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ADOPTION ASSISTANCE

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ADOPTION ASSISTANCE

2.1 Introduction

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

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

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

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

The types of adoption assistance may include:

- Basic maintenance payments to help meet the child's needs for housing, food, clothing, transportation, or personal incidentals. A supplemental clothing allowance over and above the basic maintenance payment is not an allowable payment in adoption assistance.

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

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

2.2 Framework

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

2.2.1 Practice principles

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

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

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

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

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

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

- We take responsibility for open communication, accountability, and transparency.
- Our communication must reinforce the belief that children and youth belong in family and community settings and that system resources must be allocated in a manner consistent with that belief.

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

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

2.2.2 Outcomes

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

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

2.3 Determining LDSS responsibility for adoption assistance

Responsibility for adoption assistance is based on who has placement and care of the child or where the adoptive parents reside.

The LDSS responsible for placement and care of the child is responsible for adoption assistance. The LDSS maintains responsibility for adoption assistance for the duration of the agreement whether the child is placed with adoptive parents in another state or the adoptive parents move to another jurisdiction or state ([§ 63.2-1302 D](#)).

When a licensed child placing agency (LCPA) has custody of the child:

- The LDSS where the adoptive parents reside is responsible for adoption assistance.

- The public child welfare agency where the adoptive parents reside is responsible for adoption assistance when the child is placed in another state.

When the child is not in the placement and care of a public or private child placing agency (CPA), the LDSS where the adoptive parents reside is responsible for adoption assistance.

2.3.1 Preparing for the adoption assistance process

To prepare for the adoption assistance process, the LDSS:

- Reviews and ensures the [Full Disclosure of Child Information Form](#) is complete and identifies the child's special needs (see Chapter E. Foster Care Manual, [Section 9.9.4](#)).
- Identifies the services and supports the child is *currently* receiving, including the provider, frequency, and monthly cost.
- Identifies the amount of basic maintenance adoption assistance available for the child. The amount is based on the maintenance payment rate for foster care (See Chapter E. Foster Care Manual, [Section 18.1.3](#)). It is determined by the child's age at the time of placement in the adoptive home.
- Identifies the maximum amount of enhanced maintenance payments for adoption assistance. This amount is based on the VEMAT score for the child.
- Explores whether the child may be entitled to or continue receiving [Social Security benefits](#) due to the retirement, death, disability (e.g. [Veterans' benefits](#), [Railroad Retirement benefits](#)), life insurance, and trust fund payments related to the birth parent after adoption. The child may continue to be eligible for benefits connected to the birth parents. Changing the child's social security number at the time of the adoption may prohibit the child's access to benefits.
- Explores whether the child may continue receiving [SSI](#) payments for the child's disability after the finalization of adoption. The adoptive parents will need to decide whether to continue SSI payments for an eligible child and receive adoption assistance maintenance payments concurrently, or obtain payments solely from one program.
- Enters information on the child's special needs and resources in Section I of the [Application for Assistance](#) to be given to the adoptive parents.

2.4 Educating and partnering with adoptive parents

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

- Creating a supportive environment for conversations and building trust.
- Demonstrating open and transparent communication.
- Understanding and respecting the adoptive parents' strengths, concerns, and family circumstances.
- Searching to create win-win solutions that meet the child's special needs, address the family circumstances, and use adoption assistance funds wisely.

2.4.1 How adoption assistance applies to the child

The LDSS should discuss with the adoptive parents how adoption assistance applies to the specific child they wish to adopt and their family circumstances. Conversations should include:

- The child's background and special needs.
 - All known information about the child, including the child's documented special needs and non-identifying information about the birth family on the Full Disclosure of Child Information Form (see Chapter E. Foster Care Manual, [Section 9.9.4](#)).
 - The long term needs of children who have experienced trauma.
 - The supervision, services, and supports the child currently requires, and to the extent possible, the services the child will need.
- The child's eligibility for adoption assistance. The purpose and types of adoption assistance and supports that may be available to help address the child's special needs.
- The family circumstances of the adoptive parents to begin identifying what they need to successfully integrate the child into their home, lives, and future.
- The purpose of negotiation and the application process.
- The agreement should be executed within 90 days after the LDSS receives the completed application with all supporting documentation.
- The process adoptive parents request changes to the adoption assistance agreement based on changes in the child's special needs or their family circumstances.
- When and how adoption assistance payments and agreements are terminated.

- The adoptive parents' right to appeal decisions made by the LDSS and information on the fair hearing process.

During these conversations, the agency should ensure the adoptive parents have copies of the following documents:

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

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

Failure to provide the adoptive parents information on all relevant and known facts about the child and the availability of adoption assistance for an eligible child prior to finalizing the adoption may constitute the LDSS denying adoption assistance. The adoptive parents may request an appeal of the agency's decision.

2.4.2 Information on continuing SSI payments for eligible child

When the adoptive parents are likely to continue receiving [SSI](#) payments after the final adoption, the LDSS should encourage the adoptive parents to contact a Social Security representative at 1-800-772-1213 to discuss their situation. 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 choose to apply for SSI payments for an eligible child and receive adoption assistance maintenance payments concurrently, or to obtain payments solely from one program.

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

If the income and resources of the adoptive parents do not affect the child's eligibility for SSI and the adoptive parents receive concurrent payments from both programs on behalf of the child, the SSA will reduce the SSI amount, dollar for dollar, for any title IV-E adoption assistance 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 or minimal 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 twelve (12) months, the child is no longer eligible for SSI. The adoptive parents may reapply for SSI benefits in the future, or the child may apply for Social Security Disability Insurance (SSDI) benefits after age 18 as an adult disabled since childhood.
- The LDSS should serve as a resource for the adoptive parents on the adoption assistance program as the adoptive parents make this decision. There are many complexities and financial implications and it is important that the adoptive parents discuss all aspects of combining SSI and adoption assistance with a representative from the SSA prior to negotiating the adoption assistance agreement ([Federal Child Welfare Policy Manual, Subsection 8.4D #1](#)).

2.4.3 Information on survivor and disability benefits

The adopted child can receive adoption assistance concurrently with survivor benefits (due to death of child's birth parent) or disability benefits (due to the disability of the child's birth parent) from the SSA for an eligible child. The adoptive parents should contact a Social Security representative for further information.

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

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

2.4.4 Information on Federal Adoption Tax Credit

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

The LDSS should encourage adoptive parents to consult a tax professional to determine their eligibility for the tax credit. The LDSS should also refer the adoptive parents to the following websites for information about the tax credit:

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

The LDSS should inform the adoptive parents:

- The tax credit can help defray adoption costs for eligible taxpayers.
- The maximum credit amount is established by federal law and is based on the year the adoption was finalized. (See [NACAC website](#) for the maximum credit amount available each year.)

2.4.5 Responsibility for school attendance

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

The adoptive parents shall report information on the status of the school aged child or youth on the annual affidavit (e.g., full-time student, completed secondary school).

The adoption assistance agreement includes a provision for the adoptive parents to authorize the LDSS and VDSS to use the child's State Testing Identification (STI) number, when applicable. The purpose of the STI number is to document the child's enrollment in school and to obtain educational information from the Virginia Department of Education (VDOE) on children who receive adoption assistance funds. Only non-identifying aggregate educational information on children with adoption assistance will be reported publicly.

The STI number is located on the child's SOL Student Report for the Standards of Learning assessments. If the LDSS does not have the STI number in 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 shall be maintained as confidential information by LDSS (§ [63.2-104](#)).

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

The LDSS shall inform the adoptive parents and the youth of independent living (IL) services available for youth who were adopted from foster care at age 16 and over (up to age 21). Independent living services may be available through the LDSS responsible for providing services to the family. If there is a fee, the adoptive youth or the parent will be responsible for the payment for the fees required to participate. Services include a broad range of activities, educational support, job preparation, and training to help the youth prepare for adulthood. The adopted youth is not eligible for an IL stipend. LDSS shall not use adoption assistance funds to pay for these services. For more information on types of services and the IL program, see Chapter E. Foster Care Manual, [Section 13.10](#).

2.4.7 Youth participation in National Youth in Transition Database

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

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

For more information on NYTD, see Chapter E. Foster Care Manual, [Section 13.13](#).

2.5 Application process

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

The LDSS shall provide the adoptive parents with the [Application for Assistance](#). The LDSS should complete Section 1 prior to giving the document to the adoptive parents. This tool helps the adoptive parents identify the payments, services, or supports they may need. The application should be completed by the adoptive parents with the LDSS or the LCPA when the child is in the LCPA's custody. *The child's adoptive name is used on the application. If the child's adoptive name has not been decided at the time of the application, then the applicant should use the child's birth first name and the first initial of his or her last name. This is because the child's birth name is sealed when the adoption is finalized. See Section 5 for the adoption disclosure process.*

The adoptive parents either:

- **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 they are needed.** The agreement is executed with a zero dollar payment. Medicaid may be included for an eligible child. This agreement enables the adoptive parents to request an addendum to the agreement during the duration of the agreement to address the child's special needs and family circumstances of the adoptive parents. This agreement shall be used when the child solely has the special need factors of hereditary tendency, congenital problem (including substance exposure), or birth injury and there is no evidence the child currently has a disability. The adoptive parents may request assistance if the child's problem or disability manifests in the future.

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

2.5.1 Initial review and notice of application receipt

Within **14 calendar days** after receiving the application for assistance, the LDSS should:

- Review the application to determine whether the application is complete with all required documentation.
- Notify the adoptive parents in writing that the application was received and its status:
 - **Additional information is needed.** The notification shall 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 notice date.

- **The application is complete.** The notification shall include the date the application was received. It shall state that the LDSS and adoptive parents have **90 calendar days** to execute an adoption assistance agreement.
- **The application is denied** when it is clearly evident that the child is not eligible for adoption assistance (e.g., the child is 19 years old). The notification shall clearly state the reasons for the denial, provide information on the adoptive parents' right to appeal within **30 calendar days** of receiving the notice of denial, and provide information on the fair hearing process. No further action is required by the LDSS on the application.

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

- The LDSS submits the initial [Referral for Negotiations](#).
- The LDSS and adoptive parents should complete, sign, and execute the adoption assistance agreement within **90 calendar days** from the date the LDSS received the completed application and all required documentation.
- All parties shall sign and execute the agreement prior to the final order of adoption, except for the application submitted and agreement entered into after the final order of adoption ([45 CFR 1356.40 \(b\) \(1\)](#)).

2.6 Assessing family circumstances

The LDSS should begin the assessment process by facilitating conversations with the adoptive parents about the child's special needs, the services the child requires, the family circumstances of the adoptive parents, and how these circumstances impact their need for adoption assistance. Family circumstances include the adoptive parents' overall ability to meet the immediate and future needs of the child and to incorporate the child into their home, in relation to their current lifestyle and standard of living, as well as their future plans.

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

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

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

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

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

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

- Planning for integrating the child into their family.
- Evaluating:
 - The total funds they have available for the child, taking into account their financial resources and expenses for the child.

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

The LDSS shall not use this information in determining the child's eligibility for adoption assistance maintenance payments ([45 CFR 1356.40 \(b\) \(4\) \(c\)](#)), nor as the sole factor in assessing family circumstances or in determining adoption assistance payments.

The LDSS *and the adoptive parents* enter the information *on the Application for Assistance*. The *application* calculates a monthly average for:

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

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

- If the adoptive parents anticipate any changes in the near future that will increase or decrease the financial resources they have available to support the child (e.g., change in job or additional family members to support on a regular basis).
- In what ways the adoptive parents feel this information reflects their family circumstances.
- What additional information the adoptive parents can share to better understand their family circumstances.
- Whether the adoptive parents can spend any funds differently to help meet the child's needs.

This helps the adoptive parents assess and understand the resources they have available to care for the child. The adoptive parents also refer to this information during the negotiation process.

2.6.1 Assessing basic maintenance needs of child

A basic maintenance payment shall be approved for a child, who is eligible for adoption assistance, unless the adoptive parent indicates, or it is determined through negotiation that 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 shall not be considered.

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

- The basic maintenance payment is based on the child's age rate for foster care maintenance rates (See Chapter E. Foster Care Manual, [Section 18.1.3](#)). The LDSS should explain that the payment amount shall not exceed what would have been paid had the child been in a foster family home ([§ 63.2-1302 A, Social Security Act, Title IV, § 473 \(a\) \(3\) \[42 U.S.C. 673\]](#)).
- When the child is likely to continue receiving SSI after the adoption and these payments provide a higher benefit level than the basic maintenance payment, the adoptive parents may want to use the SSI payments to help meet the child's needs.
- The adoptive family's income and expenses should be discussed as it relates to what supports are needed to adequately meet the needs of the child. For example, the LDSS worker should inform the adoptive parents that based on the information they provided, they have "x" dollars available to help care for the child. Given the available resources, what amount do you need on a monthly basis to help address the needs for the child? *The worksheet may be used as an additional resource.*
- The amount of basic maintenance the adoptive parents request, if they choose to receive less than the amount available.
- The length of time the adoptive parents request to receive the basic maintenance payment, if they choose a time before the child turns age 18. For example, the LDSS should ask the adoptive parents how long and for what time period they request this payment.

The LDSS shall inform the adoptive parents:

- The basic maintenance rate shall be automatically increased under two circumstances in the future when:

- The child reaches a higher age grouping in foster care (see Chapter E. Foster Care Manual, [Section 18.1.3](#)), to help address the increased costs of caring for an older child.
- Statewide increases are provided to help address increased costs of living.

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

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

2.6.2 Assessing additional daily supervision needs of child

The LDSS and adoptive parents should assess the child's needs for additional supervision and support when appropriate for the child. An enhanced maintenance payment may be paid when the child requires additional supervision and support from the adoptive parents to ensure the child's safety and well-being.

When the LDSS establishes that the child requires additional supervision and support based on the administration of the VEMAT, the LDSS and Assistance Negotiator shall assess and negotiate an enhanced maintenance payment with the adoptive parents, unless the adoptive parents decline such assistance. The LDSS should discuss the following factors with the adoptive parents:

- The child's needs for additional supervision and support from the adoptive parents, as documented by the VEMAT for the child.
- Available resources to help meet the child's special needs and defray the costs for adoption assistance and the adoptive parents.
- The family circumstances of the adoptive parents.
- The LDSS should ask questions such as, given the resources you have available for the child: How much financial assistance do you need to provide this supervision and support for this child? How can we share in meeting the child's special needs?
- The amount of the enhanced maintenance payment shall not exceed what would have been paid if the child was in foster care ([§ 63.2-1302 A](#)). The

VEMAT score for the child determines the maximum payment. It does not determine the final payment amount.

- The maximum allowable amount is based on the child's VEMAT score when the LDSS and Assistance Negotiator negotiate an enhanced maintenance payment with the adoptive parents. The maximum amount remains the same for any subsequent negotiations on enhanced maintenance *payments* for the duration of the adoption assistance agreement.

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

2.6.2.1 LDSS responsibilities in conducting a VEMAT

The LDSS who is responsible for the application for assistance shall coordinate the administration of the VEMAT and ensure that all conditions for conducting the VEMAT are met.

The LDSS shall conduct a VEMAT assessment within **14 calendar days** of the LDSS decision to assess or reassess the adoption assistance enhanced maintenance payment. Completing the VEMAT within this time period is consistent with the requirement that adoption assistance agreements be executed within *60 calendar days* of the receipt of the application by the LDSS. A re-administration of the VEMAT is not required if the adoption assistance agreement is signed within **six months** of a prior VEMAT assessment ([22VAC40-221-20 A 5 c](#)).

If the VEMAT is re-administered prior to the signing of the adoption placement agreement and there is a rate change, the new VEMAT rate will go into effect the first day of the following month using foster care funds until the adoption assistance agreement is in effect.

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 following exception:

- If there is no specific case manager for the family, the LDSS shall ensure that the individual at the LDSS who is assigned to manage adoption assistance requests is included in the VEMAT meeting.

The VEMAT rater shall be an individual as described in Chapter E. Foster Care Manual, [Section 18.2.2.5](#) and shall follow all requirements in administering the VEMAT.

2.6.2.2 Adoptive parents responsibilities in conducting a VEMAT

The parents should ensure that all necessary information is available for a comprehensive review of the needs of the child. The parents should:

- Cooperate with the LDSS staff who may request additional meetings with the family to discuss the child's needs, services that have been provided, progress of the child over time, services that are available that may best meet the child's needs, training, and other similar supports for the parents to learn how to better manage or address the child's needs.
- Provide and make available documentation within two years of the child's behavioral, emotional, or physical care needs that demonstrate the need for additional supervision and support by the parents. If requested, the parents should submit a signed consent for release of information for the LDSS to obtain information from individuals or organizations such as the school, therapists, and other service providers.
- Consider the LDSS request to meet with the child to assess the child's current needs. Adoptive parents may choose not to allow contact with the child. Such a decision by the adoptive parent shall not be considered by the LDSS in conducting the VEMAT. The LDSS is not required to try to meet with the child.

If the parent does not provide requested documentation, sign releases for information, or obtain additional assessments, the LDSS should not conduct a VEMAT and the agency cannot offer enhanced maintenance in the adoption assistance agreement.

The VEMAT score does not determine the enhanced maintenance payment for the child but instead determines the maximum rate allowable.

2.6.3 Assessing child care needs

A child care supplement may be provided based on the child and family's circumstances. When the LDSS establishes that child care is required, the LDSS and the Assistance Negotiator shall assess and negotiate the child care supplement with the adoptive parents based on the child care funded category.

There are two child care funded categories, maintenance and special services. The category of child care is determined by the child and family's circumstances.

Maintenance funded child care

Only adoption assistance agreements executed after July 1, 2017 will be eligible for maintenance funded child care. Addendums to adoption assistance agreements

executed **prior** to July 1, 2017 cannot be negotiated for maintenance funded child care.

- To be eligible for maintenance funded child care **all** of the following must be met:
 - The child is 0-12 years of age. Child care terminates on the child's 13th birthday, unless the child has a documented special need from a qualified medical professional warranting the continuation of child care, which will result in changing the category to special services funded child care.
 - Both adoptive parents must be working or attending college classes when the adopted child is not in school. If the adoptive parent is single, then the adoptive parent must be working or attending college classes when the adopted child is not in school.
 - School attendance includes occupational training such as cosmetology and technical schools.
 - *If the parents are self-employed, their most recent tax returns or proof of earnings statements (within the last 90 calendar days) are required to be submitted as supporting documentation.*
 - *It is the responsibility of the LDSS to verify the parents' employment or school attendance. This verification must be sent with the referral request to the Assistance Negotiator.*
 - *The child care program may be a licensed or an unlicensed regulated program. For more information on approved program types, see <http://www.dss.virginia.gov/family/cc/index.cgi>, in the VDSS Child Care Manual and [Section 2.6.6.5](#) for selecting a child care provider. Verification of the license, registration, religious exemption, or certification must be sent with the referral request to the Assistance Negotiator.*
- The monthly supplemental payment rate cannot exceed \$600 for full day child care and cannot exceed \$300 for *before and/or after school* child care. Full day is at least six hours or more of child care provided per day.
- Child care payments are negotiated and agreed upon on the adoption assistance agreement for up to one year. The child care payments are negotiated annually to evaluate the need for child care and the child's continued eligibility.
- The amount of maintenance funded child care will be included in the monthly amount for the support and care of the child. The title IV-E or state funded

maintenance payments shall not exceed the foster care payment that would otherwise be made for the child ([§ 63.2-1302 A](#)).

- To document maintenance funded child care payments in the child welfare information system, use the Assistance Screen and list child care as a maintenance type of payment. Child care payments end annually and a new entry is made each time the service is renewed. This payment is separate from the basic maintenance payment. The LDSS will use guidelines set forth in [Section 2.17 *Terminating payments and agreements*](#), to ensure families receive adequate notice of termination. If the service is still needed, the LDSS must submit a request to the Assistance Negotiator and a new addendum must be created and effective, prior to continuing the service. To avoid a lapse in service, the LDSS should initiate discussion at least 90 days prior to the end of the service.

Special services funded child care

- Eligibility for special services child care occurs when child care directly addresses the documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness **and** requires special health surveillance or specialized programs, interventions, technologies, or facilities. See [Section 2.14.2](#).
- Special Services child care can continue to the child's 18th birthday.
- The child care facility selected by the adoptive parents *should* be licensed and should specialize in serving children with medical and behavioral needs.
- For licensed special needs and therapeutic child day centers the following shall occur:
 - The child day program's director and primary staff responsible for plan implementation shall develop an individual service, education, or treatment plan for each child and the plan shall be implemented within 60 days after the first day of the child's attendance ([22VAC 40-185-120](#)); and
 - The child's individual service, education, or treatment plan shall be developed, reviewed, and revised every three (3) months and rewritten annually by the director and primary staff responsible for plan implementation in partnership with the parent. A copy of the initial plan and subsequent plans is given to the child's parent ([22VAC 40-185-120](#)).
 - A copy of the child's individual service, education, or treatment plan should be maintained in the child's adoption assistance record.

- *To document special services funded child care payments in the child welfare information system, use the Assistance Screen and list child care as a special services type of payment.*

2.6.4 Assessing the child's health insurance needs

The LDSS and adoptive parents should identify health insurance coverage for the child. The adoptive parents should:

- Add the child to their health insurance policy (e.g., employer-based, TRICARE, CHAMPVA, and self-purchased plans) in accordance with the insurance policy requirements ([§ 38.2-3432.3 \(B\) \(2\)](#)). The child may be added at the time of the adoptive placement.
- Add the child to their health insurance policy and use Medicaid or FAMIS as secondary health insurance if the child is eligible ([Virginia DSS Medical Assistance Eligibility Manual](#), M1510.301).
- Use Medicaid or FAMIS if the child is eligible.

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

Special services payments may help pay for health insurance premiums in the adoption assistance agreement. When the adoptive parents want special services payments to help pay for health insurance premiums or for benefits potentially covered under Medicaid or FAMIS, and if the child may be eligible for state medical assistance, the adoptive parents shall apply for Medicaid.

The decision to help with health insurance costs shall be based on the unique circumstances of the adoptive parents. These costs shall not be automatically paid for all children. When the child becomes eligible for other health insurance coverage, including Medicaid or FAMIS, the special services payment end for these premiums.

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

2.6.5 Assessing non-recurring adoption expenses needs

Non-recurring adoption assistance payments shall be made only when the adoption assistance agreement is signed and executed **prior** to the final order of adoption ([45 CFR 1356.41](#)).

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

- Court costs related to filing an adoption petition.
- Attorney fees and other legal service fees directly related to finalizing the adoption.
- Health and psychological examinations.
- Supervision of the placement prior to adoption.
- Transportation, lodging, and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process. These costs may be paid for more than one visit.
- Adoption fees charged or home studies conducted by the licensed child placing agencies.
- Other costs necessary to complete the child placement or adoption process ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#); [45 CFR 1356.41](#); [§ 63.2-1301 D](#); and [\(22 VAC 40-201-161\)](#)).

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

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

The amount of the payment made for nonrecurring expenses of adoption shall be determined through an agreement between the adopting parents and the LDSS. Nonrecurring expenses shall be documented on the Adoption Assistance Agreement prior to or at the time of the finalization of the adoption ([45 CFR 1356.41](#) and [22 VAC 40-201-161 C4](#)). The agreement must indicate the nature and the amount of the nonrecurring expenses to be paid. Reasonable estimates may be used when actual service costs are not known. It is not necessary to amend the agreement when the actual costs differ from the estimate. The total cost for all services rendered and paid from nonrecurring expenses shall not exceed \$2,000.

Payment and reimbursement shall be for expenses:

- Incurred by, or on behalf of, adoptive parents for which the adoptive parents have ultimate liability for payment.
- Not incurred in violation of State or Federal law.
- Paid directly to service providers or adoptive parents.

2.6.6 Assessing special services to meet child's needs

The LDSS may consider payments for special services and supports through state adoption assistance when they:

- Help meet the child's physical, mental, emotional, or dental needs (does not include orthodontic treatment for cosmetic reasons).
- Are directly related to the child's special needs, as documented by a qualified professional.
- Are time-limited based on the child's special needs [22 VAC 40-201-161 E2](#).

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

- The services are covered by health insurance or any other resources ([§ 63.2-1301 C](#)).
- The adoptive parents can financially afford the special services ([§ 63.2-1302 C3](#)). This information shall be considered as one factor when assessing and negotiating the special services payment.

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

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

2.6.6.1 Determining whether adoptive parents can financially afford services

Prior to considering special services payments, the LDSS and adoptive parents shall determine whether the adoptive parents can financially afford the special services ([22 VAC 40-201-161 E 2](#)).

To assess the amount of special services the adoptive parents can financially afford, the LDSS identifies any remaining funds the adoptive parents have available that may be used for special services and/or supports using the *application*. This amount shall be considered as one factor when assessing and negotiating the special services payment. It shall not be the sole factor considered in assessing family circumstances ([22 VAC 40-201-161 F](#)).

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

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

2.6.6.2 Types of special services

Special services and supports shall be directly related to the child's special needs listed on the adoption assistance agreement ([22 VAC 40-201-161 E 2](#)). Special services payments may be used to address the following types of situations:

- Recent changes in the child's behaviors or conditions are due to clearly identified reasons that may be resolved through time-limited services.
- The behaviors or conditions of the child are likely to decline or be resolved over time based on the documentation of a qualified professional.

Special Services may include:

- Medical, surgical, and dental care.

- Hospitalization.
- Individual remedial educational services, including tutoring or remedial educational sessions, books, or equipment.
- Psychological and psychiatric treatment.
- Speech and physical therapy.
- Special services, equipment, treatment, and training for physical and mental disabilities.
- Equipment, such as prosthetics, body braces, crutches, and hearing aids.
- Premiums for a major health insurance policy for the child, when a family policy is not available for the child.
- Therapeutic child day program, including but not limited to therapeutic recreation program, that is a specialized program exclusively serving children with special needs and an individual service, education, or treatment plan is developed and implemented with the goal of improving the functional abilities of the child.
- Therapeutic summer camp that is directly related to the child's special needs and is not solely for recreational or caretaking purposes.
- Case management provided by a qualified professional.
- Respite care when the child's condition requires extreme difficulty of care.
- Residential treatment that provides services from a Level C Residential Treatment Center.
- Educational component of the residential treatment facility, when other sources of funding are unavailable.

Special Service payments shall not be used for:

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

- For more information on distinguishing residential treatment and group homes, refer to the [DMAS website](#) under New Presentations or Outreach Materials for documents providing criteria on levels A, B, C residential facilities and services.

2.6.6.2.1 Educational Advocate

In order to consider an educational advocate for inclusion in an adoption assistance agreement or an addendum for special services payments, the adoptive parents must have the service and amount added to the agreement or addendum prior to incurring the service.

Additionally, the adoptive parents must demonstrate that they have attempted to resolve the educational issue without an educational advocate and by the using the established Individualized Education Program process at the school and other resources available to them. The VDOE provides guidance at http://www.doe.virginia.gov/special_ed/index.shtml.

When negotiating the reimbursed amount, the LDSS *should use the application* and compare the amount requested to what is usual and customary for this type of service within the specific service area. *The worksheet may be used as an additional resource.*

Payments may be made as a reimbursement to the adoptive parents, or paid directly to the service provider after the service is provided. When the reimbursement is provided to the adoptive parents, the adoptive parents shall provide a copy of a detailed invoice with hourly amounts showing what dates and services the advocate provided and a receipt of payment to the provider. When the payment is made directly to the provider, the provider shall invoice the LDSS each month after services are provided. The invoice shall include specific dates and services provided. The LDSS will confirm with the adoptive parents and/or the school that specific services were provided before issuing payment.

2.6.6.3 Tutoring

Limited payment for tutoring may be provided for any child, ages six and older, for the purpose of improving poor grades (D or below), if related to a special need as indicated on the original adoption assistance agreement or an onset of a condition directly related to the special need identified on the original adoption assistance agreement. This may be in addition to any reasonable accommodations, which may or may not be identified in a child's IEP or 504 plan, if related or specific to the condition as listed on the adoption assistance agreement.

The tutoring must:

- *Be specific to a subject area.*
- *Include an estimate of the length of time the tutoring will be needed.*
- *Occur outside of regular school hours.*
- *The child should display marked improvements, indicated by a higher overall grade and/or test scores.*

Tutoring Approvals

- *Tutoring services must be negotiated and approved by the Assistance Negotiator prior to beginning the service.*
- *Tutoring approvals are not to exceed 60 hours annually at the rate of \$50 per hour.*
- *The family will submit the child's report card, to the LDSS, within 30 days of receipt.*

Note: Tutoring will not be reimbursed when provided by a current household member or immediate family member of the adoptive household or provided in advance of approval by the Assistance Negotiator.

2.6.6.4 Determining whether residential services are covered

When exploring all available resources, the LDSS and adoptive parents shall determine whether the following resources are available to fund necessary residential treatment services prior to considering a special services payment ([22VAC40-201-161 E 2 b \(2\)](#)):

- When the child's Individualized Education Plan (IEP) requires placement in a residential treatment program for **educational** purposes, the CSA (Children's Services Act) in the locality where the adoptive parents reside is responsible for all placement costs.
- When the child's IEP does **not** require placement in a residential treatment program and the child is placed in residential treatment for **non-educational** purposes, the local school division in the locality where the adoptive parents reside is legally responsible for assuring the child's access to free and appropriate public education (FAPE). In such circumstances, the school division is responsible for determining and providing the services necessary for FAPE while the child is in the residential placement. The adoptive parents may request that special services funds be used to cover the remaining educational costs.

- When the child is Medicaid eligible, Medicaid may cover residential treatment for the child who meets Medicaid medical necessity criteria and is in a Medicaid-enrolled facility. The adoptive parents, with assistance from the LDSS, shall follow all requirements for Medicaid funding for placement in a children's residential facility.
- When the child is not Medicaid eligible during the initial admission into a residential treatment facility, the family should check with their own health insurance during the first 30 day period. In the event that their health insurance does not cover the costs, the adoptive parents may request that special services funds be used for the residential treatment costs during the child's first 30 days of placement.
- If the child is placed in a psychiatric residential treatment facility for 30 days or longer, the adoptive parents should apply for Medicaid on behalf of the child to help cover the costs. For purposes of Medicaid eligibility, the child is considered not living with the adoptive parents at 30 days or more. The adoptive parents should submit the Medicaid application to the LDSS with which they entered into the adoption assistance agreement.

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

2.6.6.5 Requirements for respite care

Respite care is a support service designed to offer short-term relief to adoptive families by providing substitute care for the adoptive special need child. The purpose of respite care for families is to reduce adoptive home disruption and assist in maintaining the permanent placement for the child.

The following requirements shall be met:

- The LDSS shall assure that the respite care provider meets all the standards for an approved LDSS home as stipulated in the [Local Department Resource, Foster and Adoptive Home Approval Guidance Manual](#). Adoptive parents may opt to use a respite care provider that does not meet this standard; however, adoption assistance funds shall not be used.
- The terms of the respite care are specified on the adoption assistance agreement or addendum **prior** to the respite care service being utilized.

- Respite care can be provided for up to 30 days per year, with no more than 15 days in any given 90 day period and no more than 240 hours of respite per year. The terms of respite care are negotiated and entered onto the adoption assistance agreement or addendum.
- Respite care is not the provision of an emergency placement when a placement has disrupted, or short-term placement of a child in a group or TFC facility for the purposes of treatment.

2.6.6.6 Selecting providers

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

The adoptive parents shall use:

- Providers through health insurance, the local school division, the state education agency, or early intervention supports and services. Adoption assistance funds should not be used to pay other providers when the services are available, appropriate, and accessible through these avenues.
- Fully licensed, regulated, approved, or accredited providers. These facilities licensed under the VDSS Minimum Standards for Licensed Child Caring Institutions are statutorily prohibited from receiving public funds ([§ 63.2-1737](#)).

The LDSS should assist the adoptive parents in verifying status:

- For child day care facilities, including therapeutic child day care programs:
 - See information on types of [child day care facilities](#) and [search for a facility](#).
- For residential treatment programs:
 - See [VDSS website](#) for information about the Child Welfare Unit of the Division of Licensing Programs.
 - See Virginia Department of Behavioral Health and Developmental Services ([VDBHDS website](#)) for information about licensed public and private providers of community services.

- Shall not place children in a residential facility when its licensure status is lowered to provisional as a result of multiple health and safety or human rights violations, until the violations and deficiencies are completely remedied and full licensure status is restored ([§ 2.2-5211.1](#)).
- Shall use therapeutic summer camps that are **fully accredited** by an external organization for achieving safety and professional industry standards in serving individuals with special needs.

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

- For child care providers, see factors listed in Chapter E. Foster Care Manual, [Section 12.8.1](#).
- For residential treatment programs, see characteristics correlated with long-term positive outcomes for children in Chapter E. Foster Care Manual, [Section 6.16.1](#).

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

2.7 Assessing resources to defray costs

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

The LDSS and the adoptive parents shall assess all available family, health insurance, community, government, and other resources to help meet the child's special needs and defray the costs for adoption assistance ([22 VAC 40-201-161 F](#)). The LDSS shall document the resources explored in the *child welfare information system* case contacts.

When the LDSS determines that health insurance benefits or other resources are appropriate, available, and accessible for the child, these resources shall be utilized prior to considering adoption assistance special services ([§ 63.2-1301 C](#)). Adoption assistance funds shall not be used to pay for services that can be provided through these resources. The adoptive parents may choose whether or not to use these resources.

2.7.1 Child's health insurance

The LDSS shall explore all services covered by the child's health insurance before using adoption assistance funds and document the findings in the *child welfare information system* case contacts.

For a Medicaid eligible child, the adoptive parents shall first seek out Medicaid providers for the needed and covered services. Special services payments may only be used when qualified Medicaid providers are not available and accessible. The adoptive parents shall provide documentation that they sought services from Medicaid providers and the services were not available and accessible.

- [Medicaid](#) or [FAMIS](#). For example, Medicaid provides:
 - Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), Medicaid services, dental services, and mental health treatment and intellectual disability services. See [Medical Assistance for Families and Children Handbook](#) for additional information.
 - Long-term care services (see Chapter E. Foster Care Manual, [Section 12.11.6.11](#)), including:
 - [My Life My Community-ID/DD Waiver Redesign](#).
 - [Home and Community-Based Waivers](#).
 - [Commonwealth Coordinated Care \(CCC\) Waiver](#).
 - For more information on waivers, see [VHI website](#) and its resource, "[Long-Term Care: A Consumer's Guide](#)."
- For a complete listing and description of covered and non-covered services, see the [Medical Assistance for Families and Children Handbook](#).
- For questions, contact a [Regional Medical Assistance Program Consultant](#).
- [TRICARE](#) provides health care coverage for families of Uniformed Service members and retirees through several health plan options, a pharmacy benefit, dental options, and other special programs. See [TRICARE Benefits Overview](#).
- The [Civilian Health and Medical Program of the Department of Veterans Affairs \(CHAMPVA\)](#) provide health care for certain dependents and survivors of Veterans and eligible Reservists and National Guard members.

For the child who is not eligible for Medicaid in relation to the adoption assistance agreement, the LDSS should determine if it is likely that the child will qualify for Medicaid under another covered group or FAMIS after the final order of adoption. If the child is not eligible for Medicaid or FAMIS, the LDSS may consider special services payments.

For the child covered through other health insurance, the adoptive parents shall provide the LDSS a copy of the full explanation of covered and non-covered benefits.

The LDSS and adoptive parents shall ensure all applicable and covered benefits are utilized prior to considering special services payments.

2.7.2 Family preservation services for adoptive families

The [Adoptions through Collaborative Partnerships](#) provides case management, counseling, crisis intervention, parent support groups, and children's support and activity groups through regional sites at no cost for any adoptive family in Virginia. Additional post adoption services are provided. See the [VDSS website](#) for additional information.

2.7.3 Children's special needs

The [Infant & Toddler Connection of Virginia](#) provides early intervention supports and services to infants and toddlers from birth through age two, who are not developing as expected or who have a medical condition that can delay normal development. To determine eligibility, the child's development is evaluated by at least two professionals from different professions or areas of development.

The [Children and Youth with Special Health Care Needs \(CYSHCN\) Program](#) by the Virginia Department of Health promotes optimal health and development of Virginia's children with special health care needs by working in partnership with families, service providers, and communities.

- Care Connection for Children is a statewide network of Centers of Excellence for children with special health care needs. The centers provide access to specialty medical services; assistance coordinating care and services; assistance in obtaining health insurance for the child; information and referral to community resources; family-to-family support; and training and consultation with community providers.

The [Children's Services Act \(CSA\)](#) creates a collaborative system of services and funding that is child-centered, family-focused, and community-based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth. The state and localities are required to provide special education and foster care services for specific children listed below ([§ 2.2-5211 C](#)). When funds are available, localities may serve other children who have emotional or behavioral problems and multiple agency involvement.

- Children who are placed for purposes of special education in approved private school educational programs ([§ 2.2-5211 B1 and C](#)).
- Children with disabilities placed by LDSS or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such

school is the appropriate placement while living in foster homes or child-caring facilities ([§ 2.2-5211 B2 and C](#)).

- Children who are abused or neglected, and children in need of services, and their families are eligible for mandated foster care services when the children:
 - Have been identified as needing services to prevent or eliminate the need for foster care placements; or
 - Have been placed through an agreement between either the LDSS or the public agency designated by the Community and Policy Management Team (CPMT) and the parents or guardians who retain legal custody; or
 - Have been committed or entrusted to an LDSS or LCPA by the court ([§ 2.2-5211 B3 and C](#) and [§ 63.2-905](#)).

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

2.7.4 Older youth with significant disabilities

Vocational Rehabilitation (VR) Transition Services with the Virginia Department for Aging and Rehabilitative Services (DARS) help youth with significant disabilities develop skills and formulate plans to move from high school to an adult life, including opportunities for employment, higher education, independent living, and community involvement. Referrals of students for DARS services often come from school personnel to the VR Counselor assigned to their school district. Referrals should be made three years prior to the youth leaving school and written into the student's IEP. See [DARS Transition Services](#) and [DARS office locations](#).

2.7.5 Educational and related services needs

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

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

- Special education may include instruction conducted in the classroom, home, hospital, institution, and other settings and instruction in physical education (§ [22.1-213](#), [34 CFR 300.39](#), and [8 VAC 20-81-10](#)). The term includes each of the following if it meets the requirements of the definition of special education:
 - Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards.
 - Vocational education.
 - Travel training.

Specifically designed instruction means adapting as appropriate to the needs of the eligible child the content, methodology, or delivery of instruction to address the unique needs of the child and to ensure access of the child to the general curriculum in order to meet the educational standards that apply to all children.

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

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

The school division's responsibility is limited to FAPE or to ensuring the provision of accommodations or activities on the IEP, which are designed to adapt the general curriculum to the child's needs. For specific details related to FAPE and VDOE regulations refer to state regulations, laws, and policies on the [VDOE website](#).

Nothing in this section:

- Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE;

- Limits the responsibility of a public agency to appropriately monitor medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
- Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly ([34 CFR 300.34 \(a\) and \(b\)](#)); and [8 VAC 20-81-10](#)).

Local school divisions are responsible for paying for services and placement identified on the IEP when the child is placed within the school system or regional special education program.

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

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

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

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

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

The [Parent Educational Advocacy Training Center \(PEATC\)](#) assists families of children with disabilities by providing education, information, and training. PEATC builds respectful, collaborative partnerships between schools, professionals, and the community to promote success in school and community life for children with disabilities.

The [Virginia Department of Education's Transition Services website](#) provides support, information, and resources designed to improve the outcomes of students with disabilities in transition from middle/secondary education to postsecondary education and employment.

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

2.7.6 Post-secondary education and training

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

- [Tuition Assistance Grant Program](#) assists Virginia residents who attend accredited private, non-profit colleges, and universities in Virginia, for purposes other than religious training or theological education.
- [Education and Training Vouchers \(ETV\) Program](#) assists eligible youth adopted at age 16 and older with post-secondary education and training expenses. It is designed to help youth aging out of foster care with the education, training, and services needed for employment and self-sufficiency. Funding for the program is supplied through vouchers that can be applied toward colleges, universities, community colleges, and one-year training institutions. Youth shall first use the [Free Application for Federal Student Aid \(FAFSA\)](#) website.
- Virginia Community College System:
 - Great Expectations Program provides transitional support to teens in foster care to help them complete high school and gain access to a community college education. This program is offered in several community colleges across the state. Coaches and mentors can provide assistance, offer encouragement, and help youth reach their goals. The [online resource directory and website](#) serves as a central clearinghouse for current and former foster youth, LDSS staff, counselors, career coaches, and foster and biological parents, giving them easy access to all services provided. The website provides additional information on and links to funding and scholarship opportunities.

- [Tuition Grant Program](#) assists with tuition and fees at any Virginia Community College for youth who graduated from high school or completed their general education development (GED) and who are considered special needs adoption, **based on financial need**.
- [Foster Care to Success](#) provides college funding and support for college-bound youth in foster care or adopted after their 16th birthday. It administers [scholarships and grants](#) for former youth in foster care to achieve a meaningful post-secondary education. They provide tuition grants, book money, living stipends, and emergency funding for unexpected expenses. They also provide academic coaches, personal mentors, care packages, and internship opportunities.
- [Federal Student Aid](#) provides free information on the website from the U.S. Department of Education on preparing for and funding education beyond high school.
- [Smart Student Guide to Financial Aid](#) is a website with comprehensive annotated collections of information about student financial aid, including a financial aid calculator for determining costs.

2.8 Screening child for adoption assistance

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

The title IV-E foster care determination is completed by the Benefit Programs Specialist. The Benefits Programs Specialist does not determine if the child is title IV-E eligible for the purposes of adoption assistance.

The LDSS shall complete a screening tool for all children **prior** to executing an adoption assistance agreement whether the application is made before or after the final order of adoption. The LDSS should begin screening the child for eligibility after termination of parental rights or after the execution of a valid permanent entrustment agreement.

The adoptive parents sign the completed tool to acknowledge that they were informed of the child's special needs, the funding source for maintenance payments, and the child's eligibility for all components of adoption assistance. The LDSS shall maintain a signed copy of the screening tool in the child's adoption assistance case record and document the results of the screening in the *child welfare information system, adoption case contacts*.

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

Adoption assistance maintenance payments and special services shall not be available for children adopted through parental placements. This restriction does not apply to adoption assistance agreements existing prior to July 2013. Parental placement means the child's parent or legal guardian located or effected the placement of the child or placed the child in a family home for the purpose of foster care or adoption (§ [63.2-1301](#)).

The LDSS should document the child's special need factors and eligibility requirements for adoption assistance within the *child welfare information system* and the supporting documentation is placed in the adoption case record. Additionally, the LDSS should document in the *child welfare information system* why this factor makes the child difficult to place and describe the efforts to place the child for adoption without providing assistance. In some situations, the child's special needs shall be documented by a qualified professional. When there is a potential financial gain or apparent conflict of interest on the part of the qualified professional, the LDSS can obtain an opinion from a similarly qualified person.

2.9 Screening child prior to final order of adoption

The Adoption Assistance Screening Tool shall be used to determine a child eligible for adoption assistance, title IV-E or state. The tool is designed to screen for basic and enhanced maintenance payments, Medicaid, special service payments, and non-recurring expenses. The LDSS shall maintain documentation to support the eligibility determination within the *child welfare information system* and the supporting documents in the adoption case record.

For both title IV-E and state funded cases, and applications submitted before and after final order, the child shall be under age 18 at the time the petition for adoption is filed ([22 VAC40-201-161 B1](#)).

The LDSS shall establish and document the child's age and legal residency at the time of the application for assistance as follows:

- The child shall be a United States citizen or legal resident. Documentation of legal residency may include: child's birth certificate, social security card, adoption documentation, or Certificate of Citizenship or Naturalization.

*If **both** the child and the foster/adoptive parents are qualified aliens, for the purpose of adoption assistance, the residency qualification is considered to have been met. If the foster/adoptive parent is a United States citizen or is a non-qualified alien and the child would otherwise be found eligible, except for the fact they are a non-qualified alien, the child only needs to meet the five year residency requirement to be eligible for adoption assistance.*

For more information on establishing legal residency in the United States see: <https://secure.ssa.gov/poms.nsf/lnx/0302610023#b>.

- For state funded cases, a qualified alien is not eligible unless that qualification makes the child a legal resident. For example, a Resident Alien Card may be used for documentation only when the child qualifies as a legal resident.
- For title IV-E funded cases, a child may be a qualified alien. Resident Alien Cards may be used for documentation. In addition, it is highly improbable, if not virtually impossible, that the child adopted abroad by a United States citizen or brought into the United States from another country for the purpose of adoption is eligible for title IV-E adoption assistance. The child may be eligible if the initial adoption of the child by adoptive parents failed and the child is subsequently placed into foster care (see [Federal Program Instruction dated August 26, 2009](#)). Contact the LDSS attorney for assistance with a specific situation.

2.9.1 Special Needs Criteria

When screening the child prior to the final order of adoption, the LDSS shall first determine whether the child meets the definition of special needs as 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:

1. *The court must have determined that the child cannot or should not be returned to the home of their parents. This can be achieved by one of the following:*
 - *Through a termination of parental rights proceeding.*
 - *Temporary Entrustment Agreement and evidence of a title IV-E foster care payment made on the child's behalf.*
 - *A Permanent Entrustment Agreement with a LDSS or LCPA with whom the State had a title IV-E agreement and meets the conditions below:*
 - a petition was filed to remove the child from the home within 180 days of the time the child lived with their specified relative, and
 - a subsequent judicial determination was made, and
 - the order contained the language that to remain in the home was contrary to the child's welfare.
2. *The child must meet any one of the following criteria:*
 - *Physical, mental, or emotional condition existing prior to adoption.*

- *Hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability.*
- *Member of a minority group based on racial, multi-racial, or ethnic heritage.*
- *Close relationship with one or more siblings.*
- *Age six or older and has been in foster care for 18 months or longer.*
- *Meets all medical or disability eligibility requirements of SSI.*

These criteria may be documented by one or more of the following:

- *Statements from qualified licensed professionals documenting the hereditary tendency, congenital problem (including substance exposure), and/or birth injury in the birth family or child's history.*
 - *Relevant diagnostic and assessment reports.*
 - *Any other relevant documents (e.g., Child Study, Individualized Educational Plan, 504 Plan from the Virginia Department of Education, etc.).*
3. *The LDSS must determine that reasonable, but unsuccessful, efforts to place the child with appropriate parents without providing adoption assistance have been made, except when it has been determined that it would not be in the best interest of the child to make this effort (e.g. the child has developed significant emotional ties with prospective adoptive parents while in the care of those parents as a foster child).*

If all three parts of the special needs determination have not been met, the child is not eligible for any type of adoption assistance payment or reimbursement.

The LDSS shall document in the child welfare information system and provide written documentation in the adoption assistance case record each condition identified as making it unlikely the child would be adopted within a reasonable period of time without adoption assistance.

When the child's sole special need factor is hereditary tendency, congenital problem (including substance exposure), and/or birth injury, and there is no evidence the child currently has a related disability, the adoptive parents and the LDSS shall enter into an adoption assistance agreement with a zero dollar payment.

Executing an agreement with a zero dollar payment preserves the child's title IV-E status and authorizes the adoptive parents to obtain Medicaid, if applicable. It also

establishes eligibility, allowing the adoptive parents to request adoption assistance payments should the child's disability manifest in the future. At that time, the child may receive basic maintenance, enhanced maintenance, and/or special services payments, consistent with applicable guidance.

An agreement shall be executed for every eligible child, unless the adoptive parents decline in writing.

2.9.2 Title IV-E applicable child

The LDSS screens the child using the applicable child criteria.

- *The child shall be older than two years or turn two years old during the 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 prospective adoptive home of his or her sibling.*

2.9.2.1 Title IV-E eligibility for an applicable child

In addition to the above applicable child criteria, the LDSS agency shall also determine that an applicable child with special needs meets one of the four following eligibility requirements:

- *Judicial determination criteria*

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

- *an involuntary removal. The first court order sanctioning the removal, must contain a statement that continuation in the home is "contrary to the welfare" of the child or that removal is in the child's best interest; or*
- *a Temporary or Permanent Entrustment Agreement. For an "applicable child," there does not have to be a title IV-E payment made under a Temporary Entrustment Agreement. The language of contrary to the child's welfare shall be obtained.*
- *Child was eligible in a prior adoption:*
 - *The child was determined eligible for title IV-E 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.

In such an instance, the child may retain eligibility for adoption assistance payments in a subsequent adoption. The LDSS agency only needs to determine that the child is still a child with special needs for the child to be eligible for adoption assistance.

- Child meets all medical and disability requirements of Social Security Income (SSI) eligibility.

The child is eligible for adoption assistance if, at the time the adoption petition is filed:

- the child meets the requirements of title XVI SSI eligibility, and
 - prior to the finalization of the adoption is determined by the LDSS to be a child with special needs. (Eligibility must be established no later than at the time the adoption petition is filed). An "applicable child" does not have to meet the needs-based requirements for SSI.
- Child of a minor parent in foster care
 - the child's parent is a child in foster care; and
 - the child's parent has title IV-E foster care maintenance payments paid on their behalf; and
 - the payments cover both the minor parent and their child at the time the adoption petition is initiated; and
 - the child must be residing in a foster family home or child care institution with their minor parent; and
 - prior to the finalization of the adoption, the child of the minor parent is determined by the LDSS to meet the definition of a child with special needs.

There are no additional 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 foster care while placed with the 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 in foster care

prior to the time 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.

2.9.3 Non-applicable eligibility – Aid to Families with Dependent Children

The LDSS screens the child using non-applicable child criteria.

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

- Child is AFDC Eligible

A child must be found AFDC or title IV-E eligible at the time of removal (when the initial title IV-E foster care determination is made).

- **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, as part of that process, AFDC eligible.

In the first court order sanctioning the removal of the child from the home, a judicial determination must be made that remaining in the home would be contrary to the child's welfare.

The initial Title IV-E Foster Care Notice of Action form showing "title IV-E categorically eligible" is used to verify AFDC eligibility.

For the child who 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 funds 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 adoption assistance record.

- **For temporarily entrusted children:** A child placed pursuant to a Temporary Entrustment Agreement must have actually received a title IV-E Foster Care payment to be eligible for title IV-E adoption assistance (child must be in the placement and care of a LDSS, LCPA, or Tribal agency that makes title IV-E foster care payments to foster families).
- **For permanently entrusted children:** The child must be in the care and custody of a LDSS or a LCPA or Tribal agency with a title IV-E

agreement with the State in place. The title IV-E agency must have filed a petition to have the child judicially removed from their home within 180 days of the Permanent Entrustment Agreement. The title IV-E agency must have a subsequent judicial order removing the child and the order must state that remaining in the home is contrary to the child's welfare.

- Child was eligible in a prior adoption

The child was determined eligible for title IV-E 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. In such an instance, the child may retain eligibility for adoption assistance payments in a subsequent adoption. The LDSS agency only needs to determine that the child is still a child with special needs for the child to be eligible for adoption assistance.

- Child meets all medical and disability requirements of SSI

The child is eligible for adoption assistance if, at the time the adoption petition is filed, the child meets the requirements of title XVI SSI eligibility, and prior to the finalization of the adoption is determined by the LDSS to be a child with special needs. (Eligibility must be established no later than at the time the adoption petition is filed). An "applicable child" does not have to meet the needs-based requirements for SSI.

- Child of a minor parent in foster care

- the child's parent is a child in foster care; and
- the child's parent has title IV-E foster care maintenance payments paid on their behalf; and
- the payments cover both the minor parent and their child at the time the adoption petition is initiated; and
- the child must be residing in a foster family home or child care institution with their minor parent; and
- prior to the finalization of the adoption, the child of the minor parent is determined by the LDSS to meet the definition of a child with special needs.

There are no additional 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 foster care while placed with the minor parent in foster care.

There is no requirement that a child must have been removed from home pursuant to a Temporary Entrustment Agreement or as a result of a judicial determination.

If the child and minor parent have been separated in foster care prior to the time of filing 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.

2.9.4 Screening child for State basic maintenance payments

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

A state maintenance payment shall be approved for the child who is eligible for adoption assistance unless the adoptive parent indicates or it is determined through negotiation that the payment is not needed ([22 VAC 40-201-161, E 1](#)). *To be considered eligible for this screening, the child must meet the special needs criteria in [Section 2.9.1](#) and the age and citizenship criteria in [Section 2.9](#).*

2.9.5 Eligibility for enhanced maintenance payments

Enhanced maintenance payments may be available when the child has a clearly defined, ongoing need that requires the adoptive parents to provide additional supervision and support beyond what is developmentally appropriate to ensure the child's safety and well-being.

When the LDSS establishes there are indications that the child may require additional supervision and support from the adoptive parents, the LDSS shall use the [Virginia Enhanced Maintenance Assessment Tool](#) (VEMAT) to assess the child's behavioral, emotional, or physical/personal care needs ([22VAC40-221-20](#)). In order to be eligible for enhanced maintenance payments, the child shall meet **one** of the following criteria:

1. The child is receiving an enhanced maintenance payment in foster care based on the VEMAT; or
2. The LDSS determines there are indications that the child may require additional supervision and support from the adoptive parents beyond what is developmentally appropriate.

In the event the child meets the first criteria and the most recent VEMAT was completed within **six months** of the receipt of the application for assistance, then the most recently completed VEMAT may be used. Otherwise, the LDSS will need to perform a new VEMAT.

When the LDSS establishes that the child requires additional supervision and support based on the administration of the VEMAT in accordance with VDSS guidance, after the adoptive parents apply for adoptive assistance, the Assistance Negotiator, LDSS, and adoptive parents shall assess and negotiate an enhanced maintenance payment unless the adoptive parents decline this assistance in writing.

The VEMAT does not determine the enhanced maintenance payment amount, only the maximum amount. Basic maintenance and enhanced maintenance combined is the maintenance payment for adoption assistance. Negotiations will begin at 70% of the total maintenance rate. At no time shall the amount of the enhanced maintenance payment exceed what would have been paid if the child was in foster care ([Social Security Act, Title IV, § 473 \(a\) \(3\) \[42 U.S.C. 673\]](#)).

The funding source for maintenance payments prior to the final order of adoption shall be title IV-E funds when the child is eligible to receive adoption assistance as an applicable child. The funding source shall be state funds when the child does not meet title IV-E requirements and meets the requirements for state funded maintenance payments.

2.9.6 Eligibility for special services payments

State funded special services payments help meet the child's physical, mental, emotional, or dental needs. Special services payments shall be time limited and directly based on the child's current special needs ([22 VAC 40-201-161 E2](#)). Only state funds shall be used to pay special services.

The child may be eligible for state special services when the child has special needs and is eligible for either title IV-E adoption assistance or state adoption assistance **AND:**

- *The child is in the custody of the LDSS or LCPA at the time of adoptive placement.*
- The adoptive parents are capable of providing the permanent family relationship needed by the child in all respects except financial ([§ 63.2-1301 C 3](#)).

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

- The adoptive parents can financially afford the special service.
- Health insurance or other resources will cover the service cost ([§ 63.2-1301 C](#) and [22 VAC 40-201-161 E 2 b \(2\)](#)).

Income shall only be one factor considered when assessing the family circumstances of the adoptive parents for special services payments ([22 VAC 40-201-161 F](#)).

2.9.7 Eligibility for non-recurring payments

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

A child is eligible for non-recurring expenses when the child has been determined to be a child with special needs, see [Section 2.9.3.2](#). The adoption assistance agreement indicates the terms and amount of non-recurring expenses and *shall* be signed prior to the final order of adoption. The total non-recurring expenses per child, per adoption, shall not exceed \$2,000. Adoptive parents cannot be reimbursed for out-of-pocket expenses if they have already received reimbursement from another source.

The LDSS should include known non-recurring payments on the adoption assistance agreement.

Title IV-E funds shall be used for all non-recurring adoption expense payments for children receiving adoption assistance, title IV-E and State.

2.9.8 Eligibility for Medicaid in relation to adoption assistance agreement

The LDSS shall inform the adoptive parents whether the child they are adopting is eligible for Medicaid.

The child is eligible for 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/or rehabilitative need (also known as a special medical need)

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

assistance agreement. The adoptive parents can apply for Medicaid outside of the adoption assistance process.

2.9.8.1 Medicaid for the child eligible for title IV-E adoption assistance

When the child is eligible for title IV-E adoption assistance, Medicaid shall 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, [MO310.102](#)).

For children placed for adoption through the Interstate Compact for Adoption and Medical Assistance (ICAMA), the ICAMA form 6.01 verifies their title IV-E eligibility for Medicaid and serves as the Medicaid application form (see the Virginia DSS Medicaid Eligibility Manual, [MO120.200 C.4.a](#)).

2.9.8.2 Medicaid for the child eligible for state adoption assistance with special medical needs

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 that meets 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 shall 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 prior to adoption;
or
- A hereditary tendency, genetic defect, congenital problem, or birth injury leading to a substantial risk of future disability (see the Virginia DSS Medicaid Eligibility Manual, [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.
- Conditions that are medically determined by a medical practitioner.

The child's adoption assistance case record shall 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 SSA may impact Medicaid eligibility. For example, while the child may initially be eligible for Medicaid, if the child becomes employed or begins receiving countable income, the child may no longer be eligible. The child's countable income shall not exceed the Medicaid Families and Children (F&C) 100% income limit for a single person. The income of the child's parents and siblings will not be counted.

The adoptive parents submit the application 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](#).

2.9.8.3 Medicaid for child eligible for state adoption assistance without special medical needs

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

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

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

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

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

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

2.10 Screening child after final order of adoption

When the adoptive parents submit an [Application for Assistance](#) after the final order of adoption has been issued and there is not an existing adoption assistance agreement, the LDSS screens the child for eligibility using the [Adoption Assistance Screening Tool](#). When screening the child after the final order of adoption, the LDSS shall first determine whether the child meets the special needs criteria as defined in [Section 2.9.1](#). After the LDSS establishes the child's special needs eligibility, the LDSS will then determine whether the child is eligible for other types of adoption assistance, including:

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

The LDSS shall provide the adoptive parents a copy of the completed screening tool, and respond to all questions they may have. The adoptive parents should sign the completed screening tool to acknowledge that they were informed of the child's special needs and eligibility for adoption assistance, the funding source for maintenance payments, and the

child's eligibility for all components of adoption assistance. By signing the screening tool, the adoptive parents are not indicating that they agree with the screening tool, rather that they have received this information. If the adoptive parents do not sign the screening tool, the LDSS should write on the form that the adoptive parents were provided the opportunity to sign the form but opted not to sign. Regardless of the child's eligibility status, the LDSS shall document the results of the screening in *child welfare information system* and place the completed tool in the child's supporting adoption case file.

Only state funded adoption assistance shall be used when a new agreement is entered into after the final order of adoption ([§ 63.2-1301 B](#) and [45 CFR 1356.40 \(b\) \(1\)](#)), even when the child was title IV-E eligible while in foster care. State adoption assistance and special services shall not be available 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](#)).

2.10.1 Screening a child for adoption assistance after final order

To determine a child's eligibility for adoption assistance, after the final order of adoption has been entered, the LDSS must first determine if the child meets the definition of special needs as defined in [Section 2.9.1](#), the age and citizenship criteria as defined in [Section 2.9](#), and the additional eligibility requirements to be eligible for adoption assistance. The LDSS shall document that the child meets each of the three criteria below:

1. The special needs criteria as defined in [Section 2.9.1](#); and
2. The age and citizenship requirements as defined in [Section 2.9](#); and
3. The child meets each of the three following additional eligibility requirements below:
 - i. The child was in custody of a LDSS or LCPA immediately prior to adoption; and
 - ii. Has a condition or disability that was present at the time of adoption but was not diagnosed until after the final order of adoption; and
 - iii. The diagnosis by a qualified licensed professional was made within 12 months of the date the adoptive parents submitted the application for assistance.

When the child meets all of the criteria above, the child has special needs and is eligible for state funded maintenance payments ([§ 63.2-1301 B](#)). The LDSS shall clearly document how the child meets each criterion in the *child welfare information system* and place the supporting documentation in the adoption case record.

Income eligibility requirements (means testing) for adoptive parents shall not be used in determining eligibility for adoption assistance maintenance payments ([45 CFR 1356.40](#)).

2.10.2 Screening a child for enhanced maintenance after final order

After the LDSS establishes the child is eligible for state adoption assistance basic maintenance, the LDSS determines whether the child is eligible for enhanced maintenance payments.

Enhanced maintenance payments are for a child that has a clearly defined, ongoing need that requires the adoptive parents to provide increased supervision and support to ensure the child's safety and well-being.

When the LDSS determines there are indications that the child may require additional supervision and support from the adoptive parents, the LDSS shall use the VEMAT to assess the child's behavioral, emotional, or physical/personal care needs.

The LDSS shall administer the VEMAT to determine whether an enhanced maintenance payment is appropriate when:

1. The child received an enhanced maintenance payment in foster care based on the VEMAT; **or**,
2. The child did not receive an enhanced maintenance payment, or local-only special services stipend in foster care, but the LDSS has sufficient reason to believe the child requires additional supervision and support from the adoptive parents that are beyond developmentally appropriate behaviors based on the frequency, duration, and intensity of the child's behavioral, emotional, and physical/personal care characteristics consistent with VEMAT guidance.

When the LDSS establishes that the child requires additional supervision and support based on the administration of the [VEMAT](#) in accordance with VDSS guidance, the Assistance Negotiator and LDSS shall then assess and negotiate an enhanced maintenance payment with the adoptive parents, unless the adoptive parents decline this assistance in writing ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(A\) \[42 U.S.C. 673\], 22 VAC 40-201-161 E1](#)). The VEMAT score does not determine the exact amount the adoptive parents will receive; rather the VEMAT score sets the maximum amount for the negotiation.

The enhanced payment amount may range from no payment up to the maximum amount allowed by law. The amount of the enhanced maintenance payment shall not exceed the foster care enhanced maintenance payment that would have been paid during the period if the child had been in a foster family home ([22 VAC 40-201-161 E1b](#)).

2.10.3 Screening for special services after final order

Special services payments help meet the child's physical, mental, emotional, or dental needs. Special services payments shall be time limited and directly based on the child's special needs ([22 VAC 40-201-161 E2](#)).

When the child has special needs and is eligible for state adoption assistance based on Virginia legal requirements after the final order of adoption, the child may be eligible for state special services when:

- The child was in the custody of the LDSS or LCPA at the time of the adoption ([§ 63.2-1301 B1](#)).
- The adoptive parents are capable of providing the permanent family relationship needed by the child in all respects except financial ([§ 63.2-1301 C](#)).

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

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

Income shall only be one factor considered when assessing the family circumstances of the adoptive parents for special services payments ([22 VAC 40-201-161 F](#)).

Special services shall not be available for children adopted through parental placements. This restriction does not apply to adoption assistance agreements existing prior to July 2013. Parental placement means the child's parent or legal guardian located or effected the placement of the child or placed the child in a family home for the purpose of adoption ([§ 63.2-100](#)).

2.10.4 Eligibility for Medicaid after the final order

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

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

under FAMIS. The income of the child's adoptive parents is counted when determining the child's eligibility.

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

For information on the FAMIS program, see the [Cover Virginia](#) website or the Virginia DSS Medicaid Eligibility Manual, [M21](#).

2.11 Negotiating adoption assistance

After the [Application for Assistance form](#) and [Adoption Assistance Screening Tool](#) are complete, the LDSS completes a [Referral for Negotiations](#). The LDSS and Assistance Negotiator shall assess and negotiate with the adoptive parents to determine agreed upon terms for time-limited services, payment, and supports to meet the child's special needs.

The purpose of negotiation is to assess the child's needs for adoption assistance taking into account the family circumstances of the adoptive parents, and to determine the adoption assistance necessary for the adoptive parents to adopt and care for the child's special needs. This process individually tailors adoption assistance to meet the unique special needs of the child, family circumstances, and available resources in the community.

- Decisions are based on:
 - Child's special needs.
 - Family circumstances of the adoptive parents.
 - Availability of other resources to meet the child's needs and help defray costs for the adoptive parents and the adoption assistance program.
 - Legal requirements for adoption assistance.

Basic maintenance and enhanced maintenance combined is the maintenance payment for adoption assistance. Negotiations will begin at **70%** of the total maintenance rate.

2.11.1 Role of the Assistance Negotiator

The Assistance Negotiator is responsible for the following action items in leading up to, during, and after the negotiation process:

- Ensures the state-wide adoption assistance negotiation process is objective, consistent, and supportive of both the LDSS and the adoptive family.
- Reviews the application for assistance or request for addendum.

- Reviews the pertinent and supporting documents that are within the *child welfare information system* and case record. Specifically:
 - Ensures that the documentation supports the child's special needs; and,
 - Reviews the previous services, history of the case, and effectiveness of outcomes of previous services.
- Interviews the case worker and the family, when necessary.
- Negotiates with the family and LDSS on a case by case basis.
- *Acknowledges receipt of the referral from the LDSS within **5 calendar days** via email.*
- *Completes the negotiation and provides the LDSS with the Adoption Negotiation Report within **30 calendar days** of receiving the Referral for Negotiations from the LDSS.*
- Validates within **30 calendar days** that the signed adoption assistance agreement matches the negotiated terms.
- Reviews the foster care and adoption case in the *child welfare information system* within 30 days of the negotiation.

2.11.2 Role of LDSS during the negotiation process

The LDSS is a key player in the negotiation process. The LDSS is responsible for the following action items in leading up to, during, and after the negotiation process:

- Discusses with the family the requested services, payments, and prepares the family for the negotiation process. Reviews the [Information Sheet on the Virginia Adoption Assistance Program](#) with the family.
- Screens the child (i.e. determining eligibility for adoption assistance) using the Virginia Adoption Assistance Screening Tool.
- Within **14 calendar days** of receipt of the *Application for Assistance* or Request for Addendum (both hereafter referred to as the application):
 - Determines if the *application* is complete.
 - Determines if the requested payments or services are reasonable.
 - *Gathers documentation which supports any additional daily support and supervision needs the child may have that are payable through an enhanced maintenance payment and for all special service payments*

requested. Supporting documentation must be current within two years of the date of application. The need for an enhanced maintenance payment must be assessed using the VEMAT tool and the completed assessment must not be more than six months old from the date of application.

- Once this information has been obtained, submits a Referral for Negotiation, the *application*, and, if applicable, the *VEMAT* to the *Assistance Negotiator*.
- If the *application* or request for addendum includes a request for enhanced maintenance, the LDSS shall follow the existing guidelines for determining if a VEMAT will be administered. *The LDSS completes the VEMAT prior to submitting the Referral for Negotiation and application. The VEMAT score and the amount are required to be entered on both of the abovementioned forms.*

The LDSS will submit any additional documentation requested by the Assistance Negotiator within *seven calendar days* of the request.

- If a LCPA has placement and care responsibility for the child, the LDSS shall work with the LCPA to obtain and provide all needed documentation to the Assistance Negotiator regarding the child's special needs.
- In conjunction with the assistance negotiator, schedules the negotiation date and time with the family, if applicable.
- Retains a copy of the Report of Negotiation in the supporting adoption case record.
- Obtains the adoptive family and LCPA (if applicable) signatures, and signs the negotiated adoption assistance agreement.
- Provides the Assistance Negotiator a copy of the signed adoption assistance agreement within **ten (10) calendar days** of obtaining all signatures.
- Updates the *child welfare information system* with adoption assistance financial and service information within **five (5) calendar days** from the signing of an adoption assistance agreement or addendum.
- Within **seven (7) calendar days** of receipt of the final order of adoption, updates the *child welfare information system* and supporting adoption case record.
- Prepares the [Family Services Summary of Facts](#) for the Appeals Officer if the adoptive family appeals decisions related to adoption assistance (including negotiations).

- Issues payments per the terms of the negotiated adoption assistance agreement.
- Reports expenditures in LASER.

2.11.3 Negotiation process

As of July 1, 2015, all applications for adoption assistance and addendum requests are being facilitated by an Assistance Negotiator. With the following exceptions:

- Adoption assistance agreements executed prior to October 2013, when the terms and conditions do not have end dates, are not referred to an Assistance Negotiator. The LDSS may utilize their existing internal process to extend the agreement past age 18 or continue special services payments in accordance with the terms of the agreement.
- A change of a provider or rate for services on an existing agreement does not have to be referred for negotiations. The LDSS may make this administrative change by completing an addendum or placing a memo in the case record explaining the change. For rate changes that exceed 30%, a referral should be made to the Assistance Negotiator.

The LDSS should submit a copy of the signed *application* to the Assistance Negotiator within **14 calendar days** of receipt from the adoptive parents. The Referral for Negotiations form and the following documentation relative to the child's special needs and the adoptive family's circumstances should be included:

- The screening tool;
- VEMAT, if the screening tool indicates that a VEMAT is required; and,
- Supporting documentation and diagnosis of each of the child's special needs (such as, but not limited to, Full Disclosure Child Information Form, medical reports, IEP, psychological evaluations, etc.).

The following is additional information needed for an addendum negotiation:

- Referral for Negotiations form;
- Professional documentation that is specific to the special needs and service requested;
- Signed copy of the Addendum Request to the Assistance Agreement form;
- Copy of the original adoption assistance agreement;

- Copy of the most recent addendum for that service, if applicable; and,

Upon receipt of the referral, the Assistance Negotiator will review the documentation and may request additional supporting documentation. If the supporting documentation is excessive, the LDSS may contact the Assistance Negotiator to request a site visit to review the case in person.

If necessary, executes the VEMAT no later than the **30th day** after receiving the application, and submits a copy of the VEMAT to the Assistance Negotiator.

After reviewing the documentation and discussing the case with the LDSS and the family (when appropriate), the Assistance Negotiator will determine if the negotiation can be conducted via the phone or if an onsite visit is required. The negotiators also have the option to conduct a desk review in some cases.

*The Negotiator will complete the negotiation and provide the LDSS with the Adoption Negotiation Report within **30 calendar days** of receiving the Referral for Negotiations and all supporting documentation from the LDSS. The Negotiator will submit the negotiation report to the LDSS and the LDSS will provide a copy to the adoptive parents.*

Within **fifteen (15) calendar day** from the date of the Adoption Negotiation Report, the LDSS should draft and execute an adoption assistance agreement. No later than **ten (10) days** following the last signature on the adoption assistance agreement, **the LDSS will submit a copy of the adoption assistance agreement to the Assistance Negotiator.**

Refer to the [Appendix D](#) for a graphic of this process.

2.11.4 Negotiating special services payments

During this process, the LDSS, Assistance Negotiator, and adoptive parents should discuss the following factors, as well as any other relevant factors:

- The amount, duration, and cost of the special service and/or support the child requires, and the anticipated impact on the child's special needs or behaviors, as documented by a qualified professional.
- Available resources to help meet the child's special needs and defray the costs for adoption assistance and the adoptive parents.
- The family circumstances of the adoptive parents.
 - Their strengths, challenges, and capacity in meeting the child's special needs.

- Their contributions (e.g., participation, transportation) to help facilitate the success of the special service.
- The remaining funds the adoptive parents identify they have available that may be used for special services and supports (i.e., the amount they can financially afford to pay).
- The LDSS should ask the adoptive parents how much they will pay from the funds they have available that may be used for special services for the child. If the adoptive parents have alternative plans for using these funds, the LDSS should ask questions such as: How do you suggest we share in the costs of meeting the child's special needs? How much will you contribute for this service? And, how much assistance do you need for this service? The LDSS and adoptive parents should discuss options for sharing in the cost and determine an agreed upon amount.
- Requirement that the LDSS payment shall not exceed the prevailing community rate for the service ([22 VAC 40-201-161 E2c](#)).
 - For child care, the VDSS policy on maximum reimbursable child care rates should be considered, based on the type of provider, number of hours the child is in care, and the age of the child (see Chapter E. Foster Care Manual, [Section 12.8](#)).
 - For residential care, the VDSS may consider the maximum rates identified by providers in the [CSA service fee directory](#).
- How the adoptive parents will monitor the effectiveness of the service and keep the LDSS informed of progress. This information allows the LDSS and adoptive parents to assess whether to increase, extend, reduce, or terminate the service based on the child's needs. The adoptive parents should:
 - Provide copies of periodic progress reports from service providers to the LDSS.
 - Sign consents for release of information for the LDSS to obtain information from service providers (e.g., the school, therapist, residential treatment provider, intensive care coordinator).
 - Arrange and participate in regular meetings and conference calls with service providers and the LDSS.

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

adoption assistance agreement and any addendum adding special services to the agreement.

2.11.5 Appealing the Negotiation

The LDSS shall provide 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. In the event that the LDSS and the Adoption Program Manager are unable to reach an accord, the LDSS may contact the [Director of Family Services](#).

2.12 Adoption Assistance Agreement

An adoption assistance agreement is a written agreement between the LDSS, the adoptive parents of the child with special needs, and the licensed child placing agency when the child is in its custody. At a minimum, the agreement and any addenda shall remain in effect per the term of the agreement regardless of the state of residence ([Social Security Act, Title IV, § 475 \(c\)\(2\)\[42 USC 675\]](#)).

2.12.1 Developing the agreement

After the negotiation, the LDSS and the adoptive parents agree on the terms of payments and/or services for adoption assistance and enter into an adoption assistance agreement. *The child's adoptive name is used on the agreement. If the child's adoptive name has not been decided at the time of the application, then the applicant should use the child's birth first name and the first initial of his or her last name. This is because the child's birth name is sealed when the adoption is finalized.*

The LDSS shall use the [Adoption Assistance Agreement \(22 VAC40-201-161 G\)](#). The agreement includes, but is not limited to:

- The child's documented special needs.
- The agreed upon terms of adoption assistance, including the type, duration, and amount of assistance to be provided.
- Process for requesting changes through an addendum to the agreement.

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

2.12.2 Executing the agreement

When the local board, or its designee, approves the agreement, all parties sign the document. The local board does not have authority to deny an adoption assistance agreement for an eligible child. Signatures shall include the local board representative, or designee, the adoptive parents, and the LCPA when the child is in LCPA custody. The signed agreement is legally binding on all parties ([Social Security Act, Title IV, § 475 \(3\) \[42 USC 675\]](#); and [§ 63.2-1302 C](#)).

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

The effective date and beginning initial payment date shall be the first day of the month following the month in which all parties signed the agreement. The agreement shall state the effective date. When the agreement is entered prior to adoption finalization, the effective date shall be no later than the date the final order of adoption is signed

by the judge. The LDSS shall 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 the date in which all parties sign the agreement.*

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

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

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

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

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

2.13 Annual affidavit

An annual affidavit is required for all adoption assistance agreements, including agreements entered into with a zero dollar payment, *unless the initial adoption assistance agreement is for a one-time payment, such as non-recurring expenses.*

The LDSS shall notify the adoptive parents in writing of the date the annual affidavit is due. The notification shall be sent **two months** before the anniversary date of when the adoption assistance agreement was effective. The LDSS shall use the [Virginia Annual Affidavit for Adoption Assistance](#).

The adoptive parents shall submit an annual affidavit to the LDSS within **30 calendar days** of the anniversary date that the adoption assistance agreement was effective (i.e., the effective date stated in the agreement) (§ [63.2-1302 C](#)).

The adoptive parents shall annually certify in the affidavit that the:

- Child's condition requiring adoption assistance continues to exist.
- Child continues to be eligible for adoption assistance:
 - The adoptive parents remain legally responsible for the child's care.
 - The adoptive parents continue to provide financial support for the child.
 - The child is not an emancipated minor, married, deceased, or enlisted in the military.
- If the youth is, or will be, 18 years old within the next year and has a mental or physical condition/disability, or an educational delay resulting from such condition/disability, that requires ongoing treatment and/or intervention.
- Whether or not they request changes to the adoption assistance agreement (§ [63.2-1302 C](#) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5](#)).
- The school-age child is a full-time student or has completed secondary school. The child:
 - Is enrolled in elementary, middle, or high school.
 - Is instructed at home in elementary or secondary education, in accordance with home schooling laws and requirements.
 - Is instructed in an independent study program for elementary or secondary education that is administered by the local school division, in accordance with education laws.

- Is incapable of participating in school full-time due to a medical condition ([Social Security Act, Title IV, § 471 \(a\) \(30\) \[42 USC 671\]](#)). Documentation by a qualified professional shall be included with the affidavit.
- Has graduated from high school or earned an equivalent credential.
- Is enrolled in an institute of higher education, technical college, or community college.
- Whether there has been any change in the child's special needs or in their family circumstances that may change the adoption assistance the child receives. When changes have occurred, the adoptive parents shall provide documentation of change (e.g., copies of new private health insurance card and full explanation of health benefits).

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

- Shall not suspend or terminate adoption assistance maintenance payments or the adoption assistance agreement.
- May suspend the special services payments until the signed affidavit is received, when the LDSS determines appropriate. The LDSS shall not terminate the special services payments.

The LDSS shall attempt to obtain the affidavit with due diligence. When the adoptive parents do not return the annual affidavit, the LDSS:

- Should send a certified letter to the adoptive parents advising them to return the signed affidavit by a required date.
- May advise them to come into the office, sign the affidavit, and pick up the check at the same time by the required date. The certified letter shall be sent at least 30 days prior to holding the check. The LDSS shall issue the check for adoption assistance payments on the normal schedule and shall give the check to the adoptive parents before they depart the premises.
- Shall inform the adoptive parents that, when applicable, special services payments being provided to the family will be suspended until the signed affidavit is received. The letter shall include information on the adoptive parents' right to appeal the LDSS decision within **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 shall document case contacts, in the *child welfare information system*, within **five calendar days** of the receipt of the signed affidavit. The LDSS shall place copies of the written notifications to the adoptive parents and the returned annual affidavits in the child's adoption assistance case record.

2.14 Making changes to agreement

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

After the adoption assistance agreement is executed, the terms of the agreement are changed when:

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

An addendum is an attachment to the original adoption assistance agreement which specifies additions or deletions to the original terms, services, or conditions of the agreement. The addendum may address a specific item, multiple items, or for the entire document. Unless specified, the terms, services, or conditions specified in the addendum supersede those in the original agreement.

An addendum is not required when terminating a payment or service based on the terms specified in an agreement or addendum.

When opting to modify the original agreement (rather than executing an addendum), the LDSS will complete an administrative change. These changes will not be in effect until both the LDSS and the adoptive parents initial and date the changes. A rate or provider change will require an administrative change and the LDSS will place a memorandum in the adoption record explaining the change. Rate changes over 30% should be referred to an Assistance Negotiator.

Adoption assistance agreements prior to October 2013, when the terms and conditions do not have end dates, are not referred to an Assistance Negotiator. The LDSS will utilize their internal process for negotiating terms and completing the addendum.

Services that are regularly utilized such as counseling may be approved on the addendum for up to one year.

2.14.1 Submitting request for addendum

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

- Basic maintenance may be reassessed at any time upon request of the adoptive parents.
- Enhanced maintenance and/or special services may be reassessed and renegotiated at any time upon request of the adoptive parents.
- Non-recurring expenses are one time only expenses and cannot be reassessed.

The adoptive parents submit an [Addendum Request to the Assistance Agreement](#) to the LDSS with which they established the agreement. Both parents sign the request when the agreement was with two parents, including adoptive parents who are separated or divorced. One parent signs the request when the agreement was with one parent or when a signed court order documents the sole legal responsibility of one parent for the child.

2.14.2 Timeframe for acting on request

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

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

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

- **Request for changes is denied.** The notification shall clearly state the reasons for the denial, provide information on the adoptive parents' right to appeal within **30 calendar days** of receiving the notice of denial, and provide information on the fair hearing process. No further action is required by the LDSS on the request.

2.14.3 Assessing overall request for addendum

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

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

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

2.14.4 Assessing relevant components of adoption assistance

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

The LDSS should use the *application* to assist in the assessment of the financial circumstances of the family and consider this information when negotiating changes to the agreement. This *application* does not determine the child's eligibility for adoption assistance and will not be used as the sole factor in assessing the family circumstances.

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

- Negotiating adoption assistance.
- Assessing:
 - Family circumstance.

- Basic maintenance needs of child.
- Additional supervision and support needs of child.
- Services to meet the child's special needs.
- Other resources.

When the adoptive parents request:

- A reassessment for additional supervision and support being provided by the adoptive parents, the LDSS determines if there are indications that the child's requirements for additional supervision and support may have changed based on the frequency, duration, and intensity of the child's behavioral, emotional, and physical/personal care characteristics. Such change in behavior shall be documented and a request is made using the [Addendum Request to the Assistance Agreement](#). When the LDSS administers the VEMAT and the child's VEMAT score is higher than the child's previous score, the new VEMAT score for the child establishes the maximum rate used during negotiations. When the child's VEMAT score is lower than the child's previous score, the payment may be lowered with the concurrence of the adoptive parents.
- To add a new diagnosis or special need factor that was present at the time of the adoption, but was not diagnosed, the adoptive parents shall submit documentation and relevant reports from qualified professionals as required for documenting special need condition/disability after the final order of adoption, when no more than one year has elapsed from the date of diagnosis.
- To document the child has a special medical need that existed at the time the initial adoption assistance agreement was executed prior to the final order of adoption, then the adoptive parents shall submit documentation by qualified professionals of the child's current special medical need and its existence at the time the initial agreement was executed (whether or not treatment was being received).
- Residential treatment services that impact the amount of required additional daily supervision and support for the child from the adoptive parents, then the LDSS shall reevaluate the VEMAT and negotiate a reduced enhanced maintenance payment with the adoptive parents.

The LDSS should use the same procedures used for initial agreements to resolve issues during negotiation.

The LDSS shall send the [Family Services Notice of Action and Right to Appeal](#) to the parents documenting the outcome. This notice should be sent within **60 calendar days** from the date the LDSS received the completed [Addendum Request to the](#)

[Assistance Agreement](#). The notification shall include information about the adoptive parents' right to appeal the decisions within **30 calendar days** of receiving the written notice.

2.14.5 Executing the addendum

The LDSS shall prepare an Addendum to the Virginia Adoption Assistance Agreement on behalf of the child.

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

Payments and services shall not be effective until all parties have signed and dated the addendum. Changes in payment rates, such as an increase or decrease in enhanced maintenance rate, shall not be implemented until the first day of the month following all signatures. The addendum shall state the effective date of the changes. This date shall not be earlier than the date when all parties signed the addendum. The addendum is executed on behalf of the child on the effective date stated in the addendum. *However, for special services payments, the effective date is the date in which all parties sign the addendum.*

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

2.14.6 Conducting a VEMAT after signing adoption assistance agreement

Within **14 calendar days** of receiving an Addendum Request to the Assistance Agreement that specifies a request for services related to additional daily supervision from the adoptive parents, the LDSS shall determine that a VEMAT will be conducted due to changes in the child's needs or behavior.

If the LDSS determines that a VEMAT will not be conducted, the LDSS shall send the Family Services Notice of Action and Right to Appeal to the parents notifying them of the reason for not executing a VEMAT and their right to appeal the decision within **30 calendar days** of receiving the written notice.

If the LDSS determines that a VEMAT will be conducted, then the LDSS shall administer a VEMAT within **25 calendar day** of the decision to reassess the adoption assistance maintenance payment. The LDSS shall ensure the VEMAT is executed within sufficient time to ensure that the LDSS is able to completely process, execute, and respond to the family who submitted the Addendum Request to the Assistance Agreement within **90 calendar days** of its receipt by the LDSS.

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 following exception:

- If there is no specific case manager for the family, the LDSS shall ensure that the individual at the LDSS who is assigned to manage adoption assistance requests is included in the VEMAT meeting.

The VEMAT rater shall be an individual as described in Chapter E. Foster Care Manual, [Section 18.2.2.5](#) and shall follow all requirements in administering the VEMAT as identified in all earlier sections of this guidance.

The parents shall cooperate with the LDSS to ensure that all necessary information is available for a comprehensive review of the child's needs.

If the parent does not provide requested documentation or sign requested releases of information or obtain additional assessments, the LDSS shall not conduct a VEMAT.

If the results of the VEMAT indicate that, due to a change in the child's need for supervision and support, a change in the enhanced maintenance payment is allowed (e.g., increase, decrease), the LDSS, *Assistance Negotiator*, and parent may negotiate a new monthly enhanced maintenance rate. The parent has the option to keep the original, unchanged agreement or proceed with negotiations for a new agreement. The LDSS and the parent shall complete an addendum to the adoption assistance agreement to document the new agreed upon monthly rate. The parents' signature on the addendum shall serve as documentation that the parent agreed to the change in the adoption assistance agreement. The new rate shall begin on the first day of the month after the addendum is signed by all parties.

2.14.7 Assessing conditions warranting continuation beyond 18th birthday

Unless the youth has a condition that warrants continuation of adoption assistance, the adoption assistance agreement terminates on the youth's 18th birthday. The LDSS, in conjunction with the Assistance Negotiator, makes the determination if the youth has a documented condition that warrants continuation beyond the youth's 18th birthday. Consequently, the LDSS shall *notify the adoptive parents in writing, using the Family Services Notice of Action and Rights to Appeal form, six months prior to the youth turning age 18* to advise that the agreement will terminate on 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.

After receiving the documentation, the LDSS with assistance of the Assistance Negotiator will determine if the youth meets the criteria for continuing the agreement beyond the youth's 18th birthday. If the LDSS determines the youth's condition warrants continuation of adoption assistance, the agreement may be continued via

amending the original agreement or entering into an addendum ([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 shall notify the adoptive parents in writing. Notice shall be made *using the Family Services Notice of Action and Right to Appeal form at least **sixty (60) calendar days** before the youth's 18th birthday* that the agreement and subsequent payments will terminate on the youth's 18th birthday.

2.14.7.1 Criteria for continuing beyond 18th birthday

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

1. The LDSS shall establish one of the following that is listed on the original adoption assistance agreement:
 - 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

2. 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 shall 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 shall 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 shall 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; or
- Is willingly cooperating and participating in the educational services; or
- Is enrolled full-time, attending and actively participating in the educational, vocational, or technical training program.

2.14.8 Extension of adoption assistance through Fostering Futures

Youth adopted from foster care after age 16 may qualify for extension of adoption assistance under Fostering Futures after reaching 18, up to age 21.

2.14.8.1 Fostering Futures eligibility criteria

When the LDSS determines that the youth is ineligible for continuation of adoption assistance beyond age 18 based on the special needs criteria, adoption assistance may continue for the youth when the following **three** 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; **and**,
- The LDSS has determined the youth ineligible for continuation of adoption assistance beyond age 18 under existing adoption guidance (i.e. the youth does not have a documented physical or mental disability present at the time of adoption or related to a hereditary tendency, congenital problem, or birth injury, or an education delay resulting from such disability, requiring ongoing treatment or intervention).

In addition to meeting the three criteria above, the youth shall meet at least **one** of the five participation circumstances. The youth must be:

1. 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.
2. 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.
3. 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.

4. Employed at least 80 hours per month.
5. 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.
 - o 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.

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.

2.14.8.2 Documentation 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 shall 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 shall be verified by a statement from a medical doctor provided by the adoptive parent. Thereafter, the adoptive parent shall 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.

2.14.8.3 Continuing adoption assistance using Fostering Futures

If the youth is eligible for an extension of adoption assistance under Fostering Futures, the service worker should 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 shall 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 shall continue without further determination; if the youth was receiving state adoption assistance, state assistance shall 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 should certify the youth's compliance with one of the participation conditions and provide documentation of the youth's participation throughout the year.

2.14.9 Requirements for residential treatment services

In order to request residential treatment services and modify the existing adoption assistance agreement, the adoptive parents should submit the Addendum Request to the Assistance Agreement form. The LDSS should follow procedures for assessing special services ([See Section 2.6.6](#)) and requests for addendums ([See Section 2.15](#)) to the adoption assistance agreement. In addition, the LDSS should follow procedures delineated in this section.

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

- Documentation from qualified professionals demonstrate:
 - Less restrictive services (i.e., wraparound, family-based, in-home, and community-based services) were utilized and not effective, or are clearly not appropriate at this time.
 - Residential treatment services are:
 - **Directly related to the child's documented special needs** as specified on the adoption assistance agreement or addendum.

- Required to provide crisis stabilization or intensive treatment on a time-limited basis.
- The most appropriate, least restrictive, and most effective services to meet the child's documented special needs.
- Measurable outcomes to be achieved with residential treatment in addressing the child's special needs.
- Services and supports that can be used to effectively transition and return the child home at the earliest appropriate time consistent with the child's special needs.
- Recent child and family assessments are consistent with the child's need for residential treatment services. The assessment shall include, but is not limited to, the Virginia Child and Adolescent Needs and Strengths Assessment (CANS) administered within the last 90 days.
- *Recommendations for residential placement must follow the current approval procedures in place for children in foster care, to include, a Family Assessment and Planning Team meeting, a Family Partnership Meeting, and any required Medicaid approval processes.*
- The wishes and concerns of the child about residential placement are being considered, consistent with the development level of the child.
- The adoptive parents are using residential treatment as a temporary placement for crisis stabilization or intensive treatment on a short-term basis. They have developed specific plans for actively planning and participating in the child's treatment and services.
- Plans to transition and return the child home at the earliest appropriate time consistent with the child's special needs are being developed by the adoptive parents and the residential treatment provider. Adoption assistance funds shall be used only when the child is to return to the adoptive home. The only exception is when the LDSS determines the child's special needs prohibit return home and the adoptive parents demonstrate continued involvement in the child's life as a permanent member of their family.
- The LDSS must make a referral to FAPT which involves a multidisciplinary team to explore residential treatment services and least restrictive, community based resources.

2.14.9.1 FAPT requirements for residential treatment services

The FAPT or approved multidisciplinary team in the locality where the adoptive parents reside:

- Determines less restrictive services (e.g., wraparound, family, or community services) are not appropriate in meeting the child's special needs at this time.
- Recommends that time-limited residential treatment is the most appropriate, least restrictive, and most effective service in meeting the child's special needs.
- Recommends services and supports to successfully transition and return the child home at the earliest appropriate time consistent with the child's special needs.

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

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

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

To add residential treatment to an existing adoption assistance agreement, the adoptive parents shall submit an Addendum Request to the Assistance Agreement.

Thirty days prior to the special services payment end date (set specified on the adoption assistance agreement or addendum) for residential services, the LDSS shall contact the adoptive parents to determine if additional services are recommended. If additional services are recommended, the LDSS, the adoptive parents, and the Assistance Negotiator shall negotiate additional services. A request for an addendum is not necessary to initiate this process. A new

addendum is required to continue the special services payment beyond the original terms.

2.14.9.2 Convening Family Partnership Meeting

When special services payments may be used for residential treatment, the LDSS should convene a Family Partnership Meeting to engage the family, other significant adults, service providers, and community members (see Chapter E. Foster Care Manual, [Section 2.9](#)). The purpose of the meeting is to identify wraparound, family, and community services and supports that may prevent the residential placement and facilitate return home at the earliest appropriate time consistent with the child's needs. The LDSS should schedule this meeting when it is most beneficial for the child during the process:

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

2.14.9.3 Negotiating residential treatment services

When the LDSS determines the child meets the requirements for residential treatment services, the LDSS and Assistance Negotiator shall negotiate special services with the adoptive parents and determine agreed upon terms. In addition, the LDSS and adoptive parents should also discuss the following factors:

- The specific services and supports that meet the child's special needs to be provided, including:
 - Residential treatment services.
 - Wraparound, family, and community services and supports necessary to successfully transition the child home.
 - Appropriate educational services for the child. The adoptive parents should discuss with the child's local school the child's educational needs and the most appropriate ways to meet those needs.
 - Intensive care coordination services arranged or provided by the community services board, when appropriate (see Virginia

Department of Behavioral Health and Development Services' [website](#)).

- The plans of the adoptive parents to actively participate in the child's treatment and return home at the earliest appropriate time that addresses the child's needs.
- Services payments for residential treatment services should be made for no longer than three months at a time. The LDSS and adoptive parents should assess the child's situation on a monthly basis, and more frequently when required for the child's special needs. The purpose is to assess progress, continued need for residential treatment, and any changes in needed services and supports.
- When the adoptive parents are receiving an enhanced maintenance payment on behalf of the child, the LDSS and adoptive parents assess the additional supervision and support the child requires from the adoptive parents when the child is placed outside of the home receiving residential treatment services.

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

2.14.9.4 Responsibilities of adoptive parents

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

- Provide the child emotional support during the transition, treatment, and services.
- Participate in treatment planning, including:
 - Researching the most appropriate residential placement for the child.
 - Obtaining pre-admission screening materials and providing all required information to meet Medicaid requirements when applicable.
 - Providing the residential treatment program relevant background and service history information about the child.

- Arranging and participating in a pre-placement visit with the child.
- Negotiating rates and entering into a placement agreement with the service provider. The adoptive parents shall provide the LDSS a copy of the agreement for the child's adoption assistance case record.
- Arranging trial home visits to prepare for the child returning home.
- Transitioning and returning the child home at the earliest appropriate time that addresses the child's needs.
- Participate actively in treatment and services at the residential treatment program, at home, and in the community.
 - Visit the child frequently and regularly based on the child's best interests and treatment plan. The adoptive parents shall visit the child at least once each month and should visit more frequently.
 - Communicate frequently and continuously through phone calls, email, social media, and letters.
 - Help maintain important relationships for the child through arranging visits and frequent communication with family, friends, school, religious, spiritual, and other cultural and community connections.
 - Provide funds for the child's use during the placement (e.g., allowance, clothing, personal incidentals, and recreational activities).

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

2.14.9.5 Discharge and aftercare planning

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

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

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

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

- Demonstrating commitment to maintaining a life-long relationship with the child as a permanent member of their family.
- Using residential placement consistent with the child's special needs (e.g., crisis stabilization, short-term intensive treatment), not as a permanent placement for the child.
- Participating actively in the residential treatment, family, and community services.
- Maintaining regular and frequent communication and visits with the child.
- Planning actively for the child to return home at the earliest appropriate time based on the child's needs.

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

- Assess the child's permanency and special needs.
- Provide special services payments to prevent the adoption from dissolution and foster care prevention services to prevent the child from coming into foster care and strengthen the adoptive family. If the adoption dissolves, the LDSS in the locality where the adoptive parents reside may be ordered to assume the child's custody. This LDSS may also provide foster care prevention services when appropriate. The LDSS with responsibility for adoption assistance and the LDSS where the adoptive parents reside should collaborate closely.
- Diligently search for relatives and significant adults; actively engage adoptive and birth family members and other significant individuals. Convene a Family Partnership Meeting to brainstorm solutions and find a permanent home and lifelong connections for the child (see Chapter E. Foster Care Manual, [Section 2.9](#)).
- Explore all available community resources to ensure appropriate services are provided, including services for older youth who have significant disabilities.

2.14.9.6 Documenting in the automated system

In the event that adoption assistance funding is used to pay for any portion of the residential treatment, the local department shall record additional data concerning the residential treatment costs on the Adopt/Assistance/Residential screen in child welfare information system.

2.15 Payment and services

Payments and services shall only be provided to parents who have entered into a written, signed, and executed adoption assistance agreement on behalf of an adopted child with special needs and the payment and service is specified on the agreement or addendum. All adoption assistance payments (this includes maintenance, non-recurring, and special services) shall 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, 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 shall be used and monitored in accordance with the negotiated and agreed upon terms delineated in the signed adoption assistance agreement and any addendum in effect.

2.15.1 Beginning payments and services

LDSS shall 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 shall begin on the first calendar day of the month following the month in which all parties sign the agreement or addendum. 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.

2.15.2 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.

2.15.3 Making and reporting maintenance payments

Maintenance payments shall 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 shall report maintenance payments in LASER for all children to the appropriate BL and cost code using the following chart. Additional information regarding adoption budget lines and cost codes are available in the [Finance Guidelines Manual](#).

LASER BL	LASER Cost Code	<i>Child welfare information system</i> Type of Payment	Description
812	81201	Maintenance	Title IV-E Basic Maintenance
812	81203	Enhanced Maintenance	Title IV-E Enhanced Maintenance
815	81501	Maintenance	Title IV-E Fostering Futures Basic Maintenance
815	81502	Enhanced Maintenance	Title IV-E Fostering Futures Enhanced Maintenance
817	81702	Maintenance	State Basic Maintenance
817	81703	Enhanced Maintenance	State Enhanced Maintenance
818	81802	Maintenance	State Fostering Futures Basic Maintenance
818	81803	Enhanced Maintenance	State Fostering Futures Enhanced Maintenance

For title IV-E funded adoption assistance agreements executed prior to October 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 shall 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 October 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 shall 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.

2.15.4 Making and reporting non-recurring adoption payments

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

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

- Not exceed \$2,000 per child per adoptive placement.
- Be 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 shall be documented in bills and receipts submitted to the LDSS by the adoptive parents or vendors.
 - The actual costs may differ from the estimated costs in the agreement.
 - The adoptive parents shall submit copies of bills and receipts no later than two years after the expense was incurred ([45 CFR 1356.41 \(e\) \(3\)](#)).
 - Payments shall be made regardless when bills and receipts are submitted.
 - Adoptive parents may incur the non-recurring costs prior to signing the agreement; however, the reimbursement will not occur until after the agreement is signed by all parties (example: home study).

Payments for non-recurring adoption expenses may be made on behalf of the child in an adoptive placement prior to 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 shall be paid to the adoptive parents or the agreed upon vendor 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 shall maintain bills and receipts submitted by the adoptive parents for reimbursement in the child's adoption assistance case record.

2.15.5 Making and reporting special services payments

Special services payments shall be paid solely from state funds, regardless of whether the child is eligible for title IV-E or state adoption assistance maintenance. The LDSS shall report payments in 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 the payment of expenses incurred for which they agree to pay directly.
- A bill or receipt documenting the actual cost of services shall be submitted to the LDSS before payment is made 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 shall inform adoptive parents of local payment procedures on time limits for paying bills or receipts submitted after **30 calendar days**.
- All special services payments shall be entered in the *child welfare information system* Assistance screen. They shall not be included with maintenance payments.
- The LDSS is not responsible for any special services expenses that have not been agreed upon and documented in the signed agreement or addendum in effect. The adoptive parents shall be responsible for payments when:
 - Expenses are incurred by the adoptive parents prior to the agreement or addendum.
 - The adoptive parents utilize different services, utilize services for a longer period of time, or exceed the costs for services documented in the agreement or addendum.
 - The specified timeframe ends for the service and support payment in the agreement or addendum.

2.15.6 Making and reporting Fostering Futures payments

Fostering Futures adoption assistance is used to extend adoption assistance services and support to youth who are 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 has to take place 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 IV-E) 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 is expected to follow the terminating the adoption assistance procedures in [Section 2.18](#).

2.15.7 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.

2.16 Maintaining responsibilities

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

2.16.1 Responsibilities of the adoptive parents

The adoptive parents who receive adoption assistance payments shall:

- Notify the LDSS when their address changes.

- Inform the Social Security Administration when the child is receiving both 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 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.

2.16.1.1 Responsibilities of adoptive parents who receive enhanced maintenance prior to finalization of the adoption

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 make the commitment to adopt 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 child 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 support the child in addressing areas of need. As a result, it is necessary for the LDSS to identify the specific requirements for support and supervision expected from the adoptive parent which may include but are not limited to:

- Participate in and cooperate with the LDSS and/or 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, in order to maintain the child's 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 needs of the child and any training needs or other supports that would be helpful in improving their ability to parent the child and effectively meet the child's needs.
- Actively participate in furthering the adoption finalization process.

2.16.2 Responsibilities of LDSS responsible for adoption assistance

The LDSS that is responsible for adoption assistance shall:

- 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, the adoptive parents may apply for special services on behalf of the child in their new state of residence. When the child requires a service specified in the original adoption assistance agreement with the LDSS that is not available from the public child welfare agency in the new state, the LDSS remains responsible for payment of the specified service ([45 CFR 1356.40 \(d\)](#)).
- Assist the adoptive parents in coordinating services to meet the child's special needs related to the adoption assistance agreement upon request.
- Provide services to prevent disruption and strengthen family well-being when requested, such as:
 - Crisis intervention.
 - Assessment.
 - Counseling, support, and advocacy.
 - Information and referral to appropriate services and 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 needs of the child. 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 shall 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. NewFound Families should also be used as a source of training and support.
 - The cost of training is an agency responsibility. 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 their 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.
 - 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 *child welfare information system* and in the child's adoption assistance case record. This includes 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 the purpose of maintaining the child's eligibility for title IV-E adoption assistance ([Federal Child Welfare Policy Manual, Subsection 8.2B.9 #1](#)).

2.16.2.1 Support services for adoptive parents receiving enhanced maintenance prior to finalization

After signing the adoption assistance agreement and until finalization, the agencies shall 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 to the child while ensuring the child's safety. Agency supports provided include at a minimum:

- A case worker and a supervisory-level services worker shall be available to the case worker twenty four hours a day, seven days per week to provide direction and assistance as necessary.
 - The agency may provide these services directly or may contract with private agencies or individuals to provide these services.
 - Agencies may also share access to an on-call worker and supervisor to meet these criteria.
- Monthly face-to-face contacts 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 expectations for how the adoptive parent is to address the needs of the child. This shall include the specific support and supervision activities to be conducted by the adoptive parent that are required to meet the needs of the child.

2.16.3 Responsibilities of LDSS where adoptive parents reside

When the adoptive parents and child live in a different locality from the LDSS that is responsible for adoption assistance, the LDSS responsible for adoption assistance is responsible for coordinating activities related to the adoption assistance agreement, in collaboration with the adoptive parents. The LDSS in the locality where the adoptive

parents reside should assist the LDSS that has responsibility for adoption assistance when requested by the LDSS.

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

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

- Obtaining family-based and community services for the child related to the adoption assistance agreement, such as:
 - Providing information and referral.
 - Identifying appropriate services and 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, in collaboration with the adoptive parents.
 - Presenting the case to FAPT and participating in the meetings.
- Providing foster care prevention services when the adoption is at risk of dissolution to prevent the child from entering foster care, such as:
 - Crisis intervention.
 - Assessment.
 - Counseling, support, and advocacy.
 - Information and referral to appropriate services and providers.

If the adoption dissolves, the LDSS where the adoptive parents reside may receive the child's custody as a result of a judicial determination, entrustment, or non-custodial

foster care agreement. Therefore, it is important that the LDSS work closely with the LDSS that is responsible for adoption assistance.

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.

2.16.4 Responsibilities of LDSS when abuse or neglect

Allegations of abuse and neglect in the adoptive family shall be treated the same as any other such reports, in accordance with the [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 should 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 2.18.5](#) 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 shall be terminated and the parents are notified in writing of the termination and their right to appeal.

2.17 Terminating payments and agreements

For termination of payments and agreements, the LDSS shall provide written notice *using the Family Services Notice of Action and Right to Appeal form and utilize regular and certified mail or have it hand delivered* to the adoptive parents **at least 60 calendar days prior to termination**. Both parents shall be notified when both parents signed the adoption assistance agreement, including separated or divorced parents. The notification shall include information on the parents' right to appeal the LDSS decision to terminate the payment within **30 calendar days** of receiving the written notice.

2.17.1 Terminating maintenance payments

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

- The agreed upon time period for the maintenance payment ends and the adoptive parents decline the maintenance payment in writing; or
- The adoptive parents request in writing that the maintenance payments end; or

- The LDSS determines that the adoption assistance agreement shall be terminated based on one or more circumstances delineated in [Section 2.18.3](#) on terminating the agreement ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(iii\) \[42 USC 673\]](#)) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5](#)).

2.17.2 Terminating state special services payments

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

- The agreed upon time period for the special services payments end; or
- The adoptive parents request in writing that the special services payments end; or
- The adoptive parents or qualified professionals document in writing to the LDSS that the special service is no longer directly related to and required to meet the child's special needs.
- The adoptive parents do not fulfill the agreed upon terms documented in the agreement or addendum for state special services payments.

The LDSS may assess and negotiate with the adoptive parents new terms for special services to be included in an addendum to the adoption assistance agreement, when appropriate.

2.17.3 Terminating agreements signed on or after October 1, 2013

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

- The youth with special needs reaches the age of 18 years, unless the LDSS determines the youth has a condition that warrants continuation of adoption assistance beyond the age of 18 years. Specifically, the youth has:
 - A mental or physical disability; or
 - An educational delay resulting from such mental or physical disability.
- The youth with special needs reaches the age of 21 years, or the age specified in the adoption assistance agreement, when the LDSS established that the youth has a condition that warrants the continuation of assistance beyond age 18 and up to age 21 years.
- The adoptive parents:

- Request in writing that the agreement ends.
- Are no longer legally responsible for the child's care:
 - Parental rights are terminated (for one adoptive parent when the agreement is with one adoptive parent, or for both adoptive parents when the agreement is with two adoptive parents); or
 - The child becomes an emancipated minor, marries, enlists in the military, or dies.
- Are not providing any financial support for the child.
- Are deceased (i.e., both adoptive parents are deceased when the agreement was with two parents; or one adoptive parent is deceased when the agreement was with one parent).
- The adoptive parents and the LDSS agree in writing to terminate the agreement ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \[42 USC 673\]](#), [22 VAC 40-201-161 M](#)).

Termination shall be based upon written documentation verifying the circumstances.

2.17.4 Terminating agreements signed prior to October 2013

For adoption assistance agreements that were signed prior to October 2013 and do not have an end date, the agreement shall be terminated when:

- *The terms of the agreement are met.*
- *The adoptive parents request in writing to end the adoption assistance payments.*
- *The child reaches the age of 18, unless the LDSS determines that the youth has a condition that warrants continuation of adoption assistance until the age of 21.*
- *The child is deceased.*
- *The adoptive parents are deceased.*
- *The adoptive parents no longer have legal responsibility for the child.*
- *The agency determines that the child is no longer receiving support from the adoptive parents.*

2.17.5 Terminating extended adoption assistance through Fostering Futures

If the annual affidavit shows that the youth no longer meets at least one of the participation conditions, the LDSS should take steps to terminate the adoption assistance agreement through procedures outlined in [Section 2.18.3](#).

If extended assistance under Fostering Futures is terminated due to the youth's failure to continue to meet one of the participation conditions, adoption assistance **cannot** be reinstated once it is terminated using Fostering Futures funding.

2.17.6 LDSS actions when adoptive parents fail to provide financial support

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

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

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

If the adoptive parents decide to not reinstitute their financial support of the child, or do not contact the LDSS to discuss their financial support of the child as the LDSS requested, the LDSS shall provide written notice in a certified letter to the adoptive parents that the agreement shall be terminated on a specified date (e.g., the date specified in the first certified letter). The notification shall include information on the adoptive parents' right to appeal the decision to terminate the agreement within 30 days of their receipt of the second written notice. The LDSS shall then terminate the payments and the adoption assistance agreement in its entirety ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(iii\) \[42 U.S.C. 673\]](#) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5 #2](#)).

2.17.7 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 shall be terminated. The child's former adoptive parents may have specified a new adoption plan for the child upon their death or another family member may assume custody of the child and then initiate adoption proceedings independent of a CPA. When the child is without a

custodian, custody is given to another relative or the child enters foster care as a result of the adoptive parents' death.

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

- When the child was eligible for title IV-E adoption assistance in the previous agreement, the child may retain eligibility for title IV-E adoption assistance in the subsequent adoption. The child does not have to re-enter foster care for his or her eligibility for title IV-E adoption assistance to continue.
 - When the new adoptive parents reside in Virginia, the LDSS that had responsibility for the initial adoption assistance agreement continues to have responsibility for adoption assistance in the subsequent adoption.
 - The LDSS shall 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 shall provide necessary documentation about the child's prior eligibility for IV-E adoption assistance to the public child welfare agency in the new state. ([Social Security Act, Title IV, § 473 \(a\) \(2\) \(C\) \[42 U.S.C. 673\]](#); and [Federal Program Instruction dated August 26, 2009](#)).

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

2.18 Appeals and fair hearings

Appeals shall 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 aggrieved by any decision of the LDSS in granting, denying, changing, or discontinuing adoption assistance may appeal the decision ([§ 63.2-1304](#)). Applicants of adoption assistance shall have the right to appeal adoption assistance decisions related to decisions ([22 VAC 40-201-161 O](#)) that may include, but are not limited to the following:

- LDSS not informing the adoptive parents of relevant and known facts about the child prior to the final order of adoption, except for information that would reveal the identity of the child's birth family.
- LDSS not informing the adoptive parents of the availability of adoption assistance for eligible children in foster care.
- LDSS not informing the adoptive parents of the child's eligibility for adoption assistance.
- LDSS denying the adoptive parents' claim that the child is eligible for adoption assistance.
- LDSS denying the adoptive parents' *application*.

- LDSS denying adoption assistance maintenance payments based upon a means test of the adoptive family.
- LDSS decreasing the amount of adoption assistance specified in the adoption assistance agreement without the concurrence of the adoptive parents.
- LDSS denying the adoptive parents' request for a change in the amount of maintenance payments due to a change in the adoptive parents' circumstances.
- LDSS terminating the adoption assistance agreement.

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

- LDSS failure to act on the adoptive parents' application within **90 calendar days** from the LDSS receiving the completed application and all required documentation.
- LDSS not acting upon the claim that the child is eligible for title IV-E benefits with reasonable promptness.

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

2.18.1 Request for appeals

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

Requests for appeals must be submitted in writing to:

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

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

2.18.2 Validating the appeal

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

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

The LDSS must return the completed validation form and a copy of the Notice of Action within **five (5) 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 (10) days** prior to the hearing of the date for the Administrative Hearing. The notice includes information about the appeal rights of the adoptive parents. The hearing is scheduled and conducted at a time, date, and place convenient to the adoptive parents. It is usually conducted by teleconference. The hearing officer will order continuation of adoption assistance where required, if the LDSS has not already taken such action.

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

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

2.18.3 Summary of Facts

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

The summary should include:

- Identifying case information.
 - Name of LDSS.
 - Name and address of child and adoptive parents.

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

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

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

2.18.4 Administrative Hearing

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

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

- Examine all documents and records used at the hearing.
- Present the case.
- Bring witnesses.
- Establish pertinent facts and advance arguments.
- Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

The LDSS will have the opportunity to:

- Clarify or modify its statements contained in the Summary of Facts.
- Question the adoptive parents and their witnesses on the salient 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 shall be based exclusively on the evidence (i.e. documents or testaments) introduced at the hearing, and on all applicable laws, regulations, policies, and guidance manuals.

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

The decision of the hearing officer is final and binding when the decision is mailed to the LDSS and adoptive parents. The LDSS must ensure that administrative action is taken to implement the hearing officer's decision no later than **ten (10) 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, shall be placed in the child's adoption assistance case record.

2.18.5 Withdrawal statement

If the LDSS and adoptive parents resolve the issue at any time after the Appeals and Fair Hearings Unit receives the adoptive parents' request for an Administrative Review Hearing, the adoptive parents must provide a written statement withdrawing the appeal request. The withdrawal statement is sent to the hearing officer with a copy to the LDSS. The withdrawal statement shall be placed in the child's adoption assistance case record.

2.18.6 Appeal to Circuit Court

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

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

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

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

2.18.7 Filing complaint of discrimination

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

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

and/or

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

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

2.19 Establishing case record

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

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

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

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

2.20 Child welfare information system case record

Adoption case information shall be documented in the *child welfare information system* adoption case record for the child on a timely basis.

- For children already in LDSS custody, the *child welfare information system* adoption record is opened within **five (5) calendar days** from the signature on the adoptive placement agreement using the Bio-Connect process to the foster care case and *the child's placement status in the child welfare information system foster care record should be changed to Adoption: Non-finalized*. Within **five (5) calendar days** of the effective date of the adoption assistance agreement, the LDSS updates the *child welfare information system* Assistance screen.
- For children adopted through LCPAs, LDSS shall create an *child welfare information system* record when the LDSS receives the *application*. The record is opened without the bio-connect process within **five (5) calendar days**.

Additional instruction on opening an adoption case in *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*.

2.20.1 Adoption case contacts

In *child welfare information system* Adoption Case Contacts, LDSS shall 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 shall 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 other 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.

2.20.2 Assistance screen

In the *child welfare information system* Assistance screen, the LDSS shall record and keep up-to-date all adoption assistance payments, including basic and enhanced maintenance, non-recurring, and special service payments. Also, the LDSS shall 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 *child welfare information system* is to provide 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, non-recurring, or service. For new agreements, as of July 1, 2014, basic and enhanced maintenance should be reported separately. For existing agreements, the local department will begin reporting the basic and enhanced maintenance separately when the LDSS is entering new payment lines upon receipt of the annual affidavit.
- **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 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* 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.

- The application date is the date of the initial *application*.
- The effective date is the first date of the next agreement year.
- The 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.

2.20.3 Residential screen

In the event that adoption assistance funding is used to pay for any portion of the residential treatment, the local department shall 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 should enter the exit date on this screen.

2.21 Appendix A: Legal excerpts and Child Welfare Policy Manual

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

2.21.1 Applicable Child

- [Social Security Act, Title IV, § 473 \[42 USC 673\]](#)
- [Child Welfare Policy Manual: Title IV-E Eligibility](#)

2.21.2 Child with special needs

- [Social Security Act, Title IV, § 473 \[42 USC 673\]](#)
- [45 CFR 1356.40](#)
- [Child Welfare Policy Manual: Special Needs](#)
- [§ 63.2-1300](#)
- [§ 63.2-1301 A](#)
- [§ 63.2-1301 B](#)
- [22 VAC 40-201-161](#)

2.21.3 State-funded maintenance payments

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

2.21.4 Nonrecurring expense payments

- [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](#)

2.21.5 State special services payments

- [§ 63.2-1301 C](#)
- [22 VAC 40-201-161](#)

2.21.6 Adoption assistance agreement

- [Social Security Act, Title IV, § 475 \(3\) \[42 USC 675\]](#).
- [45 CFR 1356.40](#)
- [Child Welfare Policy Manual: Adoption Assistance](#)
- [§ 63.2-1302 C](#)
- [22 VAC 40-201-10](#)

2.21.7 Terminating agreement

- [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](#)

2.22 Appendix B: Adoption assistance timeline

