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Adoption Assistance

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Adoption Assistance

2.1 Introduction

The purpose of adoption assistance is to facilitate adoption placements and ensure permanency for children with special needs (§ [63.2-1300](#)). The Adoption Assistance program provides medical and financial assistance for the benefit of children found eligible due to their special needs. Adoption assistance is not intended to cover the full cost of raising children; rather, it supplements the resources of the adoptive parents. Children with special needs often have experienced abuse and neglect and significant losses and disruptions in their lives. These traumatic events increase their risk for developmental, physical, emotional, and behavioral challenges, making adoption unlikely within a reasonable time without assistance.

Special needs are defined in terms of a child's age, membership in a sibling group, membership in a minority group, a medical condition, or physical, mental, or emotional disability. The specifics of these factors are set forth in [Section 2.5.1. Special Needs Eligibility](#). These special needs must be those which, it is reasonable to conclude, preclude the child's placement with their adoptive parents without such assistance.

2.2 Questions and Clarification

Despite every effort to be clear and cover all situations, questions may arise for a family services specialist (FSS) regarding policy or procedure for a particular case. FSS should discuss any questions or concerns about appropriate actions to take with their supervisor. If additional assistance is needed, the supervisor should consult with their Regional Permanency Practice Consultant, Assistance Negotiator, and City Attorney for guidance.

2.3 Outcomes

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

- Children will have permanency and stability in their living situations.
- 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.

2.4 Promoting Adoption Assistance

Federal regulation [45 CFR 1356.40\(f\)](#) states the IV-E Adoption Assistance Program is to be actively promoted by the Division of Family Services, all of its local departments of social services (LDSS) offices, and any licensed child-placing agency (LCPA) involved in the adoption of a child with special needs. The Virginia Department of Social Services (VDSS), LDSS, and LCPA agencies are required to provide information about the Adoption Assistance program and its benefits to all adoptive parents. This information must be given during the adoption assessment, the family's pre-service training, the family preparation assessment, and when a child with special needs is being presented for adoption placement.

In addition to providing information about the program, the LDSS must explain to the adoptive parent how to apply for adoption assistance. Because adoption assistance is an entitlement program, the LDSS must, whenever requested, provide the opportunity to all adoptive parents to complete and submit an [Application for Adoption Assistance](#). It is vital to inform the adoptive parent that, while not every child will be found eligible under the program's guidelines, it is their right to apply.

If the adoptive parent was not informed about the adoption assistance program or was not allowed to apply for adoption assistance prior to the finalization of the adoption, that could provide the basis for an administrative appeal. If the child is determined to be eligible following an administrative appeal, the LDSS may be required to pay the child's negotiated Adoption Assistance Agreement rates retroactively to the beginning of the time when the child would have been initially found eligible. See [2.23 Appeals and Fair Hearings](#) for additional information.

2.4.1 Adoption and Legal Guardianship Incentive Funds

The Adoption and Legal Guardianship Incentive Payments program (formerly called the Adoption Incentive Payments program) recognizes improved performance in helping children and youth in foster care find permanent homes through adoption and legal guardianship. The program was originally established as part of the [Adoption and Safe Families Act of 1997](#).

Adoption Incentive Funds are calculated and awarded to states based on the United States Health and Human Services, Administration for Children and Families, and

Children's Bureau (HHS/ACF/CB) review of Adoption and Foster Care Analysis and Reporting System (AFCARS) data.

Incentive funds have been used to support the following activities:

- *The purchase of educational training materials for prospective and current adoptive families and to establish an LDSS library with pamphlets, books, and videos related to adoption and post-adoption services/supports;*
- *To support National Adoption Month activities, such as advertisements to recruit foster and adoptive families, nominal gifts for adoptive families, celebrations of finalized adoptions with an emphasis on pre-adolescent and youth adoptions, innovative programs to increase teen, older youth and sibling group adoptions of youth in care more than 24 months who are legally free for adoption.*
- *The purchase of services of a credentialed speaker who specializes in post-adoption services and supports (must include the topic and audience);*
- *Creating a post-adoption support group for adoptees or adoptive parents.*

When adoption incentive funds are awarded, the focus of all activities must support the timely finalization of adoptions.

2.5 Adoption Assistance Eligibility

Under federal and state law, adoption assistance may be provided to families who would not otherwise be able to offer an adoptive home to a child with special needs due to financial and medical needs.

To determine if a child is eligible for adoption assistance, the LDSS must use the [Virginia Adoption Assistance Screening Tool](#). LDSS are encouraged to seek guidance, as needed, from their Regional Assistance Negotiator in completing the tool. If, upon submission, the Regional Assistance Negotiator determines the [Adoption Assistance Screening Tool](#) has been completed incorrectly, the tool will be returned to the LDSS to be corrected. The LDSS will have 10 days to resubmit a correct tool to the Assistance Negotiator before the [Referral for Negotiation](#) will be denied. See Section [2.13 Negotiating Adoption Assistance](#) for steps on this process.

2.5.1 Special Needs Eligibility

A child with special needs is defined by [§473\(c\) of the Social Security Act](#), Social Security Act, [Title IV](#), [§ 473 \(a\)\(1\)\(A\)](#), and the Code of Virginia [§ 63.2-1300](#). There are

three parts to this determination and all three must be met to be eligible for any form of adoption assistance:

- The court must have determined the child cannot or should not be returned to the home of their parents, through:
 - A termination of parental rights (TPR) proceeding *and subsequent TPR order*.
 - A Temporary Entrustment Agreement and evidence of a title IV-E foster care payment made on behalf of the child.
 - A Permanent Entrustment Agreement with an LDSS or LCPA meeting each of the conditions below:
 - A petition was filed to remove the child from home within 180 *calendar* days of the time the child lived with their specified relative, and
 - A subsequent judicial order was made, and
 - That order contained a *finding* that to remain in the home was contrary to the child's welfare.
- The child must meet any one of the following criteria:

- Has a physical, mental, or emotional condition existing prior to adoption.
Criteria must be documented by a qualified licensed professional, who is licensed by a relevant medical, psychological, and or diagnostic assessment board.

- Has a hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability.

Criteria must be documented in the child's birth records and recent medical records (within a year), and the birth parent's medical history.

If one of these three conditions is the child's sole identified special need, (including substance exposure) and there is no evidence the child currently has a related disability, the adoptive parent and the LDSS must enter into a Conditional Adoption Assistance Agreement, with a zero dollar basic and enhancement maintenance payment.

Executing a Conditional Adoption Assistance Agreement preserves the child's title IV-E eligibility status and authorizes the adoptive parent to receive Medicaid. A Conditional Adoption Assistance Agreement 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 and funding for special services consistent with applicable guidance. See [Section 2.13.1.2](#) for additional information on Conditional Adoption Assistance Agreements and *FUSION* page, [Adoption Assistance](#) for more details on hereditary, congenital, and birth injury examples.

- Is a member of a minority group based on racial, multi-racial, or ethnic heritage.
- Is a member of a sibling group of two or more children placed in the same home for the purpose of adoption.
 - For any child in a sibling group being placed together to be eligible for adoption assistance, the sibling in the group who satisfies the age requirement must also meet the [Applicable Child](#), or the [Non-Applicable Child](#) criteria. If that child does not also meet one of those additional eligibility criteria, then he or she cannot be the “qualifier” for the other sibling(s) because the child is not eligible for adoption assistance in their own right. Each sibling in the group must also individually meet the Applicable Child, Non-Applicable Child or State requirements to qualify for adoption assistance.
 - A child does not need to be placed in the home at the same time as the other siblings to be eligible for adoption assistance based on sibling group membership. For example, two eligible siblings may be placed together, then a third may be placed in the same home with them eight months later for adoption. This third sibling also meets a specific condition or factor requirement for the special needs definition on the basis of sibling group membership. If this third sibling also meets the Applicable Child or Non-Applicable Child eligibility requirements, that child is also eligible for adoption assistance.
- Is age six or older and has been in foster care for 18 months or longer.
- Meets all medical or disability eligibility requirements of the Social Security Income (SSI) program.
- The LDSS must determine that reasonable, but unsuccessful, efforts to place the child with appropriate adoptive parents without providing adoption assistance have been made, unless it is contrary to the child's best interests due to so

- The search for adoptive parents must be documented in the adoption case record and the child welfare documentation system and should include the following:
 - A discussion of potential adoptive parents at a regional adoption agency exchange meeting, or
 - Registration of the child on the Adoption Resource Exchange of VA (AREVA); or
 - *The child is being placed with a relative for the purpose of adoption; or*
 - The child has developed significant emotional ties with the adoptive parent when the child was placed while in foster care and in the home for at least 18 months.

All three parts of the special needs determined must be met before the child is considered eligible to receive any type of adoption assistance. The LDSS must document in the child's adoption assistance record, in the child welfare information system, and, if found eligible, on the Adoption Assistance Agreement, each condition identified, making it unlikely the child would be adopted within a reasonable time without adoption assistance. An agreement must be executed for every eligible child unless the adoptive parents decline in writing.

Funding for basic maintenance, enhanced maintenance, and special service payments must be directly related to the child's special need, as identified on the original Adoption Assistance Agreement or Addendum to the Adoption Assistance Agreement forms.

2.5.2 Additional Eligibility Criteria

In addition to the child's Special Needs Criteria, for both title IV-E and state-funded cases, the LDSS must also make determinations regarding age, citizenship and check the backgrounds of the prospective adoptive parents.

2.5.2.1 Child's Age

For both title IV-E and state-funded cases and applications submitted before the final order of adoption are entered by the court, the child must be under age 18 when the petition for adoption is filed. For applications submitted after the final order of adoption is entered by the court, the child must be under age 18 when applying for adoption assistance.

2.5.2.2 Citizenship

To be eligible for adoption assistance, children must have the status of a:

- U.S. citizen; or
- Qualified alien (whether or not the child/youth has been a qualified alien for five years) is eligible for title IV-E adoption assistance if they are
 - A child with special needs; and
 - Eligible under one of the four pathways in Subsections [2.5.3](#) or [2.5.4](#)
 - Placed with adoptive parents who are U.S. citizens or have a qualified alien status:
 - If the child is placed with an adoptive parent who is a citizen or has a qualified alien status, a child with a qualified alien status is exempt from the five-year bar and may be eligible for title IV-E adoption assistance if other program requirements are met.
 - If placed with an adoptive parent who has an undocumented status or holds a non-qualified alien status, a child who holds a qualified alien status and is subject to the five-year bar must have completed five years as a permanent resident as well meet other program requirements to be eligible for title IV-E adoption assistance.

See FUSION [Adoption Assistance](#) for additional information on verifying citizenship and qualified alien status.

2.5.2.3 Adoptive Parents Background Checks

Before any adoption assistance payments can be made for an eligible child, the following background checks must be secured for prospective adoptive families:

- Fingerprint-based check of the National Criminal Information Database;
- A check of the Child Abuse and Neglect Registry in which the prospective adoptive parents and other adults living in the adoptive home have resided in the last five years.

The results of the required criminal background checks show no record of a felony conviction for a crime described in [42 USC 671\(a\)\(20\)\(A\)](#) that would disqualify the adoptive parent from receiving adoption assistance payments under [42 USC 673](#).

2.5.3 Title IV-E Adoption Assistance

To be eligible for Title IV-E adoption assistance, the child must meet the definition of a child with special needs and meet either the criteria set forth as an applicable child or a non-applicable child.

2.5.3.1 Applicable Child

The following outlines the eligibility requirements for an applicable child:

- The child must be older than two years or turn two years old during the federal fiscal year (FFY) that the Adoption Assistance Agreement is executed. The FFY begins October 1st and ends September 30th; or
- The child's sibling is an applicable child and is placed in the same perspective adoptive home, *for the purpose of adoption*, of their siblings.

The applicable child must also meet one of the following categorical eligibility requirements to be eligible for title IV-E adoption assistance:

- Judicial determination criteria

The child, at the time of the initiation of adoption proceedings, must have been in the care of a public or licensed private child-placing agency pursuant to:

- an involuntary removal order. The first court order that sanctions the removal of the child from their home must contain a finding that remaining in the home is "contrary to the welfare of the child" or that "removal from the home is in the best interest of the child"; or
- a Temporary or Permanent Entrustment Agreement. The subsequent court order must contain a finding that remaining in the home is "contrary to the welfare of the child" or that "removal from the home is in the best interest of the child."

The use of Nunc Pro Tunc orders to pre-date the performance of an act to a time before it occurred is not allowed for the purpose of title IV-E. Therefore, if the required judicial determination is not included in the appropriate court order, a certified transcript of the court proceedings is the only other acceptable documentation that may be used to verify the required judicial determination was made.

- The child was eligible in a prior adoption:

Once a child has been determined eligible for title IV-E adoption assistance, the child retains this eligibility. The [Adoption and Safe](#)

[Families Act of 1997](#) amended Section [473\(a\)\(2\)](#) of the Social Security Act to allow for the continuation of title IV-E eligibility for the child. The child retains title IV-E adoption assistance eligibility if the child was available for adoption on or after October 1, 1997, and the child's prior adoption ended for one of the following reasons:

- The prior adoption was dissolved, and the parental rights of the adoptive parents were terminated.
- The prior adoption ended due to the death of the adoptive parents, leaving the child with no adoptive parent.

Because the Adoption Assistance Agreement with the adoptive parent terminates in the event of an adoption termination or the death of adoptive parents, no further adoption assistance benefits can be obtained on behalf of the child following termination.

In the event of a subsequent adoptive placement, the new adoptive parents of the child eligible from a prior adoption may receive adoption benefits for the child provided the Adoption Assistance Agreement has been negotiated with the new adoptive parents and signed by each parent the LDSS Director.

- If the child is available for adoption because the prior adoption has been dissolved or the child's adoptive parents have died. *There is no requirement for the child to reenter foster care to maintain IV-E eligibility status.*

In this instance, the child may retain eligibility for adoption assistance payments in a subsequent adoption. The LDSS only needs to determine whether the child continues to meet the definition of special needs to be eligible for adoption assistance.

The adoptive parents must also meet the background check requirements to receive adoption assistance.

- **The child meets all medical eligibility requirements of SSI eligibility.**

The determination must be established no later than at the time the adoption petition is filed.

Note: An applicable child does not have to meet the needs-based requirement for SSI.

- **Minor parent eligibility**

The child lives with their minor parent in foster care, and the foster parent receives title IV-E foster care maintenance payments for the child and infant.

- There are no other eligibility criteria that must be met in order for a child to be eligible for title IV-E adoption assistance if the child's eligibility is based on their minor parent's receipt of title IV-E foster care payments while placed with their minor parent in foster care.
- There is no requirement that a child must have been removed from their home pursuant to a Permanent Entrustment Agreement or as a result of a judicial determination.
- If the child and minor parent have been separated prior to the filing of the adoption petition, the child's eligibility for title IV-E adoption assistance must then be determined based on the child's current and individual circumstance.

2.5.3.2 Non Applicable Child

To establish title IV-E for a non-applicable child with special needs, only one of the four criteria below must be met:

- **Aid to Families and Dependent Children (AFDC) Eligibility**

The child must be found eligible for the AFDC program at the time of removal (when the initial Title IV-E determination is made). For the purpose of this guidance, AFDC refers to the AFDC program that was in effect in July of 1996.

- **For Court Placed Children:** At the initial title IV-E foster care determination, if the child was title IV-E eligible, the child is determined eligible as a part of that process.

In the first court order that sanctions the removal of the child from their home, there must contain a finding that continuation in the home is "contrary to the welfare" of the child or that removal from the home is "in the best interest of the child." This documentation is used to approve title IV-E foster care eligibility. As a result, the title IV-E Foster Care Notice of Action form showing title IV-E "Categorically Eligible" is used to verify AFDC eligibility.

- **Reasonable Efforts Language**

If the child entered foster care through a court ordered removal and met all the AFDC requirements, at the time of removal, but

was found ineligible for title IV-E in foster care for the sole reason that the initial court order did not contain the “Reasonable Efforts” language, they are considered to have met the AFDC requirement for adoption assistance. A copy of the title IV-E Foster Care Notice of Action, citing this as the reason for denial, must be included in the Adoption Assistance Case and documented in the child welfare information system.

- **For Permanently Entrusted Children:** A child placed pursuant to a Permanent Entrustment Agreement must have received a title IV-E Foster Care maintenance payment to be eligible for title IV-E adoption assistance.
- **Child was eligible in a prior adoption**
 - The child was determined eligible for adoption assistance in a prior adoption, and
 - Is available for adoption because the prior adoption has been *dissolved or the child’s adoptive parents have died. There is no requirement for the child to reenter foster care to maintain IV-E eligibility.*
 - *In this instance, the child may retain eligibility for adoption assistance payments in a subsequent adoption. The LDSS only needs to determine if the child continues to meet the definition of special needs to be eligible for adoption assistance.*
- **The child meets all medical eligibility requirements of SSI eligibility**

The determination must be established no later than at the time the adoption petition is filed.

Note: An applicable child does not have to meet the needs-based requirement for SSI.
- **Minor parent eligibility**

The child lives with their minor parent who is foster care and is receiving Title IV-E foster care maintenance payments for themselves and the child.

 - There are no other eligibility criteria that must be met in order for a child to be eligible for Title IV-E adoption assistance if the child’s eligibility is based on their minor parent’s receipt of Title IV-E foster care payments while placed with the their minor parent in foster care.

- There is no requirement that a child must have been removed from their home pursuant to a Permanent Entrustment Agreement or as a result of a judicial determination.
- If the child and minor parent have been separated prior to the filing of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances.

2.5.4 State Adoption Assistance

Children who do not meet the title IV-E adoption assistance eligibility requirements may be eligible for state-funded adoption assistance. To qualify for state-funded adoption assistance, the child must meet the following criteria before the finalization of the adoption:

2.5.4.1 Before the Adoption is Finalized

When the LDSS determines a child to be ineligible for Title IV-E adoption assistance, the LDSS must screen the child for State adoption assistance (§ [63.2-1301](#)).

State-funded adoption assistance payments may be provided to the adoptive parents on behalf of an adopted child that, in addition to meeting the definition of a child with special needs, age, citizenship, and background check criteria, also meets the requirements below:

- The child was in the custody of a LDSS, LCPA, or a Tribal agency at the time of the adoptive placement;
- The child has developed significant emotional ties with their foster parent while in their care for at least 12 months, the foster parent is committed to adopting the child, and state adoption assistance payments are necessary to facilitate the adoption.

State adoption assistance must be approved for the child who is eligible for adoption assistance unless the adoption parent indicates, in writing, or it is determined through negotiation that the payment is not needed ([22 VAC 40-201-161, E 1](#)).

State adoption assistance must not be approved for children adopted through parental placements. This restriction does not apply to Adoption Assistance Agreements existing prior to July 2013 (§ [63.2-1301 B 1](#)).

2.5.4.2 After the Adoption is Finalized

Adoption assistance must only be approved after the adoption is finalized when it is determined the child had a previous and ongoing condition that was present at the time of the adoption, but the condition was not diagnosed until after the adoption was finalized. Under this circumstance, the following applies:

- Initial applications for adoption assistance submitted after the finalization of the adoption are not eligible for title IV-E funding and, if approved, will only be considered for state-funded assistance.
- Adoption Assistance Agreements established after the final order of adoption has been entered by the court, will only be considered eligible to receive basic maintenance, enhanced maintenance and funding for special service payments.
- Non-recurring expenses must not be included in Adoption Assistance Agreements entered into after the final order of adoption (§ [63.2-1301 B](#)) and ([45 CFR 1356.41 b](#)).

To determine a child's eligibility for adoption assistance, after the final order of adoption has been entered by the court, the LDSS must first determine if the child meets the definition of special needs as defined in Section [2.5.1.](#), and the age and citizenship criteria as defined in Section [2.5.2.](#) In addition, the child must meet each of the following three eligibility requirements below:

- The child was in the custody of a LDSS or LCPA immediately prior to the finalization of the adoption; and
- The child has a condition or disability that was present at the time of the adoption but was not diagnosed until after the adoption was finalized. *The written diagnosis must indicate that the condition was present at the time the adoption was finalized.*
- The diagnosis was made by a qualified licensed professional and received within 12 months of the date the adoptive parents submitted the Application for Assistance.

2.6 Types of Adoption Assistance

Adoption assistance payments may include title IV-E or state funded maintenance payments; *however, the payments must not exceed the foster care payment that the child would have received at the time the initial Adoption Assistance Agreement is signed ([22VAC40-201-161](#)).*

An Adoption Assistance Agreement may include basic maintenance, enhanced maintenance, funding for special service payments and non-recurring expenses. *The type of assistance the child receives must be determined by the negotiation process. See [Section 2.10 Negotiating Adoption Assistance](#) for additional information.*

2.6.1 Non-Recurring Adoption Expenses

Non-recurring adoption expenses is defined as the reasonable and necessary adoption fees, court cost, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs. These expenses must not have been incurred in violation of federal or state law, nor must they have been reimbursed from other sources or funds.

Other expenses are defined as the costs of adoption incurred by or on behalf of the adoptive parent and for which the parent carries the burden of payment, such as:

- the adoption home study (including health and psychological examinations);
- supervision of the placement before adoption;
- transportation;
- and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the adoption process.

Families may receive *reimbursement* of a one-time, non-recurring payment of up to \$2,000 for the cost associated with legally finalizing the adoption of a child with special needs, see Section [2.5.1 Special Needs Eligibility](#). Payments for non-recurring expenses must be made by the LDSS and can be paid to the adoptive parent or the service provider. ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#)).

Reimbursement for non-recurring expenses may begin as soon as the adoption placement agreement and the Adoption Assistance Agreement have been signed ([22VAC40-201-161](#)).

- *Note: If the adoptive placement disrupts before the adoption is finalized, and there is a signed adoptive placement agreement, any fees the prospective adoptive parent incurred in the process of finalizing the adoption are reimbursable by title IV-E, up to \$2,000.*
- *Note: Non-recurring expenses are per child per adoptive placement. If a placement disrupts prior to finalizing and a new agreement is initiated with a new adoptive parent, the parent is entitled to receive the full \$2,000 to help facilitate the adoption.*

The LDSS should include known non-recurring payments on the Adoption Assistance Agreement. Title IV-E funds must be used to pay for all non-recurring adoption expenses for children receiving title IV-E or state adoption assistance.

2.6.2 Basic Maintenance Payments

A basic maintenance payment must be approved for a child, who is eligible for adoption assistance unless the adoptive parent indicates, or it is determined through negotiation that adoption assistance is not needed ([22 VAC 40-201-161 E 1](#)). A supplemental clothing allowance over and above the basic maintenance payment is not an allowable payment in adoption assistance and must not be considered.

- Basic maintenance payments are based on the child's age and corresponding rate as defined by foster care maintenance rates (See Chapter E. Foster Care Manual, [Section 18.1.3](#)).
- The basic maintenance rate must be automatically be increased under these two circumstances:
 - The child reaches a higher age group in the foster care basic maintenance rate chart; or
 - There is a statewide increase that is provided to help address an increased cost of living.

If, through negotiation, the adoptive parent accepts a rate that is less than the rate as defined in the foster care basic maintenance rate chart, the agreed upon payment amount must be increased by the same percentage amount used to calculate the increase in the maximum foster care maintenance payments. The LDSS will notify the adoptive parent in writing when automatic increases occur.

2.6.3 Enhanced Maintenance Payments

An enhanced maintenance payment may be paid when the child requires additional supervision and support from the adoptive parent to ensure the child's well-being and safety.

- *Assessment of a child's need for additional support and supervision is a process that is ongoing from their initial placement in foster care.*
- *If it was determined that the child's needs did not warrant additional support and supervision over the life of the foster care placement, no additional support and supervision will be paid based solely on the child being adopted.*

- *For children in LDSS custody, an enhanced maintenance payment will not be approved if the child has not received ongoing enhanced maintenance payments over the previous 12 months.*

2.6.3.1 Administering the Virginia Enhanced Maintenance Tool (VEMAT)

When the LDSS establishes that the child requires additional support and supervision based on the administration of the VEMAT, the LDSS and Assistance Negotiator must assess and negotiate an enhanced maintenance payment with the adoptive parent, unless the adoptive parent declined the assistance in writing.

The VEMAT is conducted according to the same team process as specified in Chapter E. Foster Care Manual, Section [18.2.2.3](#), with the exception being if there is no specific case manager for the family, the LDSS must ensure that the individual at the LDSS who is assigned to manage adoption assistance requests is included in the VEMAT meeting.

- *The Assistance Negotiator must only approve enhanced maintenance payments that can be supported through relevant documentation from qualified licensed professionals, that are no more than one year old.*
- *If the Assistance Negotiator determines the supporting documentation does not support the VEMAT score, the LDSS will be required to provide additional information within 10 calendar days to support the VEMAT score or administer a new VEMAT. If the requested information is not received within the 10 calendar days, the request for enhanced maintenance will be denied, and the negotiation will proceed with basic maintenance only.*
- *The LDSS must provide supporting documentation for any new VEMAT that increased the score more than four points on the tool compared to the most recent and active VEMAT score.*

Supporting documentation includes, but is not limited to, ongoing provider treatment logs, monthly and quarterly reports which demonstrate a marked increase in the child's physical, mental or emotional health and the adoptive parent's level of support and supervision due to the increase.

- A VEMAT *must not* be administered if the Adoption Assistance Agreement will be signed within six months of a prior VEMAT assessment ([22VAC40-221-20 A 5 c](#)).
- If the VEMAT is re-administered and there is a rate change, prior to signing the Adoption Assistance Agreement, the new VEMAT rate will go into effect the first day of the following month, using foster care funds (*for*

children in LDSS custody) until the Adoption Assistance Agreement is effective.

For children not in LDSS custody, the Adoption Assistance Agreement is effective once it has been signed and the petition for adoption has been filed, the first day of the following month or upon finalization of the adoption, whichever occurs first.

- The maximum allowable amount for enhanced maintenance payments is based on the child's VEMAT score. *The final payment amount is based on negotiations between the LDSS, the Assistance Negotiator, and the adoptive parent. The maximum amount remains the same for any subsequent negotiations of enhanced maintenance payments for the duration of the Adoption Assistance Agreement. As a result, the enhanced maintenance payment must only be increased if, during the previous negotiation, the adoptive parents accepted less than the maximum allowable payment.*

When the adoptive parents and the LDSS agree to time-limited enhanced maintenance payments, the LDSS must inform the adoptive parents, by certified letter, 60 calendar days before the scheduled end date of the payment that the payment is ending.

2.6.4 Special Service Payments

A special service payment is a payment that is used to meet a service need that a child has that cannot be met by the adoptive parents and is not covered under any other program or benefit for which the child would qualify. Special service payments provide financial assistance for services and treatments directly related to special needs existing before the child's adoption ([22 VAC 40-201-161- E 2](#)).

Special service payments are available to help children with unique needs due to a diagnosed medical or mental health condition or developmental delay that substantially limits a major life activity (for example: walking, speaking, breathing, working, learning, the performance of manual tasks, vision, hearing, self-care, etc.). Funding for special services must be an exception rather than the rule in Adoption Assistance Agreements.

The goal is to keep families intact by preventing adoption disruption, dissolution, and the risk of an out-of-home placement.

- Funding for special services is *always* a state-funded payment, regardless of whether the assistance agreement is a title IV-E or state agreement.
- *Unlike the basic and enhanced maintenance payment forms of adoption assistance, funding for special services does consider all of the resources the*

adoptive parent has at their disposal, including earned and unearned income and the total amount of all adoption assistance payments received ([22 VAC 40-201-161 E 2](#)).

- The LDSS and Assistance Negotiator will consider whether the adoptive parents can afford the special service (§ [63.2-1302 C3](#)). This information must be considered as one factor when assessing and negotiating the payment for the special service.

When determining whether adoptive parents can financially afford the request service, the LDSS and the adoptive parents must complete the following:

- Determine the amount of the special service;
 - Assess all income; earned and unearned;
 - Determine any remaining funds the adoptive parents have available after expenses have been paid. This amount must be considered as one factor when assessing and negotiating to fund the special service. It must not be the sole factor in assessing family circumstances ([22 VAC 40-201-161 F](#)).
- *When psychiatric residential placement is requested and has been approved, and the adoptive parents are receiving an enhanced maintenance payment for additional daily support and supervision, the enhanced maintenance payments will be suspended until the child returns home from the residential placement. Once the child transitions home, the enhanced maintenance payment will be reinstated to the total amount the child was receiving before entering residential care. If the adoptive parent does not agree to suspend the enhanced maintenance payment, funding for the residential placement must not be approved using funding for special services.*
 - *Funding for all special services, regardless of when the family entered into the original agreement, may be provided up to a maximum of \$5,000 per calendar year for the total of all approved services; not to include expenses related to psychiatric residential treatment services or daycare.*
 - *The service requested must be related to the special need identified on the original Adoption Assistance Agreement or the Addendum to an Adoption Assistance Agreement that added a new special need.*
 - *Receipt of funding for service payments while in foster care does not guarantee approval of a special service payment at the time of adoption. Only after the Assistance Negotiator has had an opportunity to review the current documentation provided in the request will it be possible to determine if funding for the requested special service will be approved.*

- *Funding for new special services will not be considered with new Adoption Assistance Agreements nor within the immediate six months after the adoption finalization. To have a special service considered as a part of a new Adoption Assistance Agreement:*
 - *The child must have been receiving the service for a minimum of six months before signing the Adoption Assistance Agreement, and*
 - *The LDSS and adoptive parent must demonstrate they have attempted to use other available resources based on the Post Adoption Services Decision Tree. When using the Post Adoption Decision Tree, the outcome should determine how the service is funded. For more information on the Post Adoption Service Decision Tree, see [Section 4 Post Adoption Services](#).*
 - *For consideration of funding using special service payments for a service previously requested and denied due to the availability of another resource, adoptive parents must show they attempted to use all resources previously identified in the Post Adoption Decision Tree.*
- *Funding for specialized therapies, such as attachment therapies, trauma-focused, etc., will not be approved at the time of adoption placement and the signing of a new Adoption Assistance Agreement or within one year of finalizing the adoption.*
- *Payment for the special service must be at the reasonable, customary, and usual rate in the child's community as determined by Medicaid; i.e., therapeutic services will be reimbursed at the Medicaid rate in the child's place of residence ([22VAC40-201-161](#)).*
- *Funding for special service payments must be approved before the adoptive parent incurs the expense or it will otherwise begin once the Adoption Assistance Agreement or Addendum is effective.*

2.6.4.1 Special Service Eligibility Criteria

All children who were:

- In the custody of an LDSS, LCPA, or tribe at the time of application; and
- Found eligible to receive ongoing title IV-E or state adoption assistance are eligible to receive funding for special services.

As with basic and enhanced maintenance payment types of adoption assistance, the adoptive parent, with help from the LDSS, must have attempted to exhaust all other resources for funding the service or treatment. For additional information

on Assessing Resources to Defray the Cost of Adoption Assistance, see FUSION [Adoption Assistance](#).

For more information on processing specific types of special services requests, see [Adoption Guidance Section 4: Post Adoption Services](#).

2.6.4.2 Terminating Special Service Payments

Funding for special service payments is time-limited. Beginning January 1, 2022, for all Adoption Assistance Agreements, regardless of their effective date and any addendums, no special service will be funded by adoption assistance for more than two years over the life of the adoption assistance case. The LDSS must terminate funding for all special services under the following conditions:

- *when the service documentation does not demonstrate that the service provided is meeting the original need for the request and it is not treating or resolving the identified issue;*
- *when the child has reached the maximum benefit from the level of care and their level of functioning has not improved despite the length of time in treatment and interventions attempted;*
- *at the agreed upon time on the Adoption Assistance Agreement.*

2.6.4.3 Services that are Not Approved for Special Services Funding

Special service payments must not be used for the following types of services and expenses:

- Legal fees and nonrecurring adoption expenses.
- Boarding schools or private school placements or expenditures.
- Placements in therapeutic foster care (TFC) Homes.
- Placement in group homes.

For more information on distinguishing residential treatment and group homes. Refer to the [DMAS](#) website for approved behavioral health providers and program levels and [Magellan of Virginia](#) for levels of community based residential services.

2.7 Medical Coverage

The family must understand the benefits and limitations of the Virginia Medicaid program. Adoptive families must be encouraged to add adoptive children to their health insurance policies to assure optimal coverage. The LDSS should inform families that their insurance will be considered primary if they choose to do so. The medical needs of a child approved for title IV-E adoption assistance are met through the Medicaid program.

The child is eligible for Virginia Medicaid as part of their Adoption Assistance Agreement ([VDSS Medical Assistance Eligibility Manual, M0310.102](#)) when the child:

- Resides in Virginia, and
- Has a title IV-E funded Adoption Assistance Agreement, or
- Has a state funded Adoption Assistance Agreement in effect that specifies the child has a special medical and rehabilitative need (also known as a special medical need)

2.7.1 Title IV-E Medicaid

Title IV-E Medicaid must be provided for all children who are eligible for title IV-E adoption assistance.

- Medicaid must be included in the Adoption Assistance Agreement.
- Medicaid eligibility continues for the child when the agreement is executed.
- The adoptive parents are not required to submit a separate Medicaid application for the child. The child is eligible whether or not the final order of adoption has been executed or a title IV-E adoption assistance 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](#)).

2.7.2 Virginia State Medicaid Assistance

When the child is eligible for adoption assistance payments solely using state funds and the child has a special need documented on the Adoption Assistance Agreement, meeting Medicaid's definition of special medical needs (listed below), the child is eligible for Medicaid under the Special Medical Needs covered group.

In Part II, Section B, of the Adoption Assistance Agreement, the LDSS must indicate that the child has a special medical need. The adoptive family must submit a Medicaid

Application and a copy of the State funded Adoption Assistance Agreement that specifies the child's special medical or rehabilitative need. 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 before 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, MO310.102 2d](#)).

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, and attention deficit disorders.
- Severe visual and dental problems requiring non-routine medical or dental treatment.

The child's adoption assistance case record must contain documentation by qualified professionals of the child's 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 SSI 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 must 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. The adoptive parents must apply to the Benefit Programs Specialist as soon as possible with the LDSS, which they entered into the Adoption Assistance Agreement. 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. For information on Special Medical Needs Adoption Assistance, see the Virginia DSS Medicaid Eligibility Manual, [M03 Medicaid Covered Groups](#).

2.7.3 Medicaid Ineligible

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

Agreement. The family may apply for Medicaid and qualify under a different category outside of the adoption assistance process.

Medicaid will terminate when the adoption assistance case is closed.

2.7.4 Private Health Insurance

All adoptive parents should be advised to add their adopted child to their private health insurance within 30 days of the adoption finalization. Insurance companies are prohibited from refusing coverage because of pre-existing conditions if the child is enrolled during this period of enrollment. Private insurance does not effect Medicaid coverage.

2.8 Supplemental Security Insurance and Adoption Assistance

When the child receives Supplemental Security Insurance (SSI) payments, or it is recommended that the adoptive parents apply after the adoption is finalized, the LDSS should encourage the adoptive parents to contact a Social Security representative (1-800-772-1213) to discuss their situation. The adoptive parents may also visit the Social Security Administration (SSA) website at <http://www.socialsecurity.gov>.

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

If the LDSS is the payee, at the finalization of the child's adoption, the LDSS must complete the following steps:

- *Notify the adoptive parents that SSA benefits are available for the child.*
- *Obtain a signed Authorization to Release Confidential Information form from the adoptive parents, permitting the FSS to discuss the status of the adoption case with SSA.*
- *Only after obtaining authorization, notify the SSA that the adoption is finalized. Provide the name and address of the adoptive parent to the SSA so the SSA can secure a representative payee application for the adoptive parents. Inform the SSA the child is receiving either:*
 - *title IV-E adoption assistance as an applicable child and the amount of the payment; or*
 - *state funded adoption assistance and the amount of the payment; or*

- *title IV-E adoption assistance as a non-applicable child and the amount of the payment.*
- *If the adoptive parents do not wish to provide authorization, the LDSS must notify the SSA the adoption is finalized; however, due to privacy concerns, the identity of the adoptive parents cannot be released. Inform the SSA that the adoptive parents have been made aware that SSA benefits are available to the child and to contact SSA to file for those benefits. Inform the SSA the child is receiving either:*
 - *title IV-E adoption assistance as an applicable child and the amount of the payment; or*
 - *state funded adoption assistance and the amount of the payment; or*
 - *title IV-E adoption assistance as a non-applicable child and the amount of the payment.*

2.8.1 Social Security and an Applicable Child

When a child receives SSI benefits and is found eligible for adoption assistance as an applicable child, there is no dollar-for-dollar reduction in adoption assistance and SSI payments. The child may receive both simultaneously.

2.8.2 Social Security and State Adoption Assistance

When a child receives SSI benefits and is approved to receive state funded adoption assistance, there is no dollar-for-dollar reduction in adoption assistance and SSI payments. The child may receive both simultaneously.

2.8.3 Social Security and the Non-Applicable Child

When a child receives SSI benefits and is found eligible for adoption assistance as a non-applicable child, there is a dollar-for-dollar reduction in adoption assistance and SSI payments.

In determining the amount of SSI the child is entitled to receive, the SSA will count 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 effect 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 paid to the adoptive parents. In this situation, the adoptive parents may choose to:

- *Reduce the title IV-E adoption assistance 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 dollar payment, if the adoptive parents are not receiving other adoption assistance. This agreement allows the adoptive parents to submit an Addendum Request to the Assistance Agreement if they want to receive basic maintenance payments in the future.*
- *Receive only the adoption assistance payment and not continue SSI payments for the child. However, if the child does not receive SSI benefits for 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 LDSS should serve as a resource for the adoptive parents on the adoption assistance program as the parents must decide what to do. There are many complexities and financial implications. The adoptive parents should discuss all aspects of combining SSI and adoption assistance with a representative from the SSA before negotiating the Adoption Assistance Agreement ([Federal Child Welfare Policy Manual, Subsection 8.4D #1](#)).

2.9 LCPA, Independent, International, Parental Placement Adoption

2.9.1 Licenced Child Placing Agencies (LCPA) Adoptions

Criteria established by the [Fostering Connections and Increasing Adoptions Act of 2008](#) have resulted in more children from LCPA's meeting eligibility requirements for adoption assistance. LCPA's depend on the LDSS to determine eligibility and provide adoption assistance to children relinquished to their custody. The determination and administration of adoption assistance benefits is the responsibility of the LDSS in the adoptive parent's locality of residence.

An LCPA that identifies a potentially eligible child and is handling the adoption may refer the child to the LDSS in the locality in which the family resides for an application for adoption assistance. The referral for adoption assistance must be made before finalization because, by federal law, title IV-E Adoption Assistance Agreements must be signed by all parties before the adoption is finalized. The LDSS will then provide; the LCPA with the LCPA Application for Adoption Assistance, or one can be obtained off the VDSS public website. The LCPA Application for Adoption Assistance requests the following information:

- *A summary of circumstances of the adoptive placement including the following:*
 - *The date the child was received by the agency;*
 - *The date of the adoptive placement;*
 - *The name, address, and telephone number of the adoptive parents; and*
 - *The date of the anticipated finalization of the adoption.*
- *A statement of the child's eligibility for Supplemental Security Income (SSI) benefits.*
- *Documentation of the voluntary relinquishment by the birth parents and the judicial determination obtained within 180 calendar days of receiving the relinquishments that it is not in the best interest of the child to be returned to the parents.*
- *Documentation of the reasonable efforts made by the LCPA to place the child in an appropriate home without providing adoption assistance or the reason it is recommended the requirement for these efforts be waived.*

Documentation of the above includes but is not limited to the following:

- *Social Security Administration notification of the child's SSI eligibility or verifications;*
- *Copies of the voluntary relinquishments, consent to adopt, termination of parental rights for both birth parents;*
- *A complete description of the reasonable efforts made to place the child without using adoption assistance;*
- *Statements from a physician, or psychiatrists, licensed to practice medicine in the United States, verifying the child's current or anticipated medical condition or physical, mental, or emotional handicap, if it applies to the child;*
- *Verification for the search of the Birth Father Registry and statement of no father having registered;*
- *The child's birth certificate.*
- *The approved adoption home study.*
- *National criminal history fingerprint checks for both adoptive parents must be completed. If the adoptive parents have resided out of state for the last five*

years, checks must also be performed in their previous places of residence. (These are not transferrable. The LDSS must obtain the background checks).

- *Death Certificate, if applicable.*

Within 10 calendar days of receiving an LCPA Application for Adoption Assistance, the LDSS will:

- *Contact the adoptive parents and schedule to have background checks completed for both adoptive parents.*
- *Complete the [Adoption Assistance Screening Tool](#) and obtain signatures from the adoptive parent indicating they have been made aware of their child's eligibility to receive adoption assistance. Advise the family that this is pending results from the criminal history fingerprint checks.*
- *If the child is determined not eligible for adoption assistance, notify the adoptive family and the LCPA using the [Family Services Notice of Action and Right to Appeal](#) form and indicate why.*
- *If the child is determined eligible for adoption assistance, submit the [Referral for Negotiations](#) form and packet to your Regional Assistance Negotiator within five calendar days of receiving the results of the criminal background checks.*
- *If the referral packet provided by the LCPA is incomplete, contact the agency and advise them of the additional information that is needed. Still move forward with contacting the adoptive parent and scheduling the criminal background checks. Inform both the parent and the LCPA that without the required information, the application will be denied. Send the [Family Services Notice of Action and Right to Appeal](#) form if the requested information is not received within 10 days and indicate why the application is being denied.*

2.9.2 Independent Adoptions

Under title IV-E of the Social Security Act, adoption assistance payments are permitted on behalf of children with special needs who meet the AFDC or SSI eligibility requirements. The act does not exclude children whose adoptions are handled independently from consideration for title IV-E eligibility.

If an attorney or other representative identifies a child and an adoptive parent as candidates for adoption assistance, an application must be provided and processed. The LDSS must also tell the family about their right to appeal any action related to the program.

Procedures and requirements as described in Section [2.5.1](#), and Section [2.5.2](#) also apply to independent adoptions, including the court order containing the determination

that it is not in the child's best interest to be returned to the parents obtained within 180 days of the child's voluntary relinquishment by the parents. The independent agent handling the adoption or the adoptive parent is responsible for providing the required documentation to the LDSS to process the application and determine eligibility. The LDSS must use the process outlined in [2.9.1](#) to process the application.

Note: In independent adoptions, families do not usually face difficulty providing documentation to meet the specific factors or conditions that would render the child eligible for adoption assistance. However, the other two special need requirements of the court determination of best interest and the documentation of reasonable efforts required for adoption assistance eligibility are frequently missing. The LDSS may be required to provide an additional explanation to applicants.

2.9.3 International Adoptions

The adoption assistance program was established to provide permanency for children with special needs in public foster care by assisting LDSS agencies by providing ongoing financial and medical assistance to the families who adopt them. As a result, the statutory requirements for title IV-E and state adoption assistance eligibility are geared towards children in public child welfare systems. Adoption assistance payments must not be paid for any child adopted outside of the United States or who was brought into the United States for the purpose of adoption.

Families who have adopted abroad are entitled to receive post-adoption services. See [Section 4 Post Adoption](#) for additional information.

2.9.4 Parental Placements

The birth parent, legal guardian, or adoptive parent of a child may place their child for adoption directly with adoptive parents of their choice. Adoption assistance maintenance payments are not available for children adopted through parental placements. This restriction does not apply to Adoption Assistance Agreements existing before July of 2013.

Parental placement means the child's parent or legal guardian located or affected the child's placement or placed the child in a family home for foster care or adoption (§ [63.2-1301](#)).

2.10 Tax Benefits for Adopting

The Fostering Connections to Success and Increasing Adoptions Act of 2008 requires LDSS to notify adoptive parents about the adoption tax credit. Refer to [IRS publication 968](#) for detailed information on tax benefits to adoptive parents. Adoption assistance payments for children with special needs are not countable for tax purposes. Adoptive

parents should keep records, including the Adoption Assistance Agreement, as proof that their child receives adoption assistance because of their special needs.

In addition to the credit, certain amounts paid by an employer for qualifying adoption expenses may be excludable from gross income. For both the credit or the exclusion, qualifying expenses include reasonable and necessary adoption fees, court costs, attorney fees, traveling expenses (including amounts spent for meals and lodging while away from home), and other expenses directly related to the legal adoption of an eligible child. Adoptive parents should be referred to the IRS website at <http://www.irs.gov/taxtopics/tc607.html> or by calling the IRS Toll-Free Number at 1- 800-829-1040 for additional information.

2.11 Documenting Adoption Assistance

The LDSS must report public and private adoption AFCARS for each child, regardless of whether the child is in LDSS custody or not, receiving adoption assistance from the LDSS; this includes non-recurring expenses and ongoing adoption assistance. Once the Adoption Assistance Agreement is signed, an adoption assistance case must be opened in the child welfare information system and reviewed annually, depending on the type of agreement.

- **Children In LDSS Custody**

The child welfare information system adoption record is opened within five calendar days from the signature on the Adoptive Placement Agreement using the bio-connect process from the foster care case.

The child's placement status in the child welfare information system foster care record should be changed to Adoption: Non-finalized. Within five calendar days of the effective date of the Adoption Assistance Agreement, the LDSS must update the child welfare information system "Adoption Assistance" screen.

- **Children Adopted Through LCPAs**

LDSS must create a record in the child welfare information system when an application is received. The record is opened without the bio-connect process and within five calendar days of receiving the application.

Additional instructions on opening an adoption case in the child welfare information system can be obtained through the Help Screen in the child welfare information system. Directions on required screens and data entry may also be found on the Help Screen in the child welfare information system.

2.11.1 Adoption Case Contacts

In child welfare information system Adoption Case Contacts, LDSS must include narrative summaries documenting policies, procedures, and timelines were followed when applicable. All case contacts after finalization should be documented in the Adoption Case Contact screen in child welfare information system. Narratives must include, but are not limited to:

- An opening narrative that describes the selection of the adoptive home placement (including the reasons the placement is in the child's best interest), the child's eligibility for adoption assistance (including types of adoption assistance that may be available), and his/her special needs.
- 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.
- Discussion of the adoption assistance program, including the application, assessment, negotiation and decision-making process, and information on the right to appeal the LDSS' decision and the fair hearing process.
- Date adoptive parents notified of application receipt and status (should be within 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 additional resources can or cannot be used to fully or partially pay for the services and supports required to meet the child's special needs.
- Date the Adoption Assistance Agreement was executed, meaning the effective date stated in the agreement is within 90 days after the LDSS receives completed application with all supporting documentation.
- Dates the signed affidavits were returned.
- Any parent or provider contacts subsequent to the final order of adoption, including requests for services/addendums.

2.11.2 Adoption Assistance Screen

In the child welfare information system Assistance screen, the LDSS must record and keep up-to-date all adoption assistance payments, including basic and enhanced

maintenance, non-recurring, and special service payments. Also, the LDSS must be able to certify that the data in the child welfare information system record is consistent with the paper case record, the LDSS financial system of record, and the expenditures submitted for reimbursement in LASER. The goal of reporting the monthly payments in the child welfare information system is to provide a relatively accurate picture of the monthly payments agreed to on the Adoption Assistance Agreement. The child welfare information system information is also used in federal reporting and state budget analysis. Further directions may be found on the Help screen in the child welfare information system.

When the initial Adoption Assistance Agreement is signed, and payments begin, the LDSS will enter in the Assistance screen each type of payment (maintenance, enhanced maintenance, non-recurring, special service) and subsequent information into the inset grid. Specifically, the:

- **Type of Payment** is either maintenance, enhanced maintenance, nonrecurring, or service.
- **Application Date** is the date of the initial application.
- **Effective Date** is the first day of the month following the month in which all parties sign and date the agreement.
- **Renewal Date** is the due date of the next annual affidavit (the last date of the month a year after the effective date) or the date the agreement terminates, whichever is sooner.
- **Type of Agreement** is the funding source for the basic maintenance portion of the agreement.
- **Authorized Amount** is the monthly maximum amount authorized for the payment. For service payments that fluctuate from month to month, the LDSS will enter the maximum monthly liability in the payment amount.
- **End Date** is left blank until the annual affidavit is received or the agreement terminates. The end date is the last date of payment within either the annual or monthly payment cycle.

Example:

The initial application is signed by the family on August 27, 2016. The last date of signature on the Adoption Assistance Agreement is 10/16/16. The agreement specifies the effective date at 11/01/16 and authorizes a title IV-E basic maintenance payment of \$700, non-recurring costs of up to \$2,000, and six months of counseling up to \$500/month. Non-recurring expenses were paid on 11/10/2016.

In the child welfare information system Adoption Assistance screen, the LDSS would have three entries:

- **Maintenance:** application date 8/27/16, effective date 11/01/16, renewal date 10/31/17; type of agreement: IV-E, type of payment: maintenance, amount authorized \$700.
- **Non-recurring:** application date 8/27/16, effective date 11/01/16, renewal date 10/31/17; type of agreement: IV-E, type of payment: Non-recurring, amount authorized \$2,000 with an end date of 11/10/2016.
- **Special Services:** application date 8/27/16, effective date 11/01/16, renewal date 04/30/17; type of agreement: IV-E, type of payment: special services, the maximum monthly amount authorized \$500.

By not entering an end date all payment types will display on the child welfare information system Adoptive Children Report (ACR); subsequently, the ACR should be able to be reconciled to the amounts authorized on the Adoption Assistance Agreement and any addendums. The LDSS' financial system of record and the monthly LASER reimbursement entries should never exceed the amounts authorized.

In the above example, unless there is an addendum to the agreement specifically authorizing continued special service payments, the LDSS would end date the special service payment on 04/30/17. Also, once all the non-recurring expenditures have been reimbursed, the agency will need to end date this entry so that it will not display on the child welfare information system Adoptive Children Report. Non-recurring expenses should only display on the ACR during the period in which the agency is either waiting for invoices or in the month the invoice is paid.

Upon receipt of the annual affidavit, the LDSS will end date the previously created individual payment lines and create new payment lines in the inset grid for the upcoming year.

- **Application Date** is the date of the initial application.
- **Effective Date** is the first date of the next agreement year.
- **Renewal Date** is the due date of the next annual affidavit.
- **Type of Agreement** is funding source for the basic maintenance portion of the agreement.
- **Authorized Amount** is the monthly maximum amount authorized for the payment.

2.11.3 Residential Screen

If adoption assistance funding is used to pay for any portion of the residential treatment, the local department must record the maximum monthly cost, the name of the facility, and the date the child entered the facility on the Adopt/ Residential Screen in child welfare information system. In the comment section of this screen, the LDSS should enter the adoption assistance terms specific to the residential treatment. When the child is no longer in treatment at this facility, the LDSS must enter the exit date on this screen.

2.12 Adoption Assistance Application

The LDSS is primarily responsible for ensuring the adoptive family understands the purpose and the process related to adoption assistance and ensuring the family submits a timely, fully complete application.

The following information should be shared before the adoptive parent formally applies for adoption assistance:

- *Unlike foster care payments, there is not a standard amount the family will receive for the Adoption Assistance Agreement. Do not make promises to the family regarding the amount of the Adoption Assistance Agreement they may receive.*
- *The Adoption Assistance Agreement is meant to combine with the family's income and resources to help subsidize expenses associated with meeting the child's needs. It is not intended to cover all of the costs of raising a child.*
- *The Adoption Assistance Agreement must be negotiated based on the family's out-of-pocket expenses incurred to meet the child's basic and special needs.*
- *The average monthly agreement is less than the foster care payment.*
- *The agreement cannot exceed the Virginia foster care basic maintenance payment as determined by the child's age combined with the level of care payment as determined by the VEMAT assessment. The VEMAT payment is not automatically added to the assistance payment. The base rate and the VEMAT payment only set the maximum assistance amount allowed. The negotiated assistance amount is based on the family's actual out-of-pocket expenses for the child.*
- *Adoption assistance ends when the child turns 18, unless an extension is granted, and then it must end by 21.*
- *Using the [Full Disclosure Checklist for Adoptive Families](#), the LDSS will:*

- Meet with the prospective adoptive parent to indicate that each has been completed:
 - *Ensure the adoptive parents have received information on the lifelong process of adoption and its meaning, have been educated on the benefits and responsibilities of adoption, and provided information regarding adoption assistance and post-adoption services.*
 - *The adoptive parents have received and signed the [Information Sheet on Virginia Assistance Programs](#), a copy must be placed in the adoption assistance case file and one provided to the adoptive parent;*
 - *Reviewed, explained, and obtained the adoptive parent signature on the [Full Disclosure of Child Information](#) form and [Background Check Requirements](#) forms;*
 - *Review and explain the completed [Adoption Assistance Screening Tool](#), and obtain the adoptive parents' signatures on the form;*
 - *Provide the prospective adoptive parents with the [Application for Assistance](#). Section one of the application should be completed prior to giving it to the adoptive parents.*
 - *Adoptive parents must sign a copy of the [Full Disclosure Checklist](#) indicating they have completed the full disclosure process, and a copy of the form must be maintained in their Adoption Assistance Case file.*

Copies of all forms signed by the adoptive parents must be placed in the child's Adoption Assistance Case file, and the adoptive parents must also be provided copies of signed forms.

Note: A separate [Adoption Assistance Screening Tool](#) and [Application for Assistance](#) must be complete for each child applying for adoption assistance.

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

All children who are found eligible for adoption assistance and in the custody of the LDSS and every adoptive parent who requests an application must be provided the [Application for Assistance](#). The LDSS must complete Section One before giving the document to the adoptive parent.

A completed application by the adoptive parent will indicate one of the following:

- **Request adoption assistance** on behalf of the child with special needs.

- **Decline adoption assistance** by signing Section 8B of the application.
- **Request to enter into an Adoption Assistance Agreement, but decline financial assistance and services until needed.** See Subsection [2.13.1.2 Deferred Adoption Assistance Agreement](#) for additional information on this topic.

The adoptive parents must 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 nor initiate the timeframes for processing applications.

2.12.1 Review the Application and Notice of Receipt

Within **seven days** after receiving the application for assistance, the LDSS must:

- Review the application to determine it is complete, and all required documentation is attached.
- Notify the adoptive parents in writing:
 - Additional information is needed. The notification must state the specific information necessary to complete the application and request the adoptive parents submit the information by email, phone, or in person within **30 calendar days** from the date of the notice, or the **application will be denied**. *If the application is denied, the LDSS must send the adoptive parent the [Family Services Notice of Action and Right to Appeal](#) form denying the adoption assistance application and indicating the specific reason for the denial.*
 - **The application is complete.** The notification must include the date the application was received. It must state that the LDSS and the adoptive parents have **60 calendar days** to execute an Adoption Assistance Agreement from the date of application.
 - **The application is denied.** Used in cases where it is evident the child is not eligible for adoption assistance, per the screening tool. *Every adoptive parent must be provided the opportunity to apply for adoption assistance. Only through applying for assistance and being denied can the adoptive parent access their rights to the appeals process.*

Once the LDSS receives the completed application and all required documentation, the LDSS must submit a [Referral for Negotiations](#) to the Assistance Negotiator. See [Negotiating Adoption Assistance](#) for additional information.

2.13 Adoption Assistance Agreement

An Adoption Assistance Agreement is a written binding agreement between the adoptive parents, the LDSS, and the LCPA when the child is in its custody. A request for adoption assistance is initiated using the [Application for Assistance](#).

The [Adoption Assistance Agreement](#) must:

- Be signed by the adoptive parents and the Local Board and be in effect before the adoption assistance payments are made, but no later than the finalization of the adoption;
- Specify the duration of the agreement;
- Specify the amount of the adoption assistance payment (if any) and the nature and amount of any other payments and services;
- Specify the child's eligibility for title IV-E, state, non-recurring adoption assistance, and funding for special services;
- Specify that the agreement remains in effect regardless of the state of residence of the adoptive parents;
- Contain provisions for the protection of interests of the child in case the adoptive parents and child should move to another state while the agreement is in effect;
- The Adoption Assistance Agreement is not effective until both the local board or its designee and the adoptive parents have signed the agreement. For married couples, both parents must sign the agreement and any subsequent addendum to the agreement.
- The Adoption Assistance Agreement must be signed prior to or on the date of the issuance of the final order of adoption. However, both processes, reaching the agreement and obtaining the adoption finalization, may be in progress simultaneously.
- Because the Adoption Assistance Agreement is a legal contract, the type(s) of assistance, amount of assistance, and the effective date of assistance must be entered on the form before either party signs it.
- The agreement must be signed within 60 days of the date of the application. The effective date of adoption assistance is the first day of the following month after all parties have signed the agreement. However, no payments must begin until an Adoption Assistance Agreement is negotiated and signed into effect and the child has been placed in the adoptive home, as indicated by the signed adoption placement agreement.

- Adoption assistance is an entitlement program for an eligible child. Therefore, once the child has been determined to be eligible, the LDSS can deny or discontinue payments and benefits only with the consent of the adoptive parent unless the Adoption Assistance Agreement is to be terminated for one of the reasons listed in Section [2.15 Terminating Adoption Assistance](#).
- The Adoption Assistance Agreement must be renewed annually and may be renewed more often if the situation warrants or the adoptive parent(s) requests a renegotiation of the agreement.
- The agreement must include, but is not limited to:
 - The child's documented special need;
 - A 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 a school or that the child has completed secondary school;
 - Submit an [Annual Affidavit for Adoption Assistance](#);
 - Submit written notification of changes when:
 - Their address changes.
 - The child cannot participate in school full-time due to a medical condition documented by a qualified professional.
 - Changes in the child's special needs or the adoptive parents' circumstances may change the amount of adoption assistance received.
 - The child is no longer eligible for adoption assistance.
- Circumstances for terminating services.
- Process for appealing decisions.
- Process for continuing adoption assistance when the family unit moves to another jurisdiction in Virginia or another state.
- Effective and expiration dates of the agreement.
- Signatures of all parties and dates.

2.13.1 Executing the Agreement

Once the Adoption Assistance Agreement is signed and the child is adopted, the adoptive parents are free to decide about expenditures on behalf of the child without further agency approval or oversight. No payment is made, or service is reimbursed until an Adoption Assistance Agreement is signed and effective per the effective date on the agreement.

When the local board, or its designee, approves the agreement, all parties sign the document. The local board does not have the authority to deny an Adoption Assistance Agreement for an eligible child. Signatures must include the local board representative, 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 must be signed and in effect before, or at the time of, the final order of adoption when title IV-E adoption assistance funds are used ([45 CFR 1356.40](#)). The effective date and beginning initial payment date must be the first day of the month following the month in which all parties signed the agreement. The agreement must state the effective date. When the agreement is entered before adoption finalization, the effective date must be no later than the date the final order of adoption is signed by the judge.

The LDSS must only provide payments and services after all parties have signed and dated the agreement and when the agreement is in effect. However, for special services payments, the effective date is when all parties sign the agreement. The LDSS must give the parents a copy of the signed agreement.

The LDSS must keep the original agreement and supporting documents in the child's adoption assistance case record. The LDSS must discuss with the adoptive parents how they may request changes at any time during the duration of the agreement. The LDSS must give the adoptive parents a copy of the Addendum Request to the Assistance Agreement.

Failure to execute an agreement before 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. 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.

2.13.1.1 When the LDSS Fails to Execute the Agreement Timely

When the Adoption Assistance Agreement is not executed before the Final Order of Adoption due to the LDSS's failure to act on the application within a reasonable time, the adoptive parents may ask for a review of the process (§ [63.2-1304](#)).

Before making a final determination on the application, the LDSS should attempt to rectify the situation as an administrative error if agreed to by the adoptive parents. The LDSS should inform the adoptive parents of its ability to resolve the situation without influencing their ability to request a review of the process.

The LDSS must complete the following steps:

- *Document the reasons the LDSS failed to process the application correctly and how the child met all eligibility criteria for title IV-E or state funding before, or at the time of, the final adoption order in the child welfare case management system.*
- *Provide a written explanation to the Assistance Negotiator with a written request to execute the Adoption Assistance Agreement using title IV-E or state funds.*

The Adoption Program Manager determines whether the situation can be corrected as an administrative error. If the Adoption Program Manager approves, the approval will be provided in writing.

- *The LDSS must then execute the Adoption Assistance Agreement using title IV-E or state funds.*

2.13.1.2 Non-Recurring Adoption Expenses Only

If the child is eligible only for the reimbursement of nonrecurring adoption expenses, the LDSS must prepare an Adoption Assistance Agreement for this benefit only and execute it with the family. Upon the receipt of proof of qualifying expenses, as described in [Subsection 2.6.1 Non-recurring Expenses](#), the non-recurring expense will be reimbursed directly to the adoptive family or the provider of the parent's choice.

2.13.1.3 Deferring Adoption Assistance

Deferred adoption assistance (zero dollar or deferred subsidy) is a type of adoption assistance reserved for children who are recognized as high risk and have the potential to develop significant medical, psychological, emotional, or behavioral issues due to their history. High-risk considerations include:

- *Any child whose genetic/medical background or birth parent's medical history indicates potential for developing physical/psychological issues;*
- *An infant who was exposed to alcohol/drugs, where such exposure is documented in the child's birth record;*

The process for determining deferred adoption assistance requires the LDSS to obtain documentation from the licensed physician, psychiatrist, psychologist, or other licensed mental health professional regarding the child's high risk factors. Examples of documentation include, but are not limited to, medical examination, psychological or psychiatric evaluations.

Children eligible for title IV-E deferred adoption assistance must be approved for title IV-E Medicaid but with a "zero dollar" amount monthly payment. A child determined eligible for state deferred adoption assistance is not eligible for Medicaid.

The agreement does not require negotiation until a need is expressed by the parent for monthly maintenance payments and a diagnosis is made supporting the payment. At that time, the LDSS will follow the procedures outlined in [Negotiating Adoption Assistance](#) to determine the monthly payment.

The foster care basic maintenance rate set forth at the time of the request, coinciding with the child's age, will be approved if the child meets eligibility requirements. The child will also be considered for funding for special service payment requests.

2.14 Negotiating Adoption Assistance

The first step in the adoption assistance process is knowing the adoption assistance policies and procedures. Only then must the FSS begin to review the information about the child, determine resources available in the community, and provide realistic expectations to the family during the process.

- *Using the [Adoption Assistance Screening Tool](#), determine if the child is eligible for adoption assistance.*

This tool must also be determined to have been completed accurately by the Regional Assistance Negotiator.

If the Assistance Negotiator determines the screening tool to be inaccurate, it will be returned to the LDSS. The LDSS must correct the screening tool, and the adoptive parent(s) must sign the corrected tool to acknowledge they are aware of any changes made to the tool. The negotiation process must not proceed until the screening tool has been corrected and it has been resubmitted to the Assistance Negotiator. If the corrected tool is not submitted to the Assistance Negotiator within 10 calendar days, the Application for Assistance must be denied.

- *Discuss the results of the adoption assistance screening tool with the adoptive parents.*

- *The LDSS must ask the adoptive parents if they would adopt the child without adoption assistance.*
- *For older youth, have an open and honest conversation with them about their feelings regarding the process. Some older youth may be concerned that the adoptive parent only wants to adopt for the “money.” Motivation for adoption is discussed in further detail in the Adoption Guidance Section 3: [Finalizing the Adoption](#). Be sure to resolve any concerns the youth has before moving forward with the adoption.*
- Complete the [Available Community Resources: Assessing Resources to Defray Costs](#) form with the adoptive family.
- Gather documentation that supports any additional daily support and supervision needs the child may have that are payable through enhanced maintenance and for all special service requests. Supporting documentation must be current within one year of the date of application, except for psychological assessments, which may be within two years of the date of application.
- Submit a Referral for Negotiations to the respective regional Assistance Negotiators. The Referral packet must contain the following:
 - An Application for Assistance
 - An Adoption Assistance Screening Tool
 - A VEMAT (if applicable)
 - Supporting documentation and diagnosis of each child’s special need (such as, Full Disclosure Child Information Form, medical report, birth records, psychological evaluations, treatment notes in cases of sudden increases of VEMAT scores, etc.)
 - *For special service requests, verification that the child has been receiving the service.*
 - A completed [Available Community Resources: Assessing Resources to Defray Costs](#) form.

The Assistance Negotiator may choose to negotiate by desk review, telephone, through an online tool (i.e. Zoom or Google Meets), or face-to-face, as appropriate, per the Assistance Negotiator responsibilities. The Assistance Negotiator must acknowledge they have everything needed to proceed with the negotiation within five calendar days to the FSS by email. Once the acknowledgment has been sent, the Assistance Negotiator has 30 calendar days to complete the negotiation.

Basic foster care maintenance and enhanced maintenance payments combined are the “maintenance payment” for adoption assistance. Negotiations begin at 70% of the total maintenance rate.

Concluding Negotiations:

- *At the conclusion of negotiations, the Assistance Negotiator will submit the [Negotiation Report](#) to the LDSS.*
- *Within **five calendar days** of receiving the [Negotiation Report](#), the LDSS must provide the adoptive family with a [Family Services Notice of Action and Rights to Appeal](#) form, informing them in writing of the decision. The adoptive family has **10 calendar days** to appeal the decision.*

2.14.1 Means Test

The use of a means test is prohibited in the process of selecting a suitable adoptive family or in negotiating an Adoption Assistance Agreement, including the determination of the amount of the adoption assistance payment. Once a child has been determined eligible, adoptive parents cannot be rejected for adoption assistance nor have their payments reduced without their agreement because of their income or other resources.

2.14.2 Responsibilities of the LDSS

The LDSS must inform the prospective adoptive parents of the availability of adoption assistance but must not discuss specifics of the agreement with the family; they must not commit to specific services or any certain amount of adoption assistance monetary figure.

The LDSS must send to the Assistance Negotiator, at least two weeks before the date planned to sign the Adoption Assistance Agreement:

- The complete social history of the child;
- Medical, school, psychological records of the child as applicable;
- The updated adoptive parent home study;
- Documentation regarding referrals to the state and national adoption exchange, recruitment plans, and any special recruitment initiatives if the placement is not with a relative or a foster family with whom a significant relationship has been established;
- Complete the [Referral for Negotiations](#) form;

- Provide the family with information about the Adoption Assistance Program.

2.14.3 Considerations During Negotiations

The Assistance Negotiator, LDSS, and the adoptive parents must take the following factors and guidelines into consideration when discussing and negotiating any adoption assistance payment:

- The child's present and future need for services are considered in relation to the adoptive family's income, other resources, expenses, circumstances, and plans for the future.
- Benefits are intended only to meet the child's needs and the adoptive parents' responsibilities to those needs.
- Any and all sources of income and support that are specifically designated for the child (such as Retirement, Survivors, Disability Insurance, or Veterans Administration benefits) must be applied toward meeting the child's needs.
- The costs associated with meeting the child's needs through private sources are considered only when those needs cannot be met through other publicly funded sources.

2.14.4 Assessing Resources to Defray Costs

The LDSS and adoptive parents must consider all relevant and applicable resources, when assessing and negotiating maintenance and special service payments for adoption assistance.

The LDSS and the adoptive parent parents must assess all available family, health insurance, community, government, and other resources to help meet the needs of the child and defray the costs for adoption assistance ([22 VAC 40-201-161 F](#)). *The LDSS must complete the following: [Available Community Resources: Assessing Resources to Defray Costs](#) form indicating what applicable resources were explored and the outcomes of exploration.*

When the LDSS determines that health insurance benefits or other resources are appropriate, available, and accessible for the child, these resources must be utilized prior to considering adoption assistance and/or special services (§ [63.2-1301 C](#)). Adoption assistance funds must 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.

For more information on assessing information to defray costs see [Section 4 Post Adoption Services](#).

2.14.5 Appealing the Negotiation

The LDSS must provide the adoptive parents with the [Family Services Notice of Action and Right to Appeal](#) to the adoptive parents; documenting the LDSS action on the adoptive parents' application.

This notice should be provided within 90 calendar days from the date the LDSS received the completed Application for Assistance with all required documentation. The notice includes information about the adoptive parents' right to appeal any LDSS decision in granting, denying, changing, or discontinuing adoption assistance within 30 calendar days of receiving written notice of the decisions and their right to a fair hearing. LDSS cannot use the Appeals and Fair Hearings process for appealing the negotiation results. LDSS who disagree or object to the results of the negotiations should contact the Adoption Program Manager by email. If the LDSS and the Adoption Program Manager are unable to reach an accord, the LDSS may contact the Director of Family Services.

2.15 Annual Certification of Adoption Assistance

The [Virginia Annual Affidavit for Adoption Assistance](#) must be used to conduct an annual certification to determine if the family continues to be legally and financially responsible for the child. It is not a re-determination of eligibility for adoption assistance.

Except for agreements signed for non-recurring expenses only, the annual affidavit is required for all Adoption Assistance Agreements, including Medicaid only agreements and agreements entered into with a zero dollar payment.

The LDSS must notify the adoptive parents in writing of the date the annual affidavit is due. The notification must be sent 60 days before the anniversary date when the Adoption Assistance Agreement was effective.

The adoptive parents must submit the Annual affidavit to the LDSS within 30 days of the anniversary date that the Adoption Assistance Agreement was effective ([§ 63.2-1302 C](#)).

The adoptive parents are required to inform the LDSS of circumstances that would make them ineligible for adoption assistance payments or payments in a different amount.

The annual renewal packet must be mailed to the adoptive family 60 days before the renewal date. All local department annual affidavits must include information to determine the following:

- Adoptive parents are legally responsible for the child;
- Adoptive parents currently provide financial support for the child;

- Child is currently attending/enrolled in school. Supporting documentation is required: current report card, authorization letter for homeschooling, or enrollment verification from the school system.
- If the youth will reach their 18th birthday within the next 12 months:
 - It must be determined that the child has a mental or physical disability that warrants continuation of the adoption assistance beyond the child's 18th birthday;
 - Local departments must obtain relevant and current documentation that the basis for continuing the assistance payment past 18 years exists.
- *Information on Post-Adoption Services.*

2.15.1 Re-determination / Review

LDSS does not routinely review Adoption Assistance Agreements. The adoptive family must notify the LDSS immediately to request a review of the Adoption Assistance Agreement if there is a change in the child's circumstances that would affect the child's eligibility for continued assistance.

Once the child is determined initially eligible in these areas, no subsequent redetermination of special needs or categorical eligibility is required. The child's adoption assistance eligibility is maintained until adoption assistance is terminated for reasons listed in [Section 2.15 Terminating Adoption Assistance](#). Examples of changes that can occur after adoption assistance are determined which will not affect the child's continuing eligibility include but are not limited to the following:

- *The move of an individual member of a sibling group out of the adoptive home after adoption assistance had started when the sibling's placement in the home was the sole qualifier for adoption assistance.*
- *A cure of the child's health condition after adoption assistance had started when the health condition was the sole reason for adoption assistance.*
- *The child's eligibility for income, such as SSI, subsequent to the start of adoption assistance.*

Changes that would impact the continuation of adoption assistance include:

- *The adoptive parent no longer providing financial support for the child*
- *The child has married, enlisted in the U.S. military or reserves, or has become emancipated.*

In addition to verifying that the adoptive parent continues to be legally and financially responsible for the child, the annual certification period provides an opportunity for the LDSS to reach out to the adoptive family and remind them of post-adoption supports and services available to them. For additional information regarding renegotiating Adoption Assistance Agreements, see [Section 4 Post Adoption Services](#).

2.15.2 Suspended Adoption Assistance

If the family has not returned the annual affidavit, the LDSS:

- Must not suspend or terminate adoption assistance maintenance payments or the Adoption Assistance Agreement;
- May suspend the special service payments until the signed affidavit is received; the LDSS must not terminate the special service payment.

The LDSS must 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.
- May permit them to come into the office, sign the affidavit, and pick up their check at the same time by the required date. The certified letter must be sent at least 30 days prior to holding the check. The LDSS must issue the check for adoption assistance payments on the normal schedule and must give the check to the adoptive parents before they depart the premises.
- Must inform the adoptive parents that, when applicable, special service payments being provided to the family will be suspended until the signed affidavit is received. The letter must include information on the adoptive parents' right to appeal the LDSS decision within 30 calendar 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.

The LDSS must document case contacts, in the child welfare information system, within five calendar days of the receipt of the signed affidavit. The LDSS must place copies of the written notifications to the adoptive parents and the returned affidavits in the child's adoption assistance case record.

2.15.3 School Attendance

LDSS must assure that every child who receives adoption assistance and is of the compulsory age (five to 18) for school attendance under state law § [22.1-254](#) is

enrolled as a full-time elementary or secondary school student or has completed secondary school. “Elementary or secondary school student” is defined to include a child that is:

- Enrolled in an institution which provides elementary or secondary education in compliance with state law,
- Instructed in elementary or secondary education at home in accordance with state law on home schools,
- In an independent study program in elementary or secondary education that is administered by the local school district and is in accordance with state law.

The adoptive parents must 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 education information from the Virginia Department of Education (VDOE) on children who receive adoption assistance funds. Only non-identifying aggregate education 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 the child welfare information system, 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 must be maintained as confidential information by LDSS (§ [63.2-104](#)).

2.16 Terminating Adoption Assistance

*The LDSS must use the [Family Services Notice of Action and Right to Appeal](#) form to inform families adoption assistance payments are terminating. The form must be completed and sent to the adoptive parents **60 calendar days** prior to terminating the agreement. It is important the LDSS list the reason for terminating the agreement so if the adoptive parent chooses to exercise their right to appeal the termination, the information is available on the form.*

If the adoptive family files an appeal, the case must remain open until all appeals have been concluded; however, payment will not be issued once the annual agreement has expired.

2.16.1 Reasons for Terminating Adoption Assistance

Federal and state law require that adoption assistance be discontinued without the concurrence of the adoptive parent when any one of the following occurs:

- The child reaches 18 years of age. If the LDSS is provided information that the child has a physical condition or a mental, emotion or physical handicap that requires a continuance of benefits, adoption assistance benefits may continue until the child reaches age 21. See [Section 2.19 Extending Adoption Assistance](#) for additional information.
- *The adoptive parent is no longer legally responsible for the child's support. According to federal interpretation found in DHHS Policy Interpretation Question [PIQ-98-02](#), a parent is not considered legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.*
- *The child no longer receives any financial support from the adoptive parent. [PIQ-98-02](#) defines financial support as basic food and shelter, and also includes payments made for tuition, clothing, maintenance of special equipment in the home, family therapy, and services for the child's special needs.*

In addition to the terms listed above, the Adoption Assistance Agreement must also be terminated under the following circumstances:

- *The terms of the Adoption Assistance Agreement have been fulfilled and the LDSS and the adoptive parents have mutually agree to terminate.*
- *The adoptive parents make a written request for termination of assistance.*
- *Child re-enters foster care and there is a subsequent termination of parental rights.*
- *Death of the eligible child.*

Note: The Adoption Assistance Agreement is a legally binding contract made with the adoptive parent and the payments must only be made to the parents who adopt the child. There is no provision for the transfer of the agreement or for the payments to be made to anyone, including the child, a relative, or a guardian, in situations where the adoptive parents die or the adoption is dissolved. However, although both the Adoption Assistance Agreement with the adoptive parents and the adoption assistance payments are terminated, the child's eligibility for adoption assistance does not terminate, as long as they continue to meet the definition of special needs.

2.16.2 When Adoptive Parents Fail to Provide Financial Support

When the LDSS can verify and document in writing the adoptive parents are not providing financial support for the child, the LDSS must immediately send the adoptive parents a certified letter stating the following:

- Verification of the information received 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](#)).
- A copy of the binding Adoption Assistance Agreement requiring 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 **ten (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 must notify both parents when both parents signed the active Adoption Assistance Agreement, including separated or divorced parents.

The LDSS must discuss the situation with the adoptive parents and document the discussion in the child welfare information system 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 must document the adoptive parents' decision and the LDSS' action in writing. The LDSS and the adoptive parents must sign the document. If the adoptive parents do not sign the document, the LDSS must 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 the LDSS requested, the LDSS must provide written notice in a certified letter to the adoptive parents that the agreement must be terminated on a specified date (e.g., the date specified in the first certified letter). The notification must include information on the adoptive parents' right to appeal the decision to terminate the agreement within 30 days of their receipt of the second written notice. The LDSS must 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](#)).

2.16.3 Timelines for Terminating Assistance

Termination of adoption assistance must occur on the first of the month following the decision of the LDSS and/or the adoptive parent to close the adoption assistance case and the provision of proper notice of action.

2.17 Special Adoption Considerations

2.17.1 Therapeutic Case Management Services

For children receiving services provided by a therapeutic foster care (TFC) agency, once the adoption placement and Adoption Assistance Agreements have been signed, treatment foster care services will end effective on the day prior to the effective date of the Adoption Assistance Agreement.

2.17.2 Interstate Adoption and Adoption Assistance

2.17.2.1 If the Child is in the Custody of a State Agency

It is the responsibility of the state with the placement and care responsibility of the child prior to the adoption to provide adoption assistance; not the state of residence of the adoptive family.

2.17.2.2 If the Child is not in the Custody of a State Agency

If a state agency does not have responsibility for placement and care, it is the adoptive parents' state of residence where the adoption assistance application should be made. In this situation, the LDSS in the adoptive parents' place of residence is responsible for processing the application, determining whether the child meets the definition of special needs, entering into an Adoption Assistance Agreement and paying the assistance.

In accordance with its own laws and programs, each state determines the amount of adoption assistance and other aid it provides on behalf of children. The assistance may be subject to a periodic review to ensure the child continues to meet program eligibility.

All interstate placements of children must be made in compliance with the Interstate Compact on the Placement of Children (ICPC or Compact), as described in [ICPC Policy Chapter E](#), for adoption placements. A placement made in violation of the Compact renders the child ineligible for adoption assistance. The LDSS must note in the eligibility determination section of the Application for Assistance that the adoptive placement was made in violation of the Compact requirements. For additional information on adoption placements see [Section 3: Finalizing the Adoption](#).

2.17.3 Adoption by Birth/Legal Parent

A child's biological or legal parent whose rights were previously terminated who later adopts their biological child is not eligible for adoption assistance.

2.17.4 When an Adopted Child Re-Enters Foster Care

When an adopted child re-enters the foster care system after a finalized adoption or if the LDSS is informed that a child placed by a different locality is no longer residing with their adoptive parents, the LDSS must immediately inform the LDSS responsible for the issuance of the adoption assistance payment. The LDSS that issues the assistance payment must immediately review the adoption assistance record and engage the family to assess their ongoing needs.

The Adoption Assistance Agreement continues unless there are grounds for terminating it. As a reminder, the LDSS is required, with a degree of flexibility, to refer

children to the child support enforcement program. To determine if it is appropriate to refer the matter to the child support program.

The LDSS should evaluate each case on an individual basis, considering the best interest of the child and the circumstances of the family. Facts to consider:

- Is the parent is working towards reunification with the child, consistent with the case plan?*
- Would the referral impede the parent's ability to reunify with the child?*
- Has the parent agreed to pay for the cost of out-of-home care or to temporarily accept a reduction in the adoption assistance payment?*

Questions of this nature should guide the agency's decision regarding whether or not the referral should be made.

Assistance payments may be made to the adoptive parents concurrently with the foster care payment to the foster parent. Medicaid will continue based on the child's adoption assistance eligibility status when the agreement is not terminated. If the agreement is terminated, Medicaid will be issued based on the Medicaid eligibility determination made from title IV-E Foster Care eligibility.

2.17.5 Adoption Following Kinship Guardianship Placement

If a guardian who has an active Kinship Guardianship Assistance Agreement, has custody of a child that meets the State's special needs criteria for adoption assistance the guardian wishes to pursue adoption of the child, the funding determination for adoption assistance will not consider the guardianship placement or the guardianship assistance payments that were made for the child.

If the child would have met the funding determination for title IV-E adoption assistance prior to the Kinship Guardianship Assistance Agreement being put in place, the title IV-E funding determination will be carried forward to adoption following a guardianship placement.

2.17.6 Adoption Following a Dissolved International Adoption

A child who is not a citizen or resident of the United States (U.S.) and was adopted outside of the U.S. or brought into the U.S. for the purpose of being adopted may be eligible for adoption assistance if the initial adoption of the child is dissolved and the child is subsequently placed in foster care through the public child welfare system. The child's circumstances must meet the State's special needs eligibility requirements.

2.17.7 Changes Due to Adoption Disruption

If the adoption disrupts prior to finalization, the LDSS must send the [Notice of Adoption Disruption](#) form to the child's guardian ad litem, the Regional Specialist, and Regional Assistance Negotiator.

The funding source must be changed from adoption assistance to foster care effective on the date of placement disruption. The LDSS must follow procedures for placing a child as set forth in Foster Care Guidance [Section 6.7.6](#).

If a child is subsequently matched with another adoptive family, a new [Application for Assistance](#) form with required documentation must be submitted, a new [Adoption Assistance Agreement](#) must be negotiated, and a new Adoption case must be opened.

The LDSS must update the child welfare information system by ending the funding in the adoption assistance case and terminating the adoption assistance. Case contacts must be documented in the foster care case and the adoption case. The adoption case must be closed due to Adoption Disruption.

2.17.8 Changes Due to Adoption Dissolution and TPR

When dissolution happens due to the adoptive parent's parental rights being terminated or by voluntary relinquishment, the family is no longer entitled to adoption assistance payments. If the adoption dissolved through termination of parental rights or voluntary entrustment, the [Adoption Assistance Agreement](#) must be terminated effective the date of when the agency assessed the parents were no longer able to commit to the child and no longer were providing financial support. This can happen prior to the point of a TPR or signing the voluntary entrustment agreement.

The LDSS must update the child welfare information system by ending the funding in the adoption assistance case and terminating the adoption assistance. Case contacts must be documented in the adoption case. The adoption case must be closed due to Adoption Dissolution.

If a child is subsequently matched with another adoptive family, a new [Application for Assistance](#) form with the required documentation must be submitted, a new [Adoption Assistance Agreement](#) must be negotiated, and a new Adoption case must be opened.

If the child were title IV-E eligible, they would continue to maintain their eligibility status for any subsequent adoption.

2.17.9 Death of Adoptive Parents

If a child is adopted by a married couple and both individuals are deceased, the Adoption Assistance Agreement will terminate the last day of the month of the death of the second parent being party to the agreement. If a child is adopted by a single individual, adoption assistance will terminate the last day of the month of the death of

the individual. Adoption assistance will be paid for the entire month the individual died. Adoption assistance does not automatically transfer to the guardian of the child.

If the guardian of the child decides to adopt the child and receive adoption assistance, it is not necessary for the appointed guardian to qualify as a foster/adoptive parent in accordance with approval standards defined in Virginia Foster and Adoptive Family Home Approval Guidance; however, the guardian must meet the background check requirements. In addition, the child must be assessed as having special needs.

The adoption assistance rate will be based on the needs of the child at the time the child is adopted by the guardian.

The LDSS will negotiate the Adoption Assistance Agreement, following the predefined process for applying and negotiating all adoption assistance applications.

2.17.9.1 LDSS Actions When Adoptive Parents Die

When both parents are deceased in a two-parent family, or one parent is deceased in a single parent family, the Adoption Assistance Agreement must 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 must not re-determine the child's eligibility for title IV-E adoption assistance payments.
 - When the LDSS establishes that the child received title IV-E maintenance payments from a previous Adoption Assistance Agreement, the child continues 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 services delineated in the new agreement may begin when the petition is filed in circuit court to finalize the adoption.
- 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 must provide necessary documentation about the child's prior eligibility for IV-E adoption assistance to the public child welfare agency in the new state. ([Social Security Act, Title IV, § 473 \(a\) \(2\) \(C\) \[42 U.S.C. 673\]](#)).

2.18 Interstate Compact on Adoption and Medical Assistance (ICAMA)

The LDSS is responsible for medical care and financial support from the date the child is placed in an out-of-state home until the adoption is finalized. The child's title IV-E eligibility, the receiving state's ICAMA reciprocity, the child's benefits, and the family's resources may impact finances and medical coverage. The LDSS should work with their ICPC Consultant to determine community resources available in the receiving state to assist the child and family.

Children receiving title IV-E adoption assistance are guaranteed to receive Medicaid in all states. However, children approved for Medicaid, whose adoption assistance is funded by state adoption assistance do not have this guarantee.

To determine if a child, may be covered in the receiving state refer to [Medicaid Cobra Reciprocity](#).

Virginia Medicaid will not be opened for children whose adoptive homes are located in another state.

For New Cases: *At case opening, the LDSS must complete the ICAMA Form 700, Notice of Medicaid Eligibility/Case Activation, and notify the child's state of residence that the Medicaid case should be opened in that state.*

For Virginia Children Moving to Other States:

When an adoptive child receiving adoption assistance moves from Virginia to another state, the adoptive parent must notify the LDSS to transfer the child's Medicaid to the new state of residence. The adoptive parent does not need to do anything besides inform the LDSS of the move. See Section [4.9.1 Address Changes](#) for additional information.

- Within seven calendar days after receipt of notification of the child's relocation or intent to relocate to another state, the LDSS must forward the following documents to the ICAMA Specialist in the State Office vaicpcoffice@dss.virginia.gov:
 - A cover letter summarizing the case; (for example, the family is moving, has recently moved, or the child previously received Medicaid in another state through foster care).
 - ICAMA [Form 700](#) VA Work Form. This includes the adoptive parent's telephone number and email address (notifies the new state of the child's eligibility for adoption assistance, which is the basis for the child's Medicaid eligibility).
 - ICAMA [Form 7.5](#) – Additional Children (used when there are two or more children in the family).
 - A copy of each child's Adoption Assistance Agreement.
 - A copy of the Final Order of Adoption (if available).
 - ICAMA [Form 7.5](#) - Information Exchange (This form provides notice that an adoption has been finalized, that the child has reached the age of majority, that the family has moved to another address in state, or that the family has moved to another state).
- The LDSS must send the adoptive parent a copy of the following forms:
 - [Form 7.02a](#) Notice of Action (to notify the parent that an application has been sent to their new state of residence on behalf of their child).
 - [Form 7.02b](#) Important Information for Families.
- The LDSS must notify the Medicaid Eligibility Specialist in their agency of the change so that the open Medicaid case can be closed.
- When Virginia is the receiving state in an adoption case from another state, and the LDSS's sole responsibility is to issue a Medicaid card, do not open an adoption assistance case in the child welfare information system.

2.19 Extending Adoption Assistance Past 18

Adoption Assistance terminates on the youth's 18th birthday unless the youth has a documented condition that warrants continuation of adoption assistance. The LDSS, in conjunction with the Assistance Negotiator, will make the determination.

The LDSS must notify the adoptive parents in writing, using the [Family Services Notice of Action and Rights to Appeal](#) form, **six months** prior to the youth's 18th birthday unless they submit, prior to the youth attaining age 18, documentation demonstrating that the youth has a condition that warrants continuation of adoption assistance, the agreement may be continued via completing an Amended Adoption Assistance Agreement. ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(II\) \[42 USC 673\]](#) and § [63.2-1302 B](#)). The terms of the agreement or addendum may be for any period after the youth's 18th birthday up to the youth's 21st birthday.

If the LDSS determines the youth does not have a condition that warrants continuation of the agreement beyond the youth's 18th birthday, the LDSS must notify the adoptive parents in writing. Notice must be made using the [Family Services Notice of Action and Right to Appeal](#) form at least 60 calendar days before the youth's 18th birthday that the agreement and subsequent payments will terminate on the youth's 18th birthday.

2.19.1 Criteria for Continuing Beyond 18th Birthday

To continue adoption assistance beyond age 18, the LDSS must determine if the youth meets both of the following criteria:

- The LDSS must establish one of the following that is listed on the original Adoption Assistance Agreement or *Addendum*:
 - 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 special need above.

AND

- The LDSS determines the youth requires ongoing treatment and intervention.
 - The youth requires treatment, intervention, or additional supervision and support from the adoptive parents to ensure the youth's safety and well-being; 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).

Evidence of these two criteria must be based on the following documentation:

- Statements from qualified professionals 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 documentation that occurred within one year (e.g., VEMAT and supporting documentation; school performance reports).

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

- Physical or mental disability, or educational delay resulting from such disability, continues to exist.
- Youth continues to require ongoing treatment 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 must continue using the same fund source (i.e., title IV-E or state funds) for adoption assistance payments after the youth attains age 18.
- Solely due to an educational delay resulting from a mental or physical disability, then the LDSS must only use state funds for adoption assistance 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.

When the youth is no longer cooperating or participating in educational or therapeutic services to address their needs, the LDSS must suspend the adoption assistance

payments. If the youth meets the criteria at a later time, the LDSS may resume payments for the youth at the previous agreed upon rate. The LDSS must notify the adoptive parents 60 days prior to suspending the payment using the [Family Services Notice of Action and Right to Appeal](#) form. The LDSS must inform the adoptive parent to contact the agency if their circumstances change.

2.19.2 Fostering Futures Eligibility Criteria

The Fostering Connections to Success and Increasing Adoptions Act of 2008 permits states to utilize title IV-E funding to provide foster care maintenance payments and adoption assistance for youth ages 18 to 21 under certain conditions. Youth adopted from foster care after age 16, may qualify for an extension of adoption assistance under Fostering Futures after reaching age 18, up to 21.

When the LDSS determines the youth is ineligible for continuation of adoption assistance beyond age 18, because they do not have a condition which would warrant continuation of adoption assistance, adoption assistance may continue for the youth when the following two criteria are met:

- The youth turned 18 on or after July 1, 2016; and
- The youth is subject to an Adoption Assistance Agreement that became effective after the youth reached the age of 16 years old.

In addition to meeting the above criteria, the youth must meet at least one of the five participation circumstances below:

- Completing secondary education or GED.
 - Examples include enrollment in a secondary school, e.g. public high school, alternative high school, private school, adult education classes, program leading to GED, or special education described in the IEP.
- Enrolled full-time or part-time (at least half-time) in an institution that provides post-secondary or vocational education.
 - Examples include remedial courses, coursework without formal admission to the institution, attendance at multiple institutions, or correspondence or on-line course affiliated with an accredited institution.
- Participating in a program or activity designed to promote employment or remove barriers to employment.
 - Examples include individualized activities based on an assessment of the youth's needs. These may be self-directed, completed on a one-on-one basis with a caregiver, or part of an organized program. They may also

include but are not limited to internships, volunteering, vocational rehabilitation, counseling, driver's education, less than half-time secondary education, or participating in a substance abuse program. Qualifying activities should clearly move the youth toward developing skills to help transition to education or employment leading to independence.

- Employed at least 80 hours per month.
- Incapable of engaging in any of the above activities due to a medical condition, i.e. a short-term or long-term physical health impairment or a mental/emotional or behavior health, developmental or cognitive disability or impairment that serves as a barrier which prevents the youth from consistently participating in employment and education.
 - The youth does not have to be currently receiving or seeking treatment or remediation for the medical condition.

In most cases, a medical condition which makes the youth incapable of participating would also make the youth eligible for the extension of adoption assistance due to a special need; and therefore, the youth would not be eligible under Fostering Futures. *However, the difference here is that the youth does not have to be currently receiving or seeking treatment under Fostering Futures program requirements.*

The LDSS with assistance of the Assistance Negotiator will make the initial determination whether the youth is eligible to continue the Adoption Assistance Agreement under Fostering Futures beyond the youth's 18th birthday.

Other Fostering Futures requirements which apply in extended foster care do not apply in extended adoption assistance: there are no voluntary agreements signed by the youth; service plans; biannual reviews; allowable placement settings; visits by a service worker; payments to the youth; court action; or title IV-E determination.

2.19.2.1 Documentation Required for Fostering Futures Eligibility

To determine initial eligibility, the adoptive parents' good faith statement of assurance that the youth will participate in secondary or post-secondary education, vocational program, employment, or job-readiness preparation as described above should be accepted. Therefore, the adoptive parent must certify on the annual affidavit whether the youth is continuing participation, including the type and status, and submit documentation verifying the youth's involvement in one or more participation conditions.

Initially, the youth's inability to participate due to a medical condition must be verified by a statement from a medical doctor provided by the adoptive parent. Thereafter, the adoptive parent must certify on the annual affidavit whether the youth continues to be unable to participate due to the medical condition, and submit documentation verifying the youth's continued medical condition.

2.19.2.2 Fostering Futures Addendum

If the youth is eligible for an extension of adoption assistance under Fostering Futures, the LDSS must prepare an Addendum to the Adoption Assistance Agreement reflecting the continuation of maintenance payments to the adoptive parents and citing the required conditions of participation. If an enhanced maintenance payment is in effect, payment must continue at the same level unless the adoptive parent agrees to a reduction.

If a youth eligible under Fostering Futures was receiving title IV-E adoption assistance prior to age 18, title IV-E assistance must continue without further determination; if the youth was receiving state adoption assistance, state assistance must continue without further determination.

Continued eligibility will be determined by the annual affidavit submitted by the adoptive parents on the anniversary of the effective date of the Adoption Assistance Agreement. The affidavit must certify the youth's compliance with one of the participation conditions and provide documentation of the youth's participation throughout the year.

2.20 Payments and Services

Payments and services must 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 and the payment and service is specified on the agreement or addendum.

All adoption assistance payments (this includes maintenance, non-recurring, and special services) must be recorded in the LDSS accounting system of record, LASER, and in the child welfare information system. Payments are reported in LASER in order for the LDSS to receive state and federal reimbursements for expenditures already incurred using local funds. Monthly costs are reported in the automated system in order to provide both the state and federal governments a liability estimation, an of expenditure projections, and because the automated system is the official system of record for the case.

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 and may use adoption assistance funds as they determine appropriate. The only exception to this statement is when special services payments are

made. While parents continue to have the right to make decisions related to the child, special services payments must 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 Services and Payments

LDSS must begin utilizing adoption assistance funds on the first calendar day of the month following the month in which all parties sign the agreement or addendum. A final order of adoption is not necessary to begin making payments or reimbursing expenses.

In the event that the LDSS begins making adoption assistance payments prior to the final order of adoption, the LDSS cannot continue utilizing foster care funding or services once the Adoption Assistance Agreement is effective. This includes:

- Foster care supplemental clothing allowances,
- Case management, and
- Any services not specified on the Adoption Assistance Agreement.

For the eligible child who is not in foster care with the LDSS or LCPA, adoption assistance payments must begin on the first calendar day of the month following the month in which the petition for adoption has been filed and all parties have signed the Adoption Assistance Agreement. This includes the child who is being subsequently adopted after the adoptive parents die, child of title IV-E foster child (when the child is eligible for adoption assistance), and the SSI eligible child.

It is the service worker's responsibility to:

- Enter the appropriate type of agreement, type of payment, effective date, renewal date, and any other key dates for all payments into the child welfare information systems that the child and payments appear appropriately on the Adoptive Children Report.
- Accurately communicate changes, the appropriate funding source, and financial coding to the individuals responsible for entering all financial information into the LDSS accounting system of record and LASER.
- Notify CSA, if necessary, of the funding change.
- Convey to the LDSS staff responsible for Medicaid any changes that may impact Medicaid eligibility.

2.20.2 Reconciling Foster Care Payment Records

When the final order is received, the LDSS must reconcile the payments made for the child to ensure that no title IV-E foster care funds (those reported under budget line [BL] 811) were used beyond the final order date. If any payments were made after the date on final order of adoption, the LDSS must make an adjusting accounting entry in LASER to refund the overpayment to BL811 and to charge the reported payments to either BL812 (title IV-E adoption assistance) or BL817 (state adoption assistance), whichever is appropriate based on the eligibility determined in the Adoption Assistance Agreement process.

For families who do not have a signed Adoption Assistance Agreement, the LDSS must make an adjusting accounting entry in LASER to shift the overpayment from Fund 1111, Reimbursable, to Fund 0033, Local-Only. It is up to the LDSS to determine if and how to recover the local only funds from the previous foster parents.

This is one of a few situations where prorating is required. Using BL811 funding until the end of the month after a signed final decree will create a title IV-E error as at the signing of the final adoption decree the child is no longer in foster care.

2.20.3 Making and Reporting Maintenance Payments

Maintenance payments must be made directly to the parents and documented in the child welfare information system on an annual basis with the exception of when the maintenance payment increases due to the child reaching a higher age grouping or when there are statewide increases, which results in an update in the automated system ([22 VAC 40-201-161 E 1d](#)).

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 Adoption Assistance Agreement.

Additionally, in order to receive reimbursement from VDSS, the local departments must report maintenance payments in LASER for all children to the appropriate BL and cost code. Additional information regarding adoption budget lines and cost codes are available on FUSION page [Budget Lines & Cost Code Descriptions](#).

For title IV-E funded Adoption Assistance Agreements executed prior to December 1, 2009 that are still in effect and meet all of the following criteria, the LDSS should report the additional daily supervision payments as enhanced maintenance under cost code 81203. In the event that all the criteria are not met, the LDSS must report these additional daily supervision payments as special service payments under BL817 and cost code 81701.

For state funded Adoption Assistance Agreements executed prior to December 1, 2009 that are still in effect and meet all of the following criteria, the LDSS should report the additional daily supervision payments as enhanced maintenance under cost code 81703. In the event that all the criteria are not met, the LDSS should report these additional daily supervision payments as special service payments cost code 81701. The effective date of the new maintenance rate will be the first of the month following the child's birth date. If the child's birth date is the first of the month, then the payment will increase on the date of the child's birth date.

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 must inform the adoptive parents in writing of the reason for the increase, new amount, and effective date for the increased basic maintenance payment.

Maintenance funded child care payments are paid as agreed upon on the Adoption Assistance Agreement for up to one year. The LDSS will report child care expenditures for title IV-E Adoption Assistance Agreements under BL812 and cost code 81201. For state Adoption Assistance Agreements, the LDSS will report child care expenditures under BL817 and cost code 81702. The LDSS cannot use cost code 81701 (Purchase of Services) for maintenance funded child care.

2.20.4 Making and Reporting Non-Recurring Expense Payments

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

Reimbursement must be for types of expenses delineated in the Adoption Assistance Agreement and must:

- Not exceed \$2,000 per child per adoptive placement.
- Be reported in LASER under BL812 and cost code 81202 regardless of whether the child is eligible for title IV-E or state maintenance payments (see the Finance Guidelines Manual).
- Be based on actual costs of services ([22 VAC 40-201-161 E 3](#)). Costs must be documented in bills and receipts submitted to the LDSS by the adoptive parents.
 - The actual costs may differ from the estimated costs in the agreement.
 - The adoptive parents must submit copies of bills and receipts no later than two years after the expense was incurred ([45 CFR 1356.41 \(e\) \(3\)](#)).

- Adoptive parents may incur the non-recurring costs before signing the agreement; however, the reimbursement will not occur until after the agreement is signed by all parties (example: child specific home study).

Payments for non-recurring adoption expenses may be made on behalf of the child in an adoptive placement before the final order of adoption when there is an Adoption Assistance Agreement in effect between the LDSS and the adoptive parents ([22 VAC 40-201-161 E 3b](#); and [Federal Child Welfare Policy Manual, Subsection 8.2D.3 #6](#)). If the adoption disrupts, non-recurring expenses incurred must 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, is eligible for adoption assistance, and a new Adoption Assistance Agreement is executed.

LDSS must maintain bills and receipts submitted by the adoptive parents for reimbursement in the child's adoption assistance case record.

2.20.5 Making and Reporting Special Service Payments

Special services payments must be paid solely from state funds, regardless of whether the child is eligible for title IV-E or state adoption assistance maintenance. The LDSS must report payments in LASER under BL817, 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 paying expenses incurred for which they agree to pay directly.
- A bill or receipt documenting the actual cost of services must be submitted to the LDSS before payment is made to the service provider or adoptive parents. The adoptive parents should submit bills or receipts within 30 calendar days of incurring the expense. The LDSS must inform adoptive parents of local payment procedures on time limits for paying bills or receipts submitted after 30 calendar days.
- All special services payments must be entered in the child welfare information system *Adoption Assistance Screen*. They must not be included with adoption assistance 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 addendum in effect at the time the service occurred.
- The adoptive parents must be responsible for payments when:

- Expenses are incurred by the adoptive parents before the agreement or addendum.
- The adoptive parents utilize different services, utilize services for a more extended period, or exceed the costs for services documented in the agreement or addendum.

They continue using a service past the specified timeframe ending the service in the agreement or addendum.

2.20.6 Making and Reporting Fostering Futures Payments

Fostering Futures adoption assistance is used to extend adoption assistance services and support to youth ages 18 up to 21. The existing Adoption Assistance Agreement determines if Fostering Futures will be title IV-E or state funded.

The addendum for Fostering Futures should be completed 30 days before the youth's 18th birthday. The approval and Budget Reporting System (BRS) request for the change to Fostering Futures adoption assistance must occur within 30 days of the child's 18th birthday.

On the youth's 18th birthday, the BL item will change to Fostering Futures 815 (title IVE) or 817 (state), depending on the type of Adoption Assistance Agreement. The former BL item and Fostering Futures BL item will be prorated if the youth's date of birth is not on the 1st day of the month. These changes will be documented in the child welfare information system. The renewal date will be the date the annual affidavit is due, which is the anniversary of the effective date of the Adoption Assistance Agreement. If the Adoption Assistance Agreement or addendum are not signed and executed by the youth's 18th birthday to reflect the extension of adoption assistance using Fostering Futures, adoption assistance is terminated. The LDSS must follow the termination procedures in [Section 2.16](#).

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 Adoptive Parents

The adoptive parents who receive adoption assistance payments must:

- Notify the LDSS when their address changes.
- Inform the Social Security Administration when the child is receiving both SSI and adoption assistance payments.

- Submit an annual affidavit to the LDSS within 30 days of the anniversary date of the Adoption Assistance Agreement (i.e., the effective date stated in the agreement) (§ [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 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, dies, or the adoptive parents become divorced.
- Notify the LDSS immediately, and 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 are deceased (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 C](#); and [Federal Child Welfare Policy Manual, Subsection 8.2D.5](#)).
- Submit copies of bills and receipts for expenses that the LDSS pays related to non-recurring adoption expenses and special services payments.

2.21.1.1 Receiving Enhanced Maintenance Prior to Finalization

Adoptive parents (who have negotiated and signed an Adoption Assistance Agreement but where the adoption is not yet finalized) may receive enhanced maintenance payments when they commit to adopting a child into their family whose needs may require a greater level of adult supervision and support than other children either short or long-term.

Adoptive parents are expected to provide the support and supervision required for their children to remain safe and have the opportunity to build on their strengths and progress in their development. Other partners such as the school, therapists, mentors, in-home providers, service workers, and others will help the child address areas of need. As a result, the LDSS must identify the specific requirements for support and supervision expected from the adoptive parent, which may include but is not limited to:

- Participate in and cooperate with the LDSS and LCPA in meetings or visits to achieve the child's goal of adoption.
- Discuss and follow through on services necessary for them and the child to maintain their safety, well-being, and preparation for adoption.
- Assume responsibility for managing the daily supervision and supportive tasks a child may need.
- Discuss with the agency any difficulties in understanding or managing the child's needs and any training needs or other supports that would help improve their ability to parent the child and effectively meet the child's needs.
- Actively participate in furthering the adoption finalization process.

2.21.2 Responsibilities of LDSS Managing Adoption Assistance Case

The LDSS that is responsible for adoption assistance must:

- Maintain responsibility for payments and 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, they 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 on 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 providers.
 - Referral to the Adoption Family Preservation (AFP) Program.
 - Adoption assistance services directly related to meeting the child's special needs.
- Discuss with the adoptive parents the child's unique needs and their ability to manage the child's needs. If needed, training is available as part of an already-established curriculum (e.g., PRIDE), the adoptive parent should be directed to attend that training. If the needed training requires access to other training sources (e.g., attending specialized training on gavage feeding or autism), the agency must identify the training source and assist the adoptive parent in accessing the training.
 - LDSS are encouraged to contact their CRAFFT Coordinator and Adoption and Family Recruitment Consultants as sources of support in locating or providing training resources.
 - The cost of training is an agency responsibility. The LDSS may pay the cost of such training through title IV-E training funds when the VDSS has approved the training through the LDSS' title IV-E training plan.
 - 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 30 days of receiving written notice of the LDSS' decisions.
- Notify the adoptive parents who are receiving adoption assistance in writing when:
 - The annual affidavit is due.
 - 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, 60 days before the increase, using the [Family Services Notice of Action and Right to the Appeal](#) form.
 - The child has a basic or enhanced maintenance payment that is time-limited.
 - The Adoption Assistance Agreement is terminated.
 - Maintain the child's adoption assistance case in the child welfare information system and the child's adoption assistance case record, including documenting any contacts made with the adoptive parent in the Adoption Case Contacts screen in the child welfare information system.

There is no redetermination of title IV-E eligibility for adoption assistance. When the child is receiving title IV-E adoption assistance, there is no need for the LDSS to re-determine 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 on the child's eligibility for other programs that require redeterminations (e.g., Medicaid, Aid to Families with Dependent Children, and SSI), redetermination is not necessary for maintaining the child's eligibility for title IV-E adoption assistance ([Federal Child Welfare Policy Manual, Subsection 8.2B.9 #1](#)).

2.21.2.1 Paying Enhanced Maintenance Prior to Finalization

After signing the Adoption Assistance Agreement until finalization, the LDSS must provide additional support and assistance to adoptive parents who have children placed in their homes where enhanced maintenance payments are made. Such assistance is critical in avoiding placement disruptions and ensuring that adoptive parents have the guidance and tools to understand the child's needs and provide appropriate support while ensuring the child's safety. Agency supports provided include at a minimum:

- A caseworker and a supervisory-level services worker must be available to the caseworker twenty-four hours a day, seven days per week, to provide direction and assistance as necessary.
- The LDSS may provide these services directly or may contract with private agencies or individuals to provide these services.
- The LDSS may also share access to an on-call worker and supervisor to meet these criteria.
- Monthly face-to-face contact with the adoptive parents by a service worker. The monthly contacts should focus on:
 - The adoptive parents' relationship with and perceptions of the child in care including such things as:
 - Their attachment to the child.
 - The child's strengths and progress in all life domains.
 - Any concerns the parent has about the child's behavior.
 - Needs or their ability to work with the child.
 - The impact of having the child in their home.
 - The need for additional training, services, or agency support.
 - Discussion about the adoptive parents and the child's special needs.
- The expectation for how the adoptive parent is to address the needs of the child. This must include the specific support and supervision activities to be conducted by the adoptive parent that is required to meet the child's needs.

2.21.3 Responsibilities of LDSS Where Adoptive Parents Reside

When the adoptive parents and child live in a different locality from the LDSS 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 with 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 are 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 supports.
 - Arranging for a Family Partnership Meeting with appropriate resources available in the community.
 - Providing service coordination through 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 collaborates 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 providers.

If the adoption dissolves, the LDSS where the adoptive parents reside may receive the child's custody due to 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.

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 is Suspected

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

In the event that the child is removed from the adoptive home and brought into foster care, the LDSS will follow steps outlined in the Division of Child Support Enforcement Program Manual in determining if child support will be collected from the parents.

The LDSS and Assistance Negotiator must attempt to renegotiate the Adoption Assistance Agreement for the duration the child is in foster care. If the adoptive parents are not providing financial support, refer to [Section 2.16.1 Reasons for Terminating Adoption Assistance](#) for guidance on LDSS actions when adoptive parents fail to provide financial support. If termination of parental rights on the adoptive parents occurs, adoption assistance payments must be terminated, and the parents are notified in writing of the termination and their right to appeal.

2.22 Establishing a Case Record

When the LDSS receives an application, the LDSS must 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 adoptive family's foster/adoptive home approval, and any eligibility record established by the Benefits Programs unit.

The adoption assistance case record is the child's service record and corresponds to the child's adoption case in the child welfare information system and the LDSS financial system of record.

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

- Age and citizenship documentation
- Documentation used to verify special needs criteria
- Reasonable efforts verification
- Applicable court orders
- Adoptive parents approval documents
- Application for adoption assistance

- Negotiation documents
- Appeals documents
- Annual Affidavits
- Service Requests and Recommendations
- Any other relevant information

2.23 Appeals and Fair Hearings

Appeals must be processed in accordance with Virginia legal requirements (§ [63.2-1304](#) and [22 VAC 40-201-161 O](#)) and procedures established by the Virginia Board of Social Services. For complete information, see the [Appeals and Fair Hearings Unit Procedure Manual](#).

Any applicant or recipient of adoption assistance has the right to request a hearing whenever adoption assistance benefits are denied, delayed, suspended, reduced, or terminated or when the processing of an Application for Assistance is unreasonably delayed (§ [63.2-1304](#)). There is no right to appeal a decision that provides adoptive parents with a maximum allowable monthly payment.

Other than a few limited exceptions, adoption assistance eligibility is lost if the Adoption Assistance Agreement is not negotiated and signed before the consummation of the adoption.

To overturn an LDSS determination denying adoption assistance eligibility through an administrative review, the adoptive parents must establish that the determination was contrary to applicable federal or state law, rule, procedure, or policy, as applied to the facts stated in the application or otherwise found by the LDSS based on the documentation submitted or available in LDSS records at the time of application.

2.23.1 Retaining Title IV-E Eligibility After Finalization

To retain title IV-E adoption assistance eligibility, the adoptive parents must be provided the opportunity to apply for adoption assistance and subsequently be denied for adoption assistance. This is true even when the LDSS has recognized an error in the initial determination and processing of the adoption assistance case.

Only after the adoptive parent has requested a hearing and shown that there is good reason to excuse the failure to have a fully executed Adoption Assistance Agreement can title IV-E eligibility be considered. The LDSS responsibility for fair hearings in title IV-E cases, is outlined in [45 CFR 1355-30](#).

Conditions that warrant this hearing:

- *The child was placed for adoption, and the LDSS did not inform the adoptive parent of the adoption assistance program before the adoption was final;*
- *The LDSS knew facts relevant to the child's eligibility for adoption assistance but did not disclose the information to the adoptive parents before the adoption was finalized; or*
- *The child's physical, mental, or emotionally disabling condition could not be diagnosed before the adoption but was later diagnosed by an appropriately qualified and licensed professional as having existed before the consummation of the adoption.*

2.23.2 Timeframes and Filing Requests for Appeals

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

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 preparing the adoptive parents' case, if necessary. The LDSS has an affirmative duty to provide information and referral services to help the adoptive parents use any legal services available in the community.

2.23.3 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 was 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 calendar day** 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 calendar days** before 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 must be placed in the child's adoption assistance case record.

2.23.4 Summary of Facts

Upon receiving notification of the scheduled Administrative Hearing, the LDSS must prepare a [Summary of Facts](#) of the case. The hearing officer and adoptive parents should receive a copy of the summary at least five calendar days before the hearing. The summary should include:

- Identifying case information.
 - Name of LDSS.
 - Name and address of the child and adoptive parents.
 - Adoption assistance case number.
 - All relevant information about the action being appealed.
 - Statement of the 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 service that was denied; the alleged failure of the CPA to act).

- The 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 exact 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 appeal reasons.
 - Specific citations and language quoted from the law, policy, and the guidance manual on which LDSS action was based.
 - If applicable, relevant provisions of the Adoption Assistance Agreement (e.g., dollar amount, number of hours, number of service units, time authorized, conditions).
 - 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](#) must be placed in the child's adoption assistance paper case record.

2.23.5 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 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 issues.
- Examine all documents submitted by the adoptive parents or their authorized representative.

Only relevant evidence related to the issues 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 the LDSS' error.

The decision of the hearing officer must 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 must notify the LDSS and adoptive parents in writing of its decision on the appeal within 60 calendar 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 calendar day 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](#) 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, must be placed in the child's adoption assistance case record.

2.23.6 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 must be placed in the child's adoption assistance case record.

2.23.7 Appeal to the Circuit Court

The adoptive parents, aggrieved by the hearing officer's decision, may seek further review of the decision by the appropriate circuit court. The adoptive parents have 30 days from the date of service (the date they 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 to perfect the appeal. The adoptive parents will not receive correspondence, nor will their adoption assistance continue. The adoptive parents send written notice to VDSS of their intent to appeal, as the hearing officer's decision is the final administrative action.

2.23.8 Filing a 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

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](#).

2.24 Legal Excerpts and Child Welfare Policy Manual

Adoption assistance is governed by Federal regulations and the laws and regulations of the Commonwealth of Virginia. The Child Welfare Policy Manual is not law but a reference manual containing citations to the law.

2.24.1 Adoption Incentives and Promoting Adoption Assistance

- [*The Preventing Sex Trafficking and Strengthening Families of Act of 2014*](#)
- [*Adoption Promotion Act of 2003 \(P.L. 108-145\)*](#)

2.24.2 Adoption Tax Credit

- [*Economic Growth and Tax Relief Reconciliation Act of 2001 \(P.L. 107-16\)*](#)
- [*Small Business Job Protection Act of 1996 \(104-188\)*](#)

2.24.3 Approvals of Prospective Adoptive Parents

- [*CFR TITLE 45 Sec. 1356.30 \(b\)*](#)

2.24.4 Extension of Medicaid Coverage

- [*Foster Care Independence Act of 1999 \(P.L. 106-169\)*](#)

2.24.5 Non-Recurring Expenses

- [*Social Security Act, Title IV, § 473 \(a\) \(1\), \(a\) \(3\), \(a\) \(5\), and \(a\) \(6\) \(A\) \[42 USC 673\]*](#)
- [*45 CFR 1356.41*](#)
- [*§ 63.2-1301 D*](#)

2.24.6 Race and Ethnicity

- [*Indian Child Welfare Act of 1978 \(P.L. 95-608\)*](#)
- [*Interethnic Placement Provisions \[of the Small Business Job Protection Act of 1996\] \(P.L. 104-188\)*](#)
- [*Multiethnic Placement Act \[of the Improving America's Schools Act of 1994\] \(P.L. 103-382\)*](#)

2.24.7 Special Needs Adoptions

- [Adoption Assistance and Child Welfare Act of 1980 \(P.L. 96-272\)](#)
- [Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 \(P.L. 93-247\)](#)
- [The Fostering Connections to Success and Increasing Adoptions Act of 2008](#)
- [Social Security Act, Title IV, § 473 \[42 USC 673\]](#)
- [45 CFR 1356.40](#)
- [§ 63.2-1300](#)
- [§ 63.2-1301 A](#)
- [§ 63.2-1301 B](#)
- [22 VAC 40-201-161](#)

2.24.8 State Funded Adoption Assistance

- [§ 63.2-1301 B](#)
- [§ 63.2-1302 B1](#)
- [22 VAC 40-201-161](#)

2.24.9 Terminating Adoption Assistance

- [Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \[42 USC 673\]](#)
- [Child Welfare Policy Manual: Termination](#)
- [§ 63.2-1302 B](#)
- [22 VAC 40-201-161](#)