions when the child is eligible for adoption assistance; and the SSI eligible child.

2.20.2 Making maintenance payments

Maintenance payments shall be made directly to the parents on a monthly basis.

- It is the service worker's responsibility to:
 - Enter the appropriate funding source and type into OASIS.
 - Accurately communicate the appropriate funding source to the individual(s) responsible within the LDSS for entering all funding information into the financial system and LASER.
- Title IV-E maintenance payments for the Title IV-E eligible child shall be paid from federal Title IV-E funds. The LDSS shall report maintenance payments for all children eligible for Title IV-E adoption assistance maintenance funds in Budget Line 812.
 - Title IV-E **basic** maintenance shall be entered into Cost Code 81201.
 - Title IV-E **enhanced** maintenance shall be entered into Cost Code 81203.
- State maintenance payments shall be paid for the non-IV-E eligible child only from state general funds. The LDSS shall report maintenance payments for all children eligible for state adoption assistance maintenance funds in Budget Line 817.
 - State **basic** maintenance shall be entered into Cost Code 81702.
 - State **enhanced** maintenance shall be entered into Cost Code 81703.
- Additional information regarding adoption budget lines and cost codes are available in the [Finance Guidelines Manual](#)).

The LDSS shall increase the basic maintenance payment when the child reaches a higher age grouping (see [Section 17.1.3](#) of the Foster Care Chapter) and when

statewide increases are approved ([22 VAC 40-201-160 E2c](#)). When the adoptive parents have requested to receive less basic maintenance than the maximum available rate, the LDSS increases the agreed upon payment amount by the same percentage amount used to calculate the increase in the maximum foster care maintenance payments, as documented in the executed adoption assistance agreement.

There is no need for the LDSS and adoptive parents to execute an addendum to the existing agreement for the increased basic maintenance payment amount. The LDSS shall inform the adoptive parents in writing of the reason for the increase, the new amount, and the effective date for the increased basic maintenance payment. Both adoptive parents on an active adoption assistance agreement shall be notified, including parents who are separated or divorced. The LDSS shall place a copy of this notification in the adoption assistance paper case record.

2.20.3 Making non-recurring adoption expense payments

Payments for nonrecurring expenses shall be made by the LDSS directly to service providers or to the adoptive parents ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#)).

Payment and reimbursement shall be for types of expenses delineated in the adoption assistance agreement and shall:

- Not exceed \$2,000 per child per adoptive placement.
- Be paid from Title IV-E funds regardless of whether the child is eligible for Title IV-E or state maintenance payments.
- Be based on actual costs of services ([22 VAC 40-201-160 E1](#)). Costs shall be documented in bills and/or receipts submitted to the LDSS by the adoptive parents and/or vendors.
 - The actual costs may differ from the estimated costs in the agreement.
 - The adoptive parents should submit copies of bills and/or receipts no later than six (6) months after the expense was incurred, or six (6) months after the adoption was finalized.
 - Payments shall be made regardless when bills and receipts are submitted.

Payments may be made on behalf of the child in an adoptive placement prior to the final order of adoption when there is a signed adoption assistance agreement in effect between the LDSS and the adoptive parents ([22 VAC 40-201-160 E1b](#); and [Federal Child Welfare Policy Manual, Subsection 8.2D.3 #6](#)). If the adoption

disrupts, non-recurring expenses incurred shall be paid to the adoptive parents in accordance with the adoption assistance agreement. Non-recurring adoption expenses may then be provided on behalf of the child in a subsequent adoptive placement when the LDSS establishes the child has special needs and is eligible for adoption assistance and a new adoption assistance agreement is executed.

LDSS shall maintain bills and receipts submitted by the adoptive parents for reimbursement in the child's adoption assistance paper case record. These bills and receipts may be copies, consistent with local finance procedures.

Non-recurring adoption expense payments shall be paid solely from federal Title IV-E funds for all children receiving adoption assistance, regardless of whether the child is eligible for Title IV-E or state adoption assistance maintenance. Payments are made from Budget Line 812, Cost Code 81202 (see the [Finance Guidelines Manual](#)).

LDSS staff time for adoptive home recruitment, completion of reports of investigations and visitations, home-studies, or any other direct services are not billable to non-recurring expenses.

2.20.4 Making special services payments

Special services payments shall be paid solely from state funds, regardless of whether the child is eligible for Title IV-E or state adoption assistance maintenance. The LDSS shall report payments in Budget Line 817, Cost Code 81701 (see the [Finance Guidelines Manual](#)).

- The LDSS may reimburse the adoptive parents or pay the service provider directly. The adoptive parents carry ultimate liability for the payment of expenses incurred for which they agree to pay directly.
- A bill or receipt documenting the actual cost of services shall be submitted to the LDSS before payment is made. The adoptive parent(s) should submit bills or receipts within thirty (30) days of incurring the expense. The LDSS shall inform adoptive parents of local payment procedures on time limits for paying bills or receipts submitted after thirty (30) days.
- Special services payments shall be documented in OASIS. They shall not be included with maintenance payments.
- The LDSS is not responsible for any special services expenses that have not been agreed upon and documented in the signed agreement or addendums in effect. The adoptive parents shall be responsible for payments when:
 - Expenses are incurred by the adoptive parents prior to the agreement or addendum.

- The adoptive parents utilize different services, utilize services for a longer period of time, or exceed the costs for services documented in the agreement or addendum.
- The specified timeframe ends for the service and/or support payment in the agreement or addendum.

2.21 Maintaining responsibilities

As delineated in the binding adoption assistance agreement, the adoptive parents and the LDSS maintain ongoing responsibilities.

2.21.1 Responsibilities of the adoptive parents

The adoptive parents who receive adoption assistance payments shall:

- Notify the LDSS when their address changes.
- Inform the Social Security Administration when the child is receiving both Supplemental Security Income (SSI) payments and adoption assistance payments.
- Submit an annual affidavit to the LDSS within thirty (30) days of the anniversary date that the adoption assistance agreement was executed (i.e., the effective date stated in the agreement) (see [Section 2.22](#)) (§ [63.2-1302.C](#)).
- Provide the child's school enrollment status when the child reaches the age of compulsory school attendance ([Social Security Act, Title IV, § 471 \(a\) \(30\) \[42 USC 671\]](#)).
- Notify the LDSS if the child is incapable of participating in school full-time due to a medical condition ([Social Security Act, Title IV, § 471 \(a\) \(30\) \[42 USC 671\]](#)). Submit documentation by a qualified professional and submit quarterly updates on the child's medical condition to the LDSS.
- Notify the LDSS when there are changes in the child's special needs and/or in the family circumstances of the adoptive parents that may change the amount of adoption assistance the child receives:
 - The child is receiving Social Security payments.
 - The amount of additional supervision and support the child requires from the adoptive parents changes.

- One of the adoptive parents in a two-parent family becomes disabled or dies or the adoptive parents become divorced
- Notify the LDSS immediately in writing when the child is no longer eligible for adoption assistance:
 - The adoptive parents are no longer legally responsible for the child's care.
 - The adoptive parents are not providing financial support for the child.
 - The child becomes an emancipated minor, is married, is deceased, or enlists in the military.
 - The adoptive parents die (i.e., two parents die in a two-parent family, or one parent dies in a one-parent family). The adoptive parents should make arrangements for the LDSS to be notified in the event of their death [Social Security Act, Title IV, § 473 \(a\) \(4\) \[42 USC 673\]; § 63.2-1302 B](#); and [Federal Child Welfare Policy Manual, Subsection 8.2D.5](#)).
- Submit copies of bills and/or receipts for expenses that the LDSS pays related to non-recurring adoption expenses and special services payments (see [Section 2.20](#)).

2.21.2 Responsibilities of LDSS responsible for adoption assistance

The LDSS that is responsible for adoption assistance (see [Section 2.3](#)) shall:

- Maintain responsibility for payments and/or services as specified in the adoption assistance agreement, and any addendum in effect, regardless of where the adoptive parents and the child reside.
 - When the adoptive parents move to another Virginia locality, the LDSS may request assistance from the LDSS or another child serving agency (e.g., LCPA, community services board) in the locality in providing services delineated in the adoption assistance agreement. The LDSS remains responsible for the payment of services, when applicable.
 - When the adoptive parents move to another state, the adoptive parents may apply for special services on behalf of the child in their new state of residence. When the child requires a service specified in the original adoption assistance agreement with the LDSS that is not available from the public child welfare agency in the new state, the LDSS remains responsible for payment of the specified service ([45 CFR 1356.40 \(d\)](#)).

- Assist the adoptive parents in coordinating services to meet the child's special needs related to the adoption assistance agreement upon request.
- Provide services to prevent disruption and strengthen family well-being when requested, such as:
 - Crisis intervention.
 - Assessment.
 - Counseling, support, and advocacy.
 - Information and referral to appropriate services and/or providers.
 - Referral to the [Adoption Family Preservation \(AFP\) Program](#) (See [Section 2.17.2](#)).
 - Adoption assistance services directly related to meeting the child's special needs.
- Assess requests for addendums to the adoption assistance agreement from the adoptive parents.
- Inform adoptive parents in writing that they have the right to appeal decisions related to granting, denying, changing, or discontinuing adoption assistance payments and services within thirty (30) days of their receiving written notice of LDSS decisions.
- Notify the adoptive parents who are receiving adoption assistance in writing when:
 - The annual affidavit is due (see [Section 2.22](#)).
 - The child has reached a higher age grouping in foster care policy or there are statewide increases in the basic maintenance adoption assistance payments and their payment is being increased as delineated in the adoption assistance agreement (see [Section 2.20.2](#)).
 - The child has a basic and/or enhanced maintenance payment that is time-limited (see [Section 2.12](#) and [Section 2.13](#) respectively).
 - The adoption assistance agreement is terminated (see [Section 2.24.3](#)).
- Maintain the child's adoption assistance case in OASIS and in the child's adoption assistance paper case record.

2.21.2.1 No redetermination of Title IV-E eligibility for adoption assistance

When the child is receiving Title IV-E adoption assistance maintenance payments, there is no need for the LDSS to redetermine the child's eligibility for Title IV-E adoption assistance. Once the child has been determined eligible to receive Title IV-E adoption assistance, the child's eligibility continues until the adoption assistance agreement is terminated. While the child's initial eligibility may be based in part on the child's eligibility for other programs that require redeterminations (e.g., Medicaid, Aid to Families with Dependent Children, and Supplemental Security Income), redetermination is not necessary for the purpose of maintaining the child's eligibility for Title IV-E adoption assistance ([Federal Child Welfare Policy Manual, Subsection 8.2B.9 #1](#))

2.21.3 Responsibilities of LDSS where adoptive parents reside

When the adoptive parents and child live in a different locality from the LDSS that is responsible for adoption assistance, the LDSS responsible for adoption assistance is responsible for coordinating activities related to the adoption assistance agreement, in collaboration with the adoptive parents. The LDSS in the locality where the adoptive parents reside should assist the LDSS that has responsibility for adoption assistance when requested by the LDSS.

When the adoptive parents request assistance related to the adoption assistance agreement, the two agencies should establish a collaborative process of coordinating assistance that most effectively meets the child's special needs. This process should include strategies for communicating information, including services requested, actions taken, and any issues that need to be resolved.

When requested, the LDSS in the locality where the adoptive parents reside should assist the LDSS that has responsibility for adoption assistance in:

- Obtaining family-based and community services for the child related to the adoption assistance agreement, such as:
 - Providing information and referral.
 - Identifying appropriate services and/or supports.
 - Arranging for a Family Partnership Meeting with appropriate resources available in the community.
 - Providing service coordination as long as the child is before the Family Assessment and Planning Team (FAPT), including:
 - Arranging the team meeting.

- Notifying the adoptive parents of the date and time.
- Providing information and supporting documents about the child and family to the team, in collaboration with the adoptive parents.
- Presenting the case to FAPT and participating in the meetings.
- Providing foster care prevention services when the adoption is at risk of dissolution to prevent the child from entering foster care, such as:
 - Crisis intervention.
 - Assessment.
 - Counseling, support, and advocacy.
 - Information and referral to appropriate services and/or providers.
- If the adoption dissolves, the LDSS where the adoptive parents reside may receive the child's custody as a result of a judicial determination, entrustment, or non-custodial foster care agreement. Therefore, it is important that the LDSS work closely with the LDSS that is responsible for adoption assistance.

As described in this section, the LDSS should work similarly in collaboration with the public child welfare agency from another state that is responsible for adoption assistance when the child resides in its locality.

2.21.4 Responsibilities of LDSS when abuse or neglect

Allegations of abuse and neglect in the adoptive family shall be treated the same as any other such reports, in accordance with the [Child Protective Services Chapter C](#).

2.22 Annual affidavit

The adoptive parents shall submit an annual affidavit to the LDSS within thirty (30) days of the anniversary date that the adoption assistance agreement was executed (i.e., the effective date stated in the agreement) (§ [63.2-1302.C](#)). The LDSS shall use the [Virginia Annual Affidavit for Adoption Assistance](#).

The LDSS shall notify the adoptive parents in writing of the date the annual affidavit is due. The notification shall be sent two (2) months before the anniversary date of when the adoption assistance agreement was executed.

The adoptive parents shall annually certify in the affidavit:

- That the child's condition requiring adoption assistance continues to exist.

- That the child continues to be eligible for adoption assistance
 - The adoptive parents remain legally responsible for the child's care.
 - The adoptive parents continue to provide financial support for the child.
 - The child is not an emancipated minor, married, deceased, or enlisted in the military.
- If the youth is, or will be, 18 years old within the next year and has a mental or physical condition/disability, or an educational delay resulting from such condition/disability, that requires ongoing treatment and/or intervention.
- Whether or not they request changes to the adoption assistance agreement ([§ 63.2-1302.C](#) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5 #1](#)).
- The school-age child is a full-time student or has completed secondary school. The child:
 - Is enrolled in elementary, middle, or high school.
 - Is instructed at home in elementary or secondary education, in accordance with home schooling laws and requirements.
 - Is instructed in an independent study program for elementary or secondary education that is administered by the local school division, in accordance with education laws.
 - Is incapable of participating in school full-time due to a medical condition ([Social Security Act, Title IV, § 471 \(a\) \(30\) \[42 USC 671\]](#)). Documentation by a qualified professional shall be included with the affidavit.
 - Has graduated from high school or earned an equivalent credential.
 - Is enrolled in an institute of higher education, technical college, or community college.
- Whether there has been any change in the child's special needs and/or in their family circumstances that may change the adoption assistance the child receives. When changes have occurred, the adoptive parents shall provide documentation of change (e.g., copies of new private health insurance card and full explanation of health benefits).

The annual affidavit shall be signed by at least one (1) of the adoptive parents. If the adoptive parent does not return the annual affidavit, the LDSS:

- Shall not suspend or terminate adoption assistance maintenance payments.

- Shall not terminate the adoption assistance agreement.
- May suspend the special services payment(s) until the signed affidavit is received, when the LDSS determines appropriate. The LDSS shall not terminate the special services payment(s).

The LDSS shall attempt to obtain the affidavit with due diligence. When the adoptive parents do not return the annual affidavit, the LDSS should send a certified letter to the adoptive parents advising them to return the signed affidavit by a required date. The LDSS may advise them to come into the office, sign the affidavit, and pick up the check at the same time by the required date. The certified letter shall be sent at least 30 days prior to holding the check. The LDSS shall issue the check for adoption assistance maintenance payments on the normal schedule and shall give the check to the adoptive parents before they depart the premises. When applicable, the LDSS shall inform the adoptive parents that special services payment(s) being provided to the family will be suspended until the signed affidavit is received. The letter shall include information on the adoptive parents' right to appeal the LDSS decision within thirty (30) days of receiving the letter and provide information on the fair hearing process. After diligent efforts by the LDSS to obtain the affidavit and when the adoptive parents fail to submit the signed affidavit by the required returned date, the LDSS may suspend the identified special services payment(s).

The LDSS shall document in OASIS case contacts when the signed affidavit was returned. The LDSS shall place copies of the written notifications to the adoptive parents and the returned annual affidavits in the child's adoption assistance paper case record.

2.23 Making changes to agreement

The adoptive parents may request a change to the existing adoption assistance agreement at any time during the duration of the agreement based on changes in the child's special needs and/or the family circumstances of the adoptive parents.

After the adoption assistance agreement is executed, the terms of the agreement shall be changed only when:

- The terms are assessed, negotiated and agreed upon by the adoptive parents and the LDSS ([Social Security Act, Title IV, § 473 \(a\) \(3\) \[42 U.S.C. 673\]](#)).
- The new terms are documented in the signed, dated, and executed [Addendum to the Virginia Adoption Assistance Agreement](#).

2.23.1 Submitting request for addendum

Changes in specific components of adoption assistance may be requested during the duration of the agreement as follows:

- Basic maintenance may be reassessed at any time upon request of the adoptive parents.
- Enhanced maintenance and/or special services may be reassessed and renegotiated at any time upon request of the adoptive parents.
- Non-recurring 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 LDSS with which they established the agreement. Both parents sign the request when the agreement was with two parents, including adoptive parents who are separated or divorced. One parent signs the request when the agreement was with one parent or when a signed court order documents the sole legal responsibility of one parent for the child.

2.23.2 Timeframe for acting on request

Within 14 fourteen (14) days after receiving the request for an addendum, the LDSS should:

- Review the request to determine whether it is complete with all required documentation.
- Notify the parents in writing that the request was received and its status:
 - **The request is complete.** The notification shall include the date the request was received. It shall state that the LDSS and parents have sixty (60) days to assess, negotiate, and execute an addendum to the adoption assistance agreement.
 - **Additional information is needed.** The notification shall state the specific information necessary to complete the request. It should request the parents submit the information by email, phone, or in person within thirty (30) days from the notice date.

If the parents do not provide the information within thirty (30) days, the LDSS should deny the request. The LDSS shall inform the parents in writing the reasons for denying the request and that they may submit a new [Request for an Addendum to the Virginia Adoption Assistance Agreement](#).

- **Request for changes is denied.** The notification shall clearly state the reasons for the denial, provide information on the adoptive parents' right to appeal within thirty (30) days of receiving the notice of denial, and

provide information on the fair hearing process. No further action is required by the LDSS on the request.

2.23.3 Assessing overall request for addendum

The LDSS and adoptive parents should discuss the information provided in the [Request for an Addendum to the Virginia Adoption Assistance Agreement](#). The purpose of this conversation is to fully understand the parents' reasons for requesting adoption assistance at this time. The conversation should include, but is not limited to:

- The changes in the child's special needs and/or the family circumstances of the parents, including:
 - The reasons the adoptive parents are concerned at this time.
 - The impetus, duration, severity, and impact of the child's special needs and/or behaviors.
- The specific services, resources, and/or supports the parents have used, or attempted to use, in their family and community to address the changes.
- The services, resources, and/or supports the parents are requesting to help meet the child's special needs.

The LDSS should summarize the concerns, needs, interests, and reasons of the parents to ensure accurate understanding.

2.23.4 Assessing relevant components of adoption assistance

The LDSS shall assess and negotiate relevant components of adoption assistance with the adoptive parents to determine agreed upon terms for the addendum. There is no need to assess components that are not impacted by the request, when the current terms will continue as delineated in the existing adoption assistance agreement.

The LDSS shall use the [Virginia Worksheet for Assessing and Negotiating Adoption Assistance](#) that was used to negotiate the existing agreement. The LDSS should save the worksheet under a new addendum worksheet name. The LDSS should then enter any relevant changes into the worksheet. The worksheet calculates and provides information for the LDSS and the parents to use during the assessment and negotiation process.

The LDSS and the parents should use the same assessment and negotiation process that is used for initial agreements to guide the addendum process, including:

- Negotiating adoption assistance ([Section 2.10](#)).
- Assessing:
 - Family circumstances ([Section 2.11](#)).
 - Basic maintenance needs of child ([Section 2.12](#)).
 - Additional supervision and support needs of child ([Section 2.13](#)).
 - Services to meet the child's special needs ([Section 2.16](#)).
 - Other resources ([Section 2.17](#)).

When the adoptive parents request:

- Changes in enhanced maintenance and/or special services, then the LDSS shall assess and negotiate the payment amount and time periods for payments with the adoptive parents based on the child's special needs and the family circumstances of the adoptive parents that can be reasonably anticipated.
- A reassessment by the LDSS of the child's needs for additional supervision and support being provided by the adoptive parents, then the LDSS shall administer the VEMAT when the LDSS determines there are indications that the child's requirements for additional supervision and support may have changed based on the frequency, duration, and intensity of the child's behavioral, emotional, and physical/personal care characteristics, consistent with VEMAT guidance. The adoptive parents shall make the request for this reassessment in accordance with VEMAT guidance (see [Section 17.2](#) in the Foster Care Chapter). When the LDSS administers the VEMAT and the child's VEMAT score is higher than the child's previous score, the new VEMAT score for the child establishes the maximum rate the child would have received if the child was in foster care that is used during negotiations. When the child's VEMAT score is lower than the child's previous score, the maximum allowable amount is not reduced to reflect the child's new score. The maximum allowable amount remains the same for negotiations.
- To add a new diagnosis or special need factor that was present at the time of the adoption, but was not diagnosed, then the adoptive parents shall submit documentation and relevant reports from qualified professionals as required for documenting special need condition/disability after the final order of adoption (see [Section 2.6.2](#)).
- To document the child has a special medical need that existed at the time the initial adoption assistance agreement was executed prior to the final order of

adoption, then the adoptive parents shall submit documentation by qualified professional(s) of the child's current special medical need and its existence at the time the initial agreement was executed (whether or not treatment was being received) (see [Section 2.5.9.2](#) for requirements on determining special medical needs).

- Residential treatment services that impact the amount of required additional supervision and support for the child from the adoptive parents, then the LDSS shall reevaluate the VEMAT for the child and negotiate the enhanced maintenance payment with the adoptive parents.

The LDSS should use the same procedures used for initial agreements to resolve issues during negotiation (see [Section 2.18](#)).

The LDSS shall send a written notice of action to the parents documenting the outcome. This notice should be sent within sixty (60) days from the date the LDSS received the complete [Request for an Addendum to the Virginia Adoption Assistance Agreement](#). The notification shall include information about the adoptive parents' right to appeal the decisions within thirty (30) days of receiving the written notice.

2.23.5 Executing the addendum

The LDSS shall prepare an [Addendum to the Virginia Adoption Assistance Agreement](#) on behalf of the child.

When the local board, or its designee, approves the addendum, the parents and the local Board, or designee, shall sign and date it. The local board does not have authority to deny an addendum for an eligible child. When both parents signed the request for an addendum and agreed to the terms in the addendum, then both parents shall sign and date the addendum.

Payments and services shall not be effective until all parties have signed and dated the addendum. The addendum shall state the effective date of the changes. This date shall not be earlier than the date when all parties signed the addendum. The addendum is executed on behalf of the child on the effective date stated in the addendum.

The LDSS shall give the adoptive parents a copy of the addendum. The LDSS shall place the original agreement and all supporting documents in the child's adoption assistance paper case record.

2.24 Terminating payments and/or agreements

2.24.1 Terminating maintenance payments

The LDSS shall only terminate maintenance payments based on terms specified in the adoption assistance agreement, and/or the addendum in effect, including:

- The agreed upon time period for the maintenance payment ends and the adoptive parents decline the maintenance payment in writing; or
- The adoptive parents request in writing that the maintenance payments end; or
- The LDSS determines that the adoption assistance agreement shall be terminated based on one or more circumstances delineated in [Section 2.24.3](#) on terminating the agreement ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(iii\) \[42 USC 673\]](#) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5](#)).

When the adoptive parents and the LDSS agreed to a time-limited maintenance payment, the LDSS shall notify the adoptive parents in a certified letter two months prior to the scheduled end date for the payment. When appropriate, the LDSS shall assess and negotiate with the adoptive parents new terms for maintenance payments (see [Section 2.12](#) or [Section 2.13](#)) to be included in an addendum to the adoption assistance agreement (see [Section 2.23](#)).

2.24.2 Terminating state special services payments

The LDSS shall terminate state special services payments based on terms in the adoption assistance agreement, and/or the addendum in effect, when:

- The agreed upon time period for the special services payments end; or
- The adoptive parents request in writing that the special services payments end; or
- The adoptive parents or qualified professional(s) document in writing to the LDSS that the special service is no longer directly related to and/or required to meet the child's special need(s).
- The adoptive parents do not fulfill the agreed upon terms documented in the agreement or addendum for state special services payments.
- The LDSS determines that the adoption assistance agreement shall be terminated based on one or more circumstances delineated in [Section 2.24.3](#) on terminating the agreement.

The LDSS discusses the situation with the adoptive parents. The LDSS shall provide written notice to the adoptive parents prior to termination. Both parents shall be notified when both parents signed the active adoption assistance agreement, including separated or divorced parents. The notification shall include information on the parents' right to appeal the LDSS decision to terminate the payment within thirty (30) days of receiving the written notice.

The LDSS may assess and negotiate with the adoptive parents new terms for special services (see [Section 2.16](#)) to be included in an addendum to the adoption assistance agreement (see [Section 2.23](#)), when appropriate.

2.24.3 Terminating the agreement

The adoption assistance agreement shall only be terminated, as specified in the adoption assistance agreement, when the LDSS determines that any one of the following circumstances occurs:

- The youth with special needs reaches the age of 18 years, unless the LDSS determines the youth has a condition that warrants continuation of adoption assistance beyond the age of 18 years:
 - A mental or physical disability; or
 - An educational delay resulting from such mental or physical disability (see [Section 2.24.4](#)).
- The youth with special needs reaches the age of 21 years, or the age specified in the adoption assistance agreement, when the LDSS established that the youth has a condition that warrants the continuation of assistance beyond age 18 and up to age 21 years (see [Section 2.24.4](#)).
- The adoptive parents:
 - Request in writing that the agreement ends.
 - Are no longer legally responsible for the child's care:
 - Parental rights are terminated (for one adoptive parent when the agreement is with one adoptive parent, or for both adoptive parents when the agreement is with two adoptive parents); or
 - The child becomes an emancipated minor, marries, enlists in the military, or dies.
 - Are not providing any financial support for the child (see [Section 2.24.5](#)).

- Die (i.e., both adoptive parents die when the agreement was with two parents; or one adoptive parent dies when the agreement was with one parent) (see [Section 2.24.6](#)).
- The adoptive parents and the LDSS agree in writing to terminate the agreement ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \[42 USC 673\]; § 63.2-1302 B; 22 VAC 40-201-160 J and K; and Federal Child Welfare Policy Manual, Subsection 8.2D.5](#)).

Termination shall be based upon written documentation verifying the circumstances.

The LDSS shall provide written notice to the adoptive parents prior to termination. Both parents shall be notified when both parents signed the active adoption assistance agreement, including separated or divorced parents. The notification shall include information on the parents' right to appeal the LDSS decision to terminate the agreement within thirty (30) days of receiving the written notice.

2.24.4 Assessing condition warrants continuation beyond age 18

Six (6) months prior to the youth turning age 18, the LDSS and parents should assess whether the youth has a condition that warrants continuation of adoption assistance beyond age 18 and up to age 21. Prior to the youth attaining age 18, the LDSS and parents negotiate and amend the adoption assistance agreement to include agreed upon terms for continued adoption assistance ([Federal Program Instruction dated July 9, 2010](#)).

To continue adoption assistance beyond age 18, the LDSS shall determine the youth meets all three of the following criteria:

1. The LDSS shall establish one of the following:
 - The youth has a physical or mental disability that was present at the time of the adoption; or
 - The youth has a physical or mental disability that is related to a hereditary tendency, congenital problem, or birth injury; or
 - The youth has an educational delay resulting from either disability above.

AND

2. The LDSS determines the youth requires ongoing treatment and/or intervention.

- The youth requires treatment, intervention, and/or additional supervision and support from the adoptive parents to ensure the youth's safety and well-being as documented by the VEMAT; and/or
- The youth requires educational services to address the youth's educational delay and the youth is enrolled full-time in an educational, vocational, or technical training program (i.e., the youth is attending and actively participating in high school, institute of higher education, technical college, or community college).

AND

3. The youth over age 18 continues to willingly cooperate and participate in the treatment and/or intervention.

Evidence of these three criteria shall be based on the following documentation:

- Statement(s) from qualified professional(s) documenting the youth's disability or educational delay and the youth's need for ongoing treatment and/or intervention.
- Relevant diagnostic and assessment reports.
- Any other relevant documents (e.g., VEMAT and supporting documentation; school performance reports).

When the LDSS determines the youth's condition warrants continuation of adoption assistance, the agreement may be continued until the youth reaches age 21 ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(II\) \[42 USC 673\]](#) and [§ 63.2-1302 B](#)).

The agreement should continue as long as the LDSS determines that:

- The physical or mental disability, or the educational delay resulting from such disability, continues to exist.
- The youth continues to require ongoing treatment and/or intervention.
- The youth continues to willingly cooperate and participate in the ongoing treatment and/or intervention.

When the LDSS determines the youth's condition warrants continuation of adoption assistance:

- Due to a physical or mental disability, then the LDSS shall continue using the same fund source (i.e., Title IV-E or state funds) for the adoption assistance maintenance payments after the youth attains age 18.

- Solely due to an educational delay resulting from a mental or physical disability, then the LDSS shall only use state funds for adoption assistance maintenance payments after the youth attains age 18, even when the maintenance payments were funded with Title IV-E funds prior to age 18 ([§ 63.2-1302 B](#)).

When the youth's condition warrants continuation solely due to an educational delay resulting from a mental or physical disability, then the agreement should be terminated when the youth no longer:

- Has the educational delay resulting from the mental or physical disability; or
- Requires educational services to address the youth's education delay; or
- Is willingly cooperating and participating in the educational services; or
- Is enrolled full-time, attending, and actively participating in the educational, vocational, or technical training program.

2.24.5 LDSS actions when adoptive parents fail to provide financial support

When the LDSS obtains and documents verifiable information that the adoptive parents are providing no financial support for the child, the LDSS shall immediately send the adoptive parents a certified letter that states:

- The verified information documenting that the adoptive parents are not providing any financial support for the child.
- The LDSS is prohibited by law from making adoption assistance payments when the child is no longer receiving any financial support from the adoptive parents ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(iii\) \[42 U.S.C. 673\]](#) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5 #2](#)).
- The binding adoption assistance agreement requires that the LDSS terminate the agreement and any addendum.
- If the adoptive parents do not immediately reinstate financial support for the child and provide documentation of such action to the LDSS, the LDSS will terminate all adoption assistance payments and the adoption assistance agreement in its entirety, effective ten (10) days after the adoptive parents' receipt of the certified letter.
- The adoptive parents must immediately contact the LDSS within ten (10) days of receipt of the certified letter to discuss the situation.

- If the adoptive parents do not immediately reinstate financial support for the child and provide documentation of such action to the LDSS, or if the adoptive parents do not contact the LDSS within 10 days of their receipt of the certified letter to discuss the situation, the LDSS will terminate all adoption assistance payments and the adoption assistance agreement in its entirety, effective ten (10) days after the adoptive parents' receipt of the certified letter.

The LDSS shall notify both parents when both parents signed the active adoption assistance agreement, including separated or divorced parents.

The LDSS shall discuss the situation with the adoptive parents and document the discussion in an OASIS narrative. The discussion should include:

- The documented lack of financial support by the adoptive parents.
- The impact on the child.
- The adoptive parents' reasons for not providing any financial support for the child.
- The adoptive parents' decision whether or not they will immediately reinstitute their financial support for the child.
- The LDSS action based on the adoptive parents' decision, either to:
 - Continue payments, if the adoptive parents reinstate financial support; or
 - End payments and the agreement on the specified date in the certified letter, if the adoptive parents do not reinstate financial support of the child.

The LDSS shall document the adoptive parents' decision and the LDSS action in writing. The LDSS and the adoptive parents shall sign the document. If the adoptive parents do not sign the document, the LDSS shall write on the document the date of the discussion with the adoptive parents and that the adoptive parents declined when asked to sign the statement.

If the adoptive parents decide to not reinstitute their financial support of the child, or do not contact the LDSS to discuss their financial support of the child as LDSS requested, the LDSS shall provide written notice in a certified letter to the adoptive parents that the agreement shall be terminated on a specified date (e.g., the date specified in the first certified letter). The notification shall include information on the adoptive parents' right to appeal the LDSS decision to terminate payments and the agreement within thirty (30) days of their receipt of the second written notice. The LDSS shall then terminate the payments and the adoption assistance agreement in

its entirety ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(iii\) \[42 U.S.C. 673\]](#) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5 #2](#)).

2.24.6 LDSS actions when adoptive parents die

When both parents die in a two-parent family, or one parent dies in a single parent family, the adoption assistance agreement shall be terminated. The child's former adoptive parents may have specified a new adoption plan for the child upon their death or another family member may assume custody of the child and then initiate adoption proceedings independent of a CPA. When the child is without a custodian, custody is given to another relative or the child enters foster care as a result of the adoptive parents' death.

The following criteria apply for adoption assistance in the subsequent adoption:

- When the child was eligible for Title IV-E adoption assistance in the previous agreement, the child may retain eligibility for Title IV-E adoption assistance in the subsequent adoption. The child does not have to re-enter foster care for his or her eligibility for Title IV-E adoption assistance to continue.
 - When the new adoptive parents reside in Virginia:
 - The LDSS that had responsibility for the initial adoption assistance agreement continues to have responsibility for adoption assistance in the subsequent adoption.
 - The LDSS establishes whether the child:
 - Is an Applicable Child or Non-Applicable Child (see [Section 2.5.2](#)).
 - Has special needs as an Applicable Child (see [Section 2.5.3.1](#)) or as a Non-Applicable Child (see [Section 2.5.4.1](#)).
 - Meets the requirements for a child subsequently adopted after the adoptive parents died for either an Applicable Child (see [Section 2.5.3.3](#)) or Non-Applicable Child (see [Section 2.5.4.3](#)).
 - The LDSS shall not redetermine the child's eligibility for Title IV-E adoption assistance payments. Specifically, the LDSS does not apply the Title IV-E eligibility criteria for an Applicable Child (see [Section 2.5.3.2](#)) or Non-Applicable Child (see [Section 2.5.4.2](#)).
 - When the LDSS establishes that the child meets the requirements above, the child continues his or her eligibility for Title IV-E adoption assistance from the previous adoption.

- The LDSS manages the application, assessment, and negotiation process with the new adoptive parents.
- The LDSS and adoptive parents execute a new adoption assistance agreement when the LDSS determines it is appropriate.
- Payments and/or services delineated in the new agreement may begin when the petition is filed in circuit court to finalize the adoption (see [Section 2.20.1](#)).
- Non-recurring adoption expenses are allowable as part of the agreement.
 - When the new adoptive parents reside in another state with the child, and the LDSS is not involved in the subsequent adoptive placement of the child, the subsequent state of residence for the new adoptive parents is responsible for establishing whether the child has special needs and entering into an adoption assistance agreement. The state where the child was initially adopted, or the state that pays adoption assistance in the child's initial adoption, is not relevant in a subsequent adoption.

The LDSS shall provide necessary documentation about the child's prior eligibility for IV-E adoption assistance to the public child welfare agency in the new state. ([Federal Child Welfare Policy Manual, Subsection 8.2B #1](#) and [Subsection 8.2A.1 #4](#); [Social Security Act, Title IV, § 473 \(a\) \(2\) \(C\) \[42 U.S.C. 673\]](#); and [Federal Program Instruction dated August 26, 2009](#)).

- When the child was only eligible for state adoption assistance in the previous agreement, the child's eligibility for state adoption assistance does not continue. In addition, the child's previous eligibility for state adoption assistance does not extend to the child's current circumstances. The child may be eligible for adoption assistance if:
 - The child enters foster care, goes through the permanency planning process, has adoption identified as the permanency goal, is to be subsequently adopted, and is determined to have special needs and eligible for adoption assistance in accordance with all policies and procedures at the time of the new adoption; or
 - A new adoption proceeding is initiated through the private placement processes, the child meets all medical or disability requirements for SSI benefits (and may also need to meet SSI financial requirements), and is determined eligible for adoption assistance in accordance with all policies and procedures at the time of the new adoption.

2.25 Appeals and fair hearings

Appeals shall be processed in accordance with Virginia legal requirements ([§ 63.2-1304](#) and [22 VAC 40-201-160](#) L) and procedures established by the Virginia Board of Social Services. For complete information, see [Appeals and Fair Hearings Unit Procedure Manual 2012](#) or current manual if updated.

Any applicant or recipient of adoption assistance aggrieved by any decision of the LDSS in granting, denying, changing, or discontinuing adoption assistance may appeal the decision ([§ 63.2-1304](#)). Applicants of adoption assistance shall have the right to appeal adoption assistance decisions related to decisions ([22 VAC 40-201-160](#) L) that may include, but are not limited to the following:

- LDSS not informing the adoptive parents of relevant and known facts about the child prior to the final order of adoption, except for information that would reveal the identity of the child's birth family.
- LDSS not informing the adoptive parents of the availability of adoption assistance for eligible children in foster care.
- LDSS not informing the adoptive parents of the child's eligibility for adoption assistance.
- Adoptive parents not agreeing with LDSS determination on the child's eligibility for adoption assistance.
- LDSS denying the adoptive parent's claim that the child is eligible for adoption assistance.
- LDSS denying the adoptive parent's application for adoption assistance.
- LDSS denying adoption assistance maintenance payments based upon a means test of the adoptive family.
- LDSS denying adoption assistance payments and/or services.
- LDSS decreasing the amount of adoption assistance specified in the adoption assistance agreement without the concurrence of the adoptive parents.
- LDSS denying the adoptive parent's request for a change in the amount of maintenance payments due to a change in the adoptive parents' circumstances.
- LDSS terminating the adoption assistance agreement.

Any applicant or recipient aggrieved by the failure of LDSS to make a decision within a reasonable time may request a review of the process ([§ 63.2-1304](#)). Such decisions may include, but are not limited to the following:

- LDSS failure to act on the adoptive parent's application within ninety (90) days from the LDSS receiving the completed application and all required documentation.
- LDSS not acting upon the claim that the child is eligible for Title IV-E benefits with reasonable promptness.

The applicant or recipient may appeal the decision within thirty (30) days after receiving written notice of the decision. The written notice shall inform the applicant/recipient of the thirty (30) day time limit for the appeal ([§ 63.2-1304](#)).

2.25.1 Request for appeals

The adoptive parents may request a fair hearing within thirty (30) days after receiving written notice of the LDSS 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

The LDSS must not prejudice or limit the adoptive parents' right to appeal a decision. The LDSS must assist the adoptive parents in submitting an appeal or in preparing the adoptive parents case, if necessary. The LDSS has an affirmative duty to provide information and referral services to help the adoptive parent make use of any legal services available in the community.

2.25.2 Validating the appeal

The LDSS will receive a copy of the adoptive parents' appeal request and a validation form from the Appeals and Fair Hearings Unit. The LDSS must specify:

- The action taken by the LDSS.
- The date of the notice of action.
- Whether or not adoption assistance has been continued during the appeal process.

The LDSS must return the completed validation form and a copy of the Notice of Action within **five (5) working days** to the hearing officer.

When the hearing officer determines the appeal request is valid, the LDSS and adoptive parents are notified in writing of the date for the Administrative Hearing. Written notice of the hearing date is provided at least ten (10) days prior to the hearing, of the date for the Administrative Hearing. The notice includes information about the appeal rights of the adoptive parents. The hearing is scheduled and conducted at a time, date, and place convenient to the adoptive parents. It is usually conducted by teleconference. The hearing officer will order continuation of adoption assistance where required, if the LDSS has not already taken such action.

When the hearing officer determines the appeal request is invalid, the LDSS and adoptive parents receive written notification with an explanation of the reason for the determination that an administrative appeal hearing cannot be granted.

A copy of the completed validation form, the Notice of Action, and the written notification from the hearing officer shall be placed in the child's adoption assistance paper case record.

For complete information, see [Appeals and Fair Hearings Unit Procedure Manual 2012](#) or current manual if updated.

2.25.3 Summary of Facts

Upon receiving notification of the scheduled administrative hearing, the LDSS must prepare a Summary of Facts of the case. A copy of the summary should be received by the hearing officer and adoptive parents at least **five (5) days** prior to the hearing.

The summary should include:

- Identifying case information.
 - Name of LDSS.
 - Name and address of child and adoptive parents.
 - Adoption assistance case number.
- All relevant information about the action being appealed.
 - Statement of issue (e.g., the specific request of the adoptive parents that was denied; the determination by the LDSS; the type, amount, and date of adoption assistance payment and/or service that was denied; the alleged failure of the CPA to act).

- Logical, chronological sequence of events which led to the action taken by the LDSS (e.g., specific dates; agency requests for verification; actions that occurred or did not occur; LDSS actions to resolve the issues). The LDSS should assume that the reader is not familiar with the facts of the case or the program policy.
- Description of specific calculations and policy or guidance used to determine adoption assistance amounts, when applicable. If specific figures are disputed, the reasons underlying the dispute must be addressed.
- Adoptive parents' request for and date of appeal, including quoted words from adoptive parents regarding the issue and their reasons for appealing.
- Specific citation(s) and language quoted from law, policy, and/or the guidance manual on which LDSS action was based.
- Relevant provisions of the adoption assistance agreement, if applicable (e.g., dollar amount, number of hours, number of service units, period of time authorized, provisions).
- Copies of all other relevant documentation regarding the action being appealed (e.g., documents submitted by adoptive parents, notices, adoption assistance forms, worksheets, letters).
- Signature of LDSS Director and date.

The Summary of Facts, including all attachments, must be signed and sent to the adoptive parents, their representative if any, and the hearing officer.

A copy of the Summary of Facts shall be placed in the child's adoption assistance paper case record.

For complete information, see [Appeals and Fair Hearings Unit Procedure Manual 2012](#) or current manual if updated.

2.25.4 Administrative Hearing

The formal administrative hearing is conducted by the VDSS hearing officer. The hearing officer is an impartial person charged by the Commissioner to hear appeals and decide if the LDSS followed policy and procedure in making a decision.

At the hearing, the adoptive parents and/or their authorized representative will 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 LDSS will have 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 LDSS acted in accordance with law and policy and the burden of proof is on the adoptive parents to demonstrate LDSS 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 LDSS 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 LDSS and adoptive parents. The LDSS must ensure that administrative action is taken to implement the hearing officer's decision no later than **ten (10) working days** following the date of the decision, regardless of whether the adoptive parents request further review by the Circuit Court. See the [Appeals and Fair Hearings Unit Procedure Manual 2012](#) for exceptions to implementation within this time period. After corrective action is taken, the LDSS must notify the adoptive parents and the hearing officer in writing that the agency has complied with the decision.

All documents from the hearing, the written decision of the hearing officer, and the LDSS written notice documenting compliance with the decision, when applicable, shall be placed in the child's adoption assistance paper case record.

For complete information, see [Appeals and Fair Hearings Unit Procedure Manual 2012](#) or current manual if updated.

2.25.5 Withdrawal statement

If the LDSS 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 LDSS. The withdrawal statement shall be placed in the child's adoption assistance paper case record.

2.25.6 Appeal to Circuit Court

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.

Written notice of intent to appeal the hearing officer's decision must be sent 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.

2.25.7 Filing complaint of discrimination

If the adoptive parents believe they have been discriminated against by the VDSS or LDSS 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

For more information, see [VDSS Office for Civil Rights](#).

2.26 Establishing paper case record

When the LDSS receives an application for adoption assistance, the LDSS shall establish an adoption assistance case record for the child. This record is separate from the child's foster care record, the record established for the foster/adoptive home approval of the adoptive family, and any eligibility record established by the eligibility unit.

The adoption assistance paper case record is the child's service record and corresponds to the child's adoption case in OASIS.

It shall include documentation in all areas delineated below. Specific documentation required is listed in the [Checklist for Child's Virginia Adoption Assistance Paper Case Record](#):

- Child's eligibility for adoption assistance, including child's special needs.
- Availability of funds/payments.
- Child adoption legal documents.
- Adoption assistance documents.
- Written notifications and correspondence.
- Annual affidavits.
- Payments and services.
- Any other relevant information.

2.27 OASIS case record

Adoption assistance information shall be correctly documented in the OASIS adoption case record for the child on a timely basis.

- For children already in LDSS custody, the OASIS adoption record is opened using the Bio-Connect process in OASIS.
- For children adopted through LCPAs, LDSS shall create an OASIS record when the LDSS receives the application for adoption assistance. The record is opened without the Bio-connect process.

Additional instruction on opening an adoption case in OASIS can be obtained through the Help Screen in the OASIS system. Directions on required screens and data entry may be found on the Help Screen in the OASIS system.

In OASIS case contacts, LDSS shall include narrative summaries documenting policies, procedures, and timelines were followed when applicable. Narratives shall include, but are not limited to:

- Child's special needs including specific factors that exist and relevant information from child's history, family background, foster care placements, and personal characteristics.
- Full disclosure and discussion with adoptive parents on all known child information, including special needs, and all known, relevant, and non-identifying information on child's birth family.
- Reasonable efforts to place the child with an appropriate adoptive home without adoption assistance are not in the child's best interest OR description of reasonable efforts that were made but were unsuccessful.
- Selection of the adoptive home placement, including the reasons the placement is in the child's best interest.
- Discussion of child's eligibility for adoption assistance, including types of adoption assistance that may be available.
- Discussion of the adoption assistance program, including the application, assessment, negotiation and decision-making process and information on the right to appeal LDSS decisions and the fair hearing process.
- Date adoptive parents notified of application receipt and status (should be within fourteen (14) days after receiving the application).
- Exploration of all available health insurance, extended family, community, government, and other resources, including the LDSS determination that these other resources can or cannot be used to fully or partially pay for the services and/or supports required to meet the child's special needs.

- Date the adoption assistance agreement was executed, meaning the effective date stated in the agreement (shall be within ninety (90) days after the LDSS receives completed application with all supporting documentation).
- Dates the signed affidavits were returned.
- Pertinent information from parent and provider contacts.