Understanding the Adoption Subsidy Conundrum

Continuing Legal Education Materials

DATE: Friday, October 23, 2015

TIME: 3:35 pm - 4:50 pm

LOCATION: New York Law School, 185 West Broadway, New York, NY 10013

PANELISTS: Sarah Jaffe, Staff Attorney, Broken Adoptions Project, The Children’s Law Center, Brooklyn, NY
Betsy Kramer, Director of the Public Policy and Special Litigation Project, Lawyers for Children, New York, NY
Tinaddine Turner, Director of Adoptions, New York City Administration for Children’s Services, New York, NY

MODERATOR: Sandy Santana, Executive Director, Children’s Rights Inc., New York, NY

CLE: 1.5 Continuing Legal Education credits, Areas of Professional Practice, Transitional and Non-Transitional
Timed Agenda

Understanding the Adoption Subsidy Conundrum

Date: October 23, 2015

Time: 3:35 pm – 4:50 pm

Location: New York Law School, 185 West Broadway, New York, NY, 10013

CLE: 1.5 Continuing Legal Education credits, Areas of Professional Practice, Transitional and Non-Transitional

Panelists:

- Sarah Jaffe, Staff Attorney, Broken Adoptions Project, The Children’s Law Center, Brooklyn, NY
- Betsy Kramer, Director of the Public Policy and Special Litigation Project, Lawyers for Children, New York, NY
- Tinaddine Turner, Director of Adoptions, New York City Administration for Children’s Services, New York, NY

Moderator: Sandy Santana, Executive Director, Children’s Rights Inc., New York, NY

Panel Description:
The use or misuse of an adoption subsidy can have a significant impact on a young person who has experienced a broken adoption. Many young people deprived of their rightful support end up homeless, struggling, or returned to foster care. This impacts their ability to trust, maintain supportive connections, and launch independent adult lives. In addition to the financial consequences, youths whose subsidies are not being utilized for their care and support describe feeling like “just a paycheck” for someone who kicked them out of their home. Under current interpretations of state and federal regulations, an adoption subsidy terminates only in very limited circumstances. This panel will discuss the legal, policy, and practice issues surrounding adoption subsidies.
# Understanding the Adoption Subsidy Conundrum

**Table of Contents**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>NY Soc. Serv. § 453 Maintenance Subsidy; Handicapped or Hard to Place Child</td>
<td>3</td>
</tr>
<tr>
<td>42 U.S.C.A §673 Adoption and Guardianship Assistance Program</td>
<td>7</td>
</tr>
<tr>
<td>Letter from New York City Department of Investigation Commissioner Rose Gill Hearn to Hon. Richard M. Berman Re: United States v. Judith Leekin, 08 Cr. 446 (RMB) (S.D.N.Y. July 9, 2008)</td>
<td>17</td>
</tr>
<tr>
<td>American Bar Association: Children’s Rights Litigation-Adoption Subsidies Are Unchecked for FraudBy David J. Lansner and Carolyn A. Kubitschek – (July 9, 2012)</td>
<td>19</td>
</tr>
<tr>
<td>Letter from Craig Sunkes, Esq. to Nick Nehamas - Response to Foil#13-153 (March 25, 2014)</td>
<td>28</td>
</tr>
<tr>
<td>Letter from Deputy Commissioner and General Counsel for The New York State Office of Children and Family Services, Karen Walker Bryce, Esq. to Program Manager for Administration for Children and Families, Junius Scott- Re Adoption Assistance Questions (August 29, 2007)</td>
<td>29</td>
</tr>
<tr>
<td>Response Letter from Program Manager for Administration for Children and Families, Junius Scott to Deputy Commissioner and General Counsel for The New York State Office of Children and Family Services, Karen Walker Bryce Esq.- Re: Adoption Assistance Questions (November 21, 2007)</td>
<td>31</td>
</tr>
<tr>
<td>Adoption Subsidy Termination Trends across States (Narrative) by The Children’s Law Center (2015)</td>
<td>33</td>
</tr>
<tr>
<td>The Chronicle of Social Change in New York City, Failed Adoptions Still Pay off For Adults By John Kelly (April 28, 2014)</td>
<td>47</td>
</tr>
<tr>
<td>City Limits.Org: The Adoption Subsidy: Good Intentions Unfortunate Realities By Dawn Post (June 7, 2013)</td>
<td>49</td>
</tr>
</tbody>
</table>
New York State Legislation Regarding Adopted Children and Subsidies

§ 453. Maintenance subsidy; handicapped or hard to place child.

1. (a) A social services official shall make monthly payments for the care and maintenance of a handicapped or hard to place child whom a social services official has placed for adoption or who has been adopted and for the care and maintenance of a handicapped or hard to place child placed for adoption by a voluntary authorized agency who is residing in such social services district. Where a handicapped or hard to place child is placed in an adoptive placement outside the state, monthly payments for the care and maintenance of the child shall be made by the social services official placing the child or in whose district the voluntary authorized agency maintains its principal office. Such payments shall be made until the child’s twenty-first birthday to persons with whom the child has been placed, or to persons who have adopted the child and who applied for such payments prior to the adoption, pursuant to a written agreement therefor between such official or agency and such persons; provided, however, that an application may be made subsequent to the adoption if the adoptive parents first become aware of the child’s physical or emotional condition or disability subsequent to the adoption and a physician certifies that the condition or disability existed prior to the child’s adoption. The social services official shall consider the financial status of such persons only for the purpose of determining the amount of the payments to be made, pursuant to subdivision three of this section. Upon the death of persons who have adopted the child prior to the twenty-first birthday of the child, such payments shall continue to the legal guardian or custodian of the child under the age of eighteen upon issuance of letters of guardianship or order of custody and shall continue until the child shall attain the age of twenty-one. If the guardian or custodian was the caretaker of the child under the age of eighteen prior to the issuance of letters of guardianship or order of custody, such payments shall be made retroactively from the death of the adoptive parent or parents.

(a-1) Payments pursuant to this section may be made by direct deposit or debit card, as elected by the recipient, and administered electronically, and in accordance with such guidelines as may be set forth by regulation of the office of children and family services. The office of children and family services may enter into contracts on behalf of local social services districts for such direct deposit or debit card services in accordance with section twenty-one-a of this chapter.

(b) Any child with respect to whom federally reimbursable maintenance subsidy payments are made under this subdivision shall be deemed to be a recipient of aid to families with dependent children for purposes of determining eligibility for medical assistance.

(c) No payments may be made pursuant to this subdivision if the social services official determines that the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents. The social services official on a biennial basis shall remind the adoptive parents of their obligation to support the child and to notify the social services official if the adoptive parents are no longer providing any support of the child or are no longer legally responsible for the support of the child.
(d) Applications for such subsidies shall be accepted prior to the commitment of the guardianship and
custody of the child to an authorized agency pursuant to the provisions of this chapter, and approval
thereof may be granted contingent upon such commitment.

(e) Upon the death of the sole or surviving adoptive parent or both adoptive parents after the
eighteenth birthday and before the twenty-first birthday of the adopted child, where such adoptive
parent or parents were receiving adoption subsidy payments at the time of death, such subsidy
payments shall continue but shall be made to the guardian of the child on behalf of such child, where
the child consents to the appointment of a guardian. Such subsidy payments shall be made
retroactively from the death of the adoptive parent or parents to the appointment of a guardian, and
shall continue until the twenty-first birthday of the child. If, however, there is no willing or suitable
person to be appointed as guardian, or the child does not consent to the appointment of a guardian,
such subsidy payments shall be made retroactively from the death of the adoptive parent or parents
and shall continue to be made until the twenty-first birthday of the child: (i) through direct payments
to the child, if the social services official determines that the child demonstrates the ability to manage
such direct payments; or (ii) to a representative payee certified by the social services official.

(f) Upon receipt of notification of the death of the sole or surviving adoptive parent or both adoptive
parents after the eighteenth birthday and before the twenty-first birthday of the adopted child,
where such adoptive parent or parents were receiving adoption subsidy payments at the time of
death, the social services official shall notify the child of: (i) the processes available to continue subsidy
payments until the twenty-first birthday of the child including appointment of a guardian under the
surrogate's court procedure act, application to be approved for direct subsidy payments, or the
appointment of a representative payee; and (ii) the right of the child to be involved in all such
processes.

(g) Where the social services official has determined that the child does not demonstrate the ability to
manage direct subsidy payments, the social services official shall certify payment to a representative
payee on behalf of the child. Subsidy payments received by the representative payee shall be held and
used strictly for the use and benefit of the child. Designation of the appropriate entity or individual
and investigation of an individual for certification as a representative payee shall be conducted by the
social services official responsible for payment of the adoption subsidy pursuant to this section.

(i) The social services official may designate an employee of the social services district to be the
representative payee responsible for receipt of the adoption subsidy on behalf of the child only where
the official determines that such employee has no conflict of interest in performing the duties and
obligations as representative payee. If the child resides in a social services district other than the
district responsible for payment of the adoption subsidy, the social services district in which the child
resides may be designated the representative payee and a social services official of such district shall
select an employee of such social services district to be responsible for receipt of the adoption subsidy
as the representative payee, only where the official determines that such employee has no conflict
of interest in performing the duties and obligations as a payee. Where a voluntary authorized agency
has a prior relationship with a child, or where the social services district does not have sufficient or
appropriate staff available to perform the functions of the representative payee, the social services
district may contract with a voluntary authorized agency as the representative payee on behalf of the child where the social services district determines it would be in the best interests of the child to do so.

(ii) The social services official may designate an individual for certification as a representative payee who shall perform the functions and duties of a representative payee in accordance with the best interests of the child. In determining whether an individual is appropriate to be certified as the representative payee, the social services official shall first consult with the child and shall give the child's preferences significant weight. The child's preference shall be determinative of the representative payee only where such preference does not conflict with the best interests of the child. Prior to designation of an individual by the social services official for certification as a representative payee, the social services official shall:

(A) collect proof of identity and a verifiable social security number of the nominated representative payee;

(B) conduct an in-person interview of the individual;

(C) investigate any potential conflicts of interest that may ensue if such individual is certified; and

(D) determine the capabilities and qualifications of the individual to manage the subsidy payment for the child.

(iii) (A) If, after completion of the investigation, the social services official is satisfied that the individual is qualified, appropriate and will serve the best interests of the child, the social services official shall certify the selected individual as the representative payee for the child.

(B) If the twenty-first birthday of the child occurs while awaiting the certification of a representative payee, the child shall be entitled to retroactive direct payment of subsidy payments since the death of the adoptive parent or parents after the eighteenth birthday of the child.

(iv) The representative payee shall submit reports to the social services official no less than once a year describing the use of the payments in the preceding year. Such reports shall be submitted by December thirty-first of each year. The social services official may also request reports from time to time from the representative payee. If a representative payee fails to submit a report, the social services official may require that the representative payee appear in person to collect payments. The social services official shall keep a centralized file and update it periodically with information including the addresses and social security or tax-payer identification numbers of the representative payee and the child.

(v) The social services official shall revoke the certification of a representative payee upon:

(A) determining that the representative payee has misused the payments intended for the benefit of the child;
(B) the failure of the representative payee to submit timely reports or appear in person as required by
the social services official after such failure; or

(C) the request of the child upon good cause shown.

(vi) The social services official shall notify the child of the contact information of the representative
payee within five days of making a designation.

(vii) A child may appeal the refusal of the social services official to certify the individual preferred by
the child for certification as the representative payee or revoke the certification of a representative
payee upon request of the child pursuant to section four hundred fifty-five of this title.

2. The agreement provided for in subdivision one of this section shall be subject to the approval of the
department upon the application of the social services official; provided, however, that in accordance
with the regulations of the department, the department may authorize the social services official to
approve or disapprove the agreement on behalf of the department. In either situation, if the agreement
is not approved or disapproved by the social services official within thirty days of submission, the
voluntary authorized agency may submit the agreement directly to the department for approval or
disapproval. If the agreement is not disapproved in writing by the department within thirty days after its
submission to the department, it shall be deemed approved. Any such disapproval shall be accompanied
by a written statement of the reasons therefor.

3. The amount of the monthly payment made pursuant to this section shall be determined pursuant to
regulations of the department and based upon the financial need of such persons. The department
shall review such regulations annually. The amount of the monthly payment shall not be less than
seventy-five per centum of the board rate nor more than one hundred per centum of such rate.

4. Except as may be required by federal law as a condition for federal reimbursement of public
assistance expenditures, payments under this section shall not be considered for the purpose of
determining eligibility for public assistance or medical assistance for needy persons.
terminated or substantially modified programs and programs and
continuance in office of Assistant Secretary for Family
Support, and provisions relating to termination of enti-
tlements under AFDC program, see section 115 of Pub.
L. 104-193, set out as an Effective Date note under sec-
section 601 of this title.

**Effective Date of 1994 Amendment**

Amendment by Pub. L. 103-432 effective with respect to
to fiscal years beginning on or after Apr. 1, 1996, see
section 202(e) of Pub. L. 103-432, set out as a note under
section 622 of this title.

**Effective Date of 1987 Amendment**

Section 1913(c) of Pub. L. 100-203 provided that: "The
amendments made by this section (amending this sec-
ctions 602, 673, and 675 of this title) shall be
become effective April 1, 1987."

**Effective Date of 1986 Amendment**

Section 102(a)(1) of Pub. L. 96-272, as amended by Pub.
§4(c)(1), Nov. 8, 1984, 98 Stat. 3297; Pub. L. 99-272, title
XII, §12306(c)(1), Apr. 7, 1986, 100 Stat. 294; Pub. L. 100-203, title
IX, §913(a)(1), Dec. 22, 1987, 101 Stat. 1330-313, provided that:
the amendment made by this section is effective with respect to expendi-

Section 102(c) of Pub. L. 96-272, as amended by Pub.
§4(c)(2), Nov. 8, 1984, 98 Stat. 3297; Pub. L. 99-272, title
XII, §12306(c)(2), Apr. 7, 1986, 100 Stat. 294; Pub. L.
1330-313, provided that: "The amendments made by sub-
sections (a) and (b) [amending this section and sections
608, 673, and 675 of this title] shall be effective only with
respect to expenditures made after September 30, 1979.

Section 913(b) of Pub. L. 100-203 provided that: "The
amendments made by subsection (a) [amending section
102(a)(1), (c), and (e) of Pub. L. 96-272, set out as notes
under this section] shall become effective October 1, 1987."

**Construction of 2008 Amendment**

For construction of amendment by section 301(a)(2) of
Pub. L. 103-432, see section 301(d) of Pub. L. 101-350, set
out as a note under section 671 of this title.

**Children Voluntarily Removed From Home of Relative**

Section 102(d)(1) of Pub. L. 96-272 provided that: "For
purposes of section 472 of the Social Security Act [this
section], a child who was voluntarily removed from
the home of a relative and who had a judicial determina-
tion prior to October 1, 1978, to the effect that continu-
ation therein would be contrary to the welfare of such
child shall be deemed to have been so removed as a re-
sult of such judicial determination if, and from the
date that, a case plan and a review meeting the require-
ments of section 471(a)(16) of such Act [section 671(a)(16)
of this title] have been made with respect to such child
and such child is determined to be in need of foster care
as a result of such review. In the case of any child de-
scribed in the preceding sentence, for purposes of sec-
section 472(a)(4) of such Act [subsec. (a)(4) of this section],
the date of the voluntary removal shall be deemed to be
the date on which court proceedings are initiated which
led to such removal."

**Annual Report to Congress of Number of Children Placed in Foster Care Pursuant to Voluntary Placement Agreements**

515, as amended by Pub. L. 100-203, title IX, §913(a)(3),
Dec. 22, 1987, 101 Stat. 1330-313, which required the Sec-
retary of Health, Education, and Welfare, to submit to
Congress a full and complete annual report on the place-
ment of children in foster care pursuant to vol-
untary placement agreements under this section and
section 608 of this title, terminated, effective May 15,
2000, pursuant to section 3003 of Pub. L. 101-64-66, as
amended, set out as a note under section 1113 of Title
31, Money and Finance. See, also, item 12 on page 99 of
House Document No. 103-7.

**§ 673. Adoption and guardianship assistance pro-
gram**

(a) Agreements with adoptive parents of children
with special needs; State payments; qualify-
ing children; amount of payments; changes
in circumstances; placement period prior to
adoption; nonrecurring adoption expenses

(1)(A) Each State having a plan approved
under this part shall enter into adoption assist-
ance agreements (as defined in section 675(3) of
this title) with the adoptive parents of children
with special needs.

(B) Under any adoption assistance agreement
entered into by a State with parents who adopt
a child with special needs, the State—

(i) shall make payments of nonrecurring
adoption expenses incurred by or on behalf
of such parents in connection with the adoption
of such child, directly through the State agen-
cy or through another public or nonprofit pri-
ivate agency, in amounts determined under
paragraph (3), and

(ii) in any case where the child meets the re-
quirements of paragraph (2), may make adoption
assistance payments to such parents, di-
rectly through the State agency or through
another public or nonprofit private agency, in
amounts so determined.

(2)(A) For purposes of paragraph (1)(B)(ii), a
child meets the requirements of this paragraph
if—

(i) in the case of a child who is not an applicable
child for the fiscal year (as defined in
subsection (e)), the child—

(I) was removed from the home of
a relative specified in section 606(a) of
this title (as in effect on July 16, 1996) and
placed in foster care in accordance with a voluntary
placement agreement with respect to which
Federal payments are provided under section
674 of this title (or section 603 of this title,
as such section was in effect on July 16, 1996), or
in accordance with a judicial deter-
mination to the effect that continuation in
the home would be contrary to the welfare of
the child; and

(bb) met the requirements of section
672(a)(3) of this title with respect to the
home referred to in subitem (AA) of this
item;

(bb) meets all of the requirements of sub-
chapter XVI with respect to eligibility for
supplemental security income benefits; or

(cc) is a child whose costs in a foster fam-
ily home or child-care institution are cov-
tered by the foster care maintenance pay-
ments being made with respect to the minor
parent of the child as provided in section
675(4)(B) of this title; and

(II) has been determined by the State, pur-
suant to subsection (c)(1) of this section, to
be a child with special needs; or

(ii) in the case of a child who is an applicable
child for the fiscal year (as so defined), the child—
(1)(aa) at the time of initiation of adoption proceedings was in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to—
(AA) an involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; or
(BB) a voluntary placement agreement or voluntary relinquishment;
(bb) meets all medical or disability requirements of subchapter XVI with respect to eligibility for supplemental security income benefits; or
(cc) was residing in a foster family home or child care institution with the child's minor parent, and the child's minor parent was in such foster family home or child care institution pursuant to—
(AA) an involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; or
(BB) a voluntary placement agreement or voluntary relinquishment; and
(II) has been determined by the State, pursuant to subsection (c)(2), to be a child with special needs.
(B) Section 672(a)(4) of this title shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien determined eligible for adoption assistance payments under this part; or
(c) The child—
(I) meets the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments, during the period of the placement, on application of the child, when the adoption assistance agreement was made); and
(II) fails to meet the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments, during the period of the placement, on application of the child, when the adoption assistance agreement was made); and
(III) fails to meet the requirements of subparagraph (A)(i) but would meet such requirements if—
(aa) the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated; or
(bb) the child's adoptive parents have died; and
(IV) fails to meet the requirements of subparagraph (A)(i) but would meet such requirements if—
(aa) the prior adoption was treated as if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and
(bb) the prior adoption were treated as if the child were not an applicable child for the fiscal year (as defined in subsection (e)), the child—
(I) meets the requirements of subparagraph (A)(i)(II); and
(II) has been determined by the State, pursuant to subsection (c)(2), to be a child with special needs.
(B) Section 672(a)(4) of this title shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien determined eligible for adoption assistance payments under this part; or
(c) The child—
(I) meets the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments, during the period of the placement, on application of the child, when the adoption assistance agreement was made); and
(II) fails to meet the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments, during the period of the placement, on application of the child, when the adoption assistance agreement was made); and
(III) fails to meet the requirements of subparagraph (A)(i) but would meet such requirements if—
(aa) the prior adoption was treated as if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and
(bb) the prior adoption were treated as if the child were not an applicable child for the fiscal year (as defined in subsection (e)), the child—
(I) meets the requirements of subparagraph (A)(i)(II); and
(II) has been determined by the State, pursuant to subsection (c)(2), to be a child with special needs.
(B) Section 672(a)(4) of this title shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien determined eligible for adoption assistance payments under this part; or
(c) The child—
(I) meets the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments, during the period of the placement, on application of the child, when the adoption assistance agreement was made); and
(II) fails to meet the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments, during the period of the placement, on application of the child, when the adoption assistance agreement was made); and
(III) fails to meet the requirements of subparagraph (A)(i) but would meet such requirements if—
(aa) the prior adoption was treated as if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and
(bb) the prior adoption were treated as if the child were not an applicable child for the fiscal year (as defined in subsection (e)), the child—
(I) meets the requirements of subparagraph (A)(i)(II); and
(II) has been determined by the State, pursuant to subsection (c)(2), to be a child with special needs.
(B) Section 672(a)(4) of this title shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien determined eligible for adoption assistance payments under this part; or
(c) The child—
(I) meets the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments, during the period of the placement, on application of the child, when the adoption assistance agreement was made); and
(II) fails to meet the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments, during the period of the placement, on application of the child, when the adoption assistance agreement was made); and
(III) fails to meet the requirements of subparagraph (A)(i) but would meet such requirements if—
(aa) the prior adoption was treated as if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and
(bb) the prior adoption were treated as if the child were not an applicable child for the fiscal year (as defined in subsection (e)), the child—
(I) meets the requirements of subparagraph (A)(i)(II); and
(II) has been determined by the State, pursuant to subsection (c)(2), to be a child with special needs.
(B) Section 672(a)(4) of this title shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien determined eligible for adoption assistance payments under this part; or
(c) The child—
(I) meets the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments, during the period of the placement, on application of the child, when the adoption assistance agreement was made); and
(II) fails to meet the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments, during the period of the placement, on application of the child, when the adoption assistance agreement was made); and
(III) fails to meet the requirements of subparagraph (A)(i) but would meet such requirements if—
(aa) the prior adoption was treated as if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and
(bb) the prior adoption were treated as if the child were not an applicable child for the fiscal year (as defined in subsection (e)), the child—
(I) meets the requirements of subparagraph (A)(i)(II); and
(II) has been determined by the State, pursuant to subsection (c)(2), to be a child with special needs.
§ 673  TITLE 42—THE PUBLIC HEALTH AND WELFARE

Page 1938

the same terms and subject to the same conditions as if such individuals had adopted such child.

(6)(A) For purposes of paragraph (1)(B)(i), the term “nonrecurring adoption expenses” means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

(B) A State’s payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section 674(a)(3)(E) of this title.

(7)(A) Notwithstanding any other provision of this subsection, no payment may be made to parents with respect to any applicable child for a fiscal year that—

(i) would be considered a child with special needs under subsection (c)(2);

(ii) is not a citizen or resident of the United States; and

(iii) was adopted outside of the United States or was brought into the United States for the purpose of being adopted.

(B) Subparagraph (A) shall not be construed as prohibiting payments under this part for an applicable child described in subparagraph (A) that is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of the child by the parents described in subparagraph (A).

(8) A State shall spend an amount equal to the amount of savings (if any) in State expenditures under this part resulting from the application of paragraph (7)(A) to all applicable children for a fiscal year to provide to children or families any service (including post-adoption services) that may be provided under this part or part B.

(b) Aid for dependent children; assistance for minor children in needy families

(1) For purposes of subchapter XIX of this chapter, any child who is described in paragraph (3) is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of assistance under such part A of this subchapter and deemed to be a recipient of assistance under such part A of this subchapter for a fiscal year to provide to children or families any service (including post-adoption services) that may be provided under this part or part B.

(2) For purposes of division A of subchapter XX of this chapter, any child who is described in paragraph (3) is deemed to be a minor child in a needy family under a State program funded under part A of this subchapter as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter; or

(3) A child described in this paragraph is any child—

(A)(i) who is a child described in subsection (a)(2) of this section, and

(ii) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued),

(B) with respect to whom foster care maintenance payments are being made under section 672 of this title, or

(C) with respect to whom kinship guardianship assistance payments are being made pursuant to subsection (d).

(4) For purposes of paragraphs (1) and (2), a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the child’s minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are being made under section 672 of this title.

(c) Children with special needs

For purposes of this section—

(1) in the case of a child who is not an applicable child for a fiscal year, the child shall not be considered a child with special needs unless—

(A) the State has determined that the child cannot or should not be returned to the home of his parents; and

(B) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter; or

(2) in the case of a child who is an applicable child for a fiscal year, the child shall not be considered a child with special needs unless—

(A) the State has determined, pursuant to a criterion or criteria established by the State, that the child cannot or should not be returned to the home of his parents;

(B)(i) the State has determined that there exists with respect to the child a specific factor or condition (such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under this section and medical assistance under subchapter XIX; or

(ii) the child meets all medical or disability requirements of subchapter XVI with re-

1 See References in Text note below.
(d) Kinship guardianship assistance payments for children

(1) Kinship guardianship assistance agreement

(A) In general

In order to receive payments under section 674(a)(5) of this title, a State shall—
(i) negotiate and enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian of a child who meets the requirements of this paragraph; and
(ii) provide the prospective relative guardian with a copy of the agreement.

(B) Minimum requirements

The agreement shall specify, at a minimum—
(i) the amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child;
(ii) the additional services and assistance that the child and relative guardian will be eligible for under the agreement;
(iii) the procedure by which the relative guardian may apply for additional services as needed; and
(iv) subject to subparagraph (D), that the State will pay the total cost of non-recurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed $2,000.

(C) Interstate applicability

The agreement shall provide that the agreement shall remain in effect without regard to the State residency of the relative guardian.

(D) No effect on Federal reimbursement

Nothing in subparagraph (B)(iv) shall be construed as affecting the ability of the State to obtain reimbursement from the Federal Government for costs described in that subparagraph.

(2) Limitations on amount of kinship guardianship assistance payment

A kinship guardianship assistance payment on behalf of a child shall not exceed the foster care maintenance payment which would have been paid on behalf of the child if the child had remained in a foster family home.

(3) Child’s eligibility for a kinship guardianship assistance payment

(A) In general

A child is eligible for a kinship guardianship assistance payment under this subsection if the State agency determines the following:

(i) The child has been—

(A) In general

Subject to paragraphs (2) and (3), in this section, the term “applicable child” means a child for whom an adoption assistance agreement is entered into under this section during any fiscal year described in subparagraph (B) if the child attained the applicable age for that fiscal year before the end of that fiscal year.

(B) Applicable age

For purposes of subparagraph (A), the applicable age for a fiscal year is as follows:

<table>
<thead>
<tr>
<th>In the case of fiscal year:</th>
<th>The applicable age is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>16</td>
</tr>
<tr>
<td>2011</td>
<td>14</td>
</tr>
<tr>
<td>2012</td>
<td>12</td>
</tr>
<tr>
<td>2013</td>
<td>10</td>
</tr>
<tr>
<td>2014</td>
<td>8</td>
</tr>
</tbody>
</table>
the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtitle I.

AMENDMENTS


Subsec. (a)(2)(A). Pub. L. 110–351, §402(1)(A)(i), substituted “if—” for “if the child—” in introductory provisions, inserted cl. (i) designation and introductory provisions, redesignated former cl. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and inserted “subsection (c)(1)” for “subsection (c)” in subcl. (II), redesignated former subcls. (I) to (III) of cl. (i) as items (aa) to (cc), respectively, of cl. (i)(I), redesignated former items (aa) and (bb) of cl. (i)(I) as subitems (AA) and (BB), respectively, of cl. (i)(I)(aa) and substituted “subsection (AA) of this item” for “item (aa) of this subclause” in subitem (BB), realigned margins, and added cl. (ii).

Subsec. (a)(2)(C). Pub. L. 110–351, §402(1)(A)(ii), substituted “if—” for “if the child—” in introductory provisions, inserted cl. (i) designation and introductory provisions, redesignated former cl. (i) to (iv) as subcls. (I) to (IV), respectively, of cl. (i)(I), redesignated the former paragraph (A)(ii) for “paragraph (A)” in subcl. (I) and “subparagraph (A)(ii)” for “subparagraph (A)” in subcl. (IV), redesignated former subcls. (I) to (II) of cl. (iii) as items (aa) and (bb), respectively, of cl. (i)(iii), redesignated former subcls. (I) and (II) of cl. (iv) as items (aa) and (bb), respectively, of cl. (i)(iv), realigned margins, and added cl. (ii).


Subsec. (a)(4). Pub. L. 110–351, §201(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and (B) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.”


Subsec. (c). Pub. L. 110–351, §402(2), substituted “this section—” for “this section, a child shall not be considered a child with special needs unless—” in introductory provisions, inserted par. (1) designation and introductory provisions, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, and added par. (2).


2006—Subsec. (a)(2). Pub. L. 109–171 amended par. (2) generally. Prior to amendment, par. (2) contained provisions relating to criteria used for determining whether a child met the requirements of par. (2) for purposes of par. (1)(B)(ii).

1997—Subsec. (a)(2). Pub. L. 105–89 inserted at end “Any child who meets the requirements of subparagraph (C), who was determined eligible for adoption assistance payments under this part with respect to a prior adoption, who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or
because the child’s adoptive parents have died, and who fails to meet the requirements of subparagraphs (A) and (B) but would meet such requirements if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part and the prior adoption were treated as never having occurred, shall be treated as meeting the requirements of this paragraph for purposes of paragraph (1)(B)(ii)."


1996—Subsec. (a)(2)(A)(i). Pub. L. 104–193, §108(d)(5)(A), inserted “(as such section was in effect on June 1, 1995)” after “section 607 of this title’, ‘(as so in effect on June 1, 1995)” after “607 of this title’.

Subsec. (a)(2)(B)(i). Pub. L. 104–193, §108(d)(5)(B), inserted “with respect to whom foster care maintenance payments are being made under section 672 of this title."

Subsec. (b). Pub. L. 104–193, §108(d)(6), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “For purposes of subsections XIX and XX of this chapter, any child—

(1)(A) who is a child described in subsection (a)(2) of this section, and

(B) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or

(2) with respect to whom foster care maintenance payments are being made under section 672 of this title, shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this chapter.”


Pub. L. 103–432, §265(b), substituted “section 674(a)(3)(C) of this title’ for “section 674(a)(3)(B) of this title’.


1986—Subsec. (a)(2). Pub. L. 99–603, as amended Pub. L. 100–203, §9139(b), inserted “without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter” after “without providing adoption assistance”, and inserted “medical assistance under subchapter XIX of this chapter” after “appropriate adoptive parents without providing adoption assistance under this section”.


Effective Date of 2008 Amendment

Amendment by section 201(c) of Pub. L. 110–351 effective Oct. 1, 2010, see section 201(d) of Pub. L. 110–351, set out as a note under section 672 of this title. Amendment by Pub. L. 110–351 effective Oct. 7, 2008, except as otherwise provided, and applicable to payments under this part and part B of this subchapter for quarters beginning on or after effective date of amendment, with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110–351, set out as a note under section 671 of this title.

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Effective Date of 1997 Amendments

Section 307(b) of Pub. L. 105–89 provided that: “The amendment made by subsection (a) [amending this section] shall only apply to children who are adopted on or after October 1, 1997.”


Effective Date of 1996 Amendment

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and
proceedings commenced before such date, rules relating to
closing out of accounts for terminated or substantially modified programs and continuance in office of
Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC
program, see section 116 of Pub. L. 104–193, set out as an
Effective Date note under section 601 of this title.

Effective Date of 1994 Amendment
Section 265(d) of Pub. L. 103–432 provided that: “Each
amendment made by this section [amending this sec-
tion and sections 608 and 675 of this title] shall take ef-
fect as if the amendment had been included in the pro-
amendment relates, at the time the provision became
law.”

Section 266(b) of Pub. L. 103–432 provided that: “The
amendment made by this section [amending this sec-
tion] shall take effect as if the amendment had been in-
cluded in the provision of OBRA–1993 [Pub. L. 103–66] to
which the amendment relates, at the time the provi-
sion became law.”

Effective Date of 1987 Amendment
Amendment by section 9133(b)(3), (4) of Pub. L. 100–203
effective Apr. 1, 1988, see section 9133(c) of Pub. L. 100–203,
set out as a note under section 672 of this title.

Effective Date of 1986 Amendments
Amendment by Pub. L. 99–514 applicable only with re-
spect to expenditures made after Dec. 31, 1986, see sec-
tion 1711(d) of Pub. L. 99–514, set out as a note under
section 670 of this title.

Section 12305(c) of Pub. L. 99–272 provided that: “The
amendments made by this section [amending this sec-
tion and sections 675 and 1396a of this title] shall apply
to medical assistance furnished in or after the first cal-
endar quarter beginning more than 90 days after the
date of enactment of this Act [Apr. 7, 1986].”

Effective Date of 1980 Amendment
Amendment by section 102(a)(3) of Pub. L. 96–272 ef-
fective only with respect to expenditures made after
Sept. 30, 1979, see section 102(c) of Pub. L. 96–272, set out
as a note under section 672 of this title.

§ 673a. Interstate compacts

The Secretary of Health and Human Services
shall take all possible steps to encourage and as-
sist the various States to enter into interstate
compacts (which are hereby approved by the
Congress) under which the interests of any
adopted child with respect to whom an adoption
assistance and Child Welfare Act of 1980, and not as part of
the Social Security Act which comprises this chapter.

Change of Name

“Secretary of Health and Human Services” was sub-
stituted for “Secretary of Health, Education, and Wel-
fare” in text, pursuant to Pub. L. 96–98, title V, § 508(b),
Oct. 17, 1979, 93 Stat. 695, which is classified to section
3508(b) of Title 20, Education.

§ 673b. Adoption incentive payments

(a) Grant authority

Subject to the availability of such amounts as
may be provided in advance in appropriations
Acts for this purpose, the Secretary shall make a
grant to each State that is an incentive-eligible
State for a fiscal year in an amount equal to
the adoption incentive payment payable to the
State under this section for the fiscal year,
which shall be payable in the immediately suc-
ceeding fiscal year.

(b) Incentive-eligible State

A State is an incentive-eligible State for a fis-
cal year if—

(1) the State has a plan approved under this
part for the fiscal year;

(2)(A) the number of foster child adoptions
in the State during the fiscal year exceeds the
base number of foster child adoptions for the
State for the fiscal year;

(B) the number of older child adoptions in
the State during the fiscal year exceeds the
base number of older child adoptions for the
State for the fiscal year;

(C) the State’s foster child adoption rate for
the fiscal year exceeds the highest ever foster
child adoption rate determined for the State;

(3) the State is in compliance with sub-
section (c) of this section for the fiscal year;

(4) the State provides health insurance cov-
erage to any child with special needs (as deter-
mined under section 673(c) of this title) for
whom there is in effect an adoption assistance
agreement between a State and an adoptive
parent or parents; and

(5) the fiscal year is any of fiscal years 2008
through 2012.

(c) Data requirements

(1) In general

A State is in compliance with this sub-
section for a fiscal year if the State has pro-
vided to the Secretary the data described in
paragraph (2)—

(A) for fiscal years 1995 through 1997 (or, if
the first fiscal year for which the State
seeks a grant under this section is after fis-
cal year 1996, the fiscal year that precedes
such first fiscal year); and

(B) for each succeeding fiscal year that
precedes the fiscal year.

(2) Determination of numbers of adoptions
based on AFCARS data

The Secretary shall determine the numbers of
foster child adoptions, of special needs
adoptions that are not older child adoptions,
and of older child adoptions in a State during
a fiscal year, and the foster child adoption
rate for the State for the fiscal year, for pur-
poses of this section, on the basis of data
meeting the requirements of the system estab-
lished pursuant to section 679 of this title, as
reported by the State and approved by the
Secretary by August 1 of the succeeding fiscal
year.

(3) No waiver of AFCARS requirements

This section shall not be construed to alter
or affect any requirement of section 679 of this
8.2D.5 TITLE IV-E, Adoption Assistance Program, Payments, Termination

1. Question: Under what circumstances may the State agency terminate an adoption assistance agreement?

Answer: Title IV-E adoption assistance is available on behalf of a child if s/he meets all of the eligibility criteria and the State agency enters into an adoption assistance agreement with the prospective adoptive parent(s) prior to the finalization of the adoption. The agreement must be signed by all parties to the agreement (namely, the adoptive parents and a State agency representative) in order to meet the requirements for an adoption assistance agreement.

Once an adoption assistance agreement is signed and in effect, it can be terminated under three circumstances only. Namely, (1) the child has attained the age of 18 (or the age of 21 if the State has determined that the child has a mental or physical disability which would warrant continuation of assistance); (2) the State determines that the adoptive parents are no longer legally responsible for support of the child; or (3) the State determines that the adoptive parents are no longer providing any support to the child.

Source/Date: ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References: Social Security Act - section 473(a)(4); 45 CFR 1356.40(b)

2. Question: Section 473(a)(4)(B) of the Social Security Act states that no adoption assistance payment can be made, "to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents." When is a parent considered to be "no longer legally responsible for support" or not providing "any support" for the child?
Answer: A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.

"Any support" includes various forms of financial support. The State may determine that payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs, are acceptable forms of financial support. Consequently, the State may continue the adoption assistance subsidy, if it determines that the parent is, in fact, providing some form of financial support to the child.

Source/Date: ACYF-CB-PIQ-98-02 (9/03/98)

Legal and Related References: Social Security Act - section 473(a)(4)(B)

3. Question: Can a State agency automatically suspend the adoption assistance payment for the duration of an adopted child's placement in foster care? The State agency would reinstate the payment upon the child's return home.

Answer: No. An automatic suspension is, in effect, the equivalent to a termination of the adoption assistance payment and as such is unallowable under section 473(a)(4)(B) if the parent remains legally responsible or is providing any support for the child. However, consistent with section 473(a)(4)(B) of the Act, there may be circumstances in which adoptive parent(s) may be eligible for payments in a different amount. In these instances, a State may re-negotiate the agreement and reduce the payment for the duration of an adopted child's placement in foster care with the concurrence of the adoptive parent.t.

Source/Date: ACYF-CB-PIQ-98-02 (9/03/98)

Legal and Related References: Social Security Act - section 473(a)(4)(B)

4. Question: Is it permissible for a State to include a statement in the title IV-E adoption assistance agreement to the effect that "The Department's obligation to provide for Federally funded adoption assistance payments and/or services is subject to the appropriation of State funds"?
Answer: No. Although we understand that the State may experience difficulties in its ability to pay subsidies due to the State budget, such difficulties do not relieve or alter the State’s obligation under title IV-E to act in accordance with executed adoption assistance agreements. Accordingly, any statement that undermines the State’s obligation to honor the terms of the title IV-E adoption assistance agreement is not consistent with Federal requirements in sections 473(a)(1)(B)(ii) and 473(a)(3) of the Social Security Act. Once an agreement is signed, the State must obtain the concurrence of the adoptive parent if it wishes to make any changes in the payment amount with one exception. That exception is when there is an across-the-board reduction or increase in the foster care maintenance payment rate. In that circumstance, the State may adjust the adoption assistance payment without the adoptive parent’s concurrence.

Source/Date: 08/05/08

Legal and Related References: Social Security Act - sections 473(a)(1)(B)(ii) and 473(a)(3); CWPM 8.2D4, Q/A #2)
July 9, 2008

BY HAND

Honorable Richard M. Berman
United States District Court Judge
Southern District of New York
United States Courthouse
500 Pearl Street, Room 650
New York, NY 10007

Re: United States v. Judith Leekin, 08 Cr. 446 (RMB)

Dear Judge Berman:

This letter is respectfully submitted in connection with the upcoming sentencing of Judith Leekin, to assist the Court by providing some context for this extraordinary case. The Department of Investigation (DOI) is a 140 year-old law enforcement agency that has broad oversight of the activities of all New York City agencies. That includes oversight of the personnel and operations of the New York City Administration for Children's Services (ACS). As you know ACS is the City agency that, in conjunction with the State, administers adoptions and the foster care system.

DOI has never seen a case like the Leekin case. We learned about the shocking conduct of Leekin last summer from Florida authorities and the facts made us recoil. Although the Florida prosecutors were pursuing criminal charges relating to the abuse in that jurisdiction of the children in Leekin's custody, DOI felt strongly enough about the conduct that we decided we would also take up a separate investigation in New York of the fraud Leekin committed in this jurisdiction through, inter alia, ACS's adoption program. The conduct engaged in by this defendant against children, including children with special needs, was so inhumane that we wanted the full weight of the law to be brought to bear against Leekin for her actions. We did so on behalf of the New York City children she victimized, on behalf of ACS and on behalf of the City of New York.
where the conduct of conviction took place. In addition, we felt a strong deterrent message must be sent. This sentencing is the culmination of those efforts.¹

As Your Honor is aware, Leekin illegally adopted eleven children in New York City. She is charged with taking advantage of the subsidies that come with adopting children with physical and mental disabilities. To be sure, DOI will address with ACS the vulnerabilities in ACS's adoption subsidy program and procedures exposed by this case, but the fact is that Leekin converted the adoption of special needs children into a lucrative form of personal remuneration at their expense. In the course of our investigation, DOI had the opportunity to interview a number of the children that Leekin adopted. To hear each describe the years of abuse and neglect that they endured was utterly heartbreaking. Many of the children had few teeth from never having seen a dentist. Most bore physical scars from Leekin's brutality. None could read or write; their vocabulary garnered from the little television that Leekin allowed the children to watch. While Leekin will stand before you at sentencing on fraud charges, this fraudulent scheme crushed the childhoods of those children and caused them irreparable pain and suffering. Leekin deprived these children of freedom, schooling and medical care, exposed them to sexual and physical abuse, and all the while Leekin collected payments for the "care" of these children.

The brutality and callousness of the conduct involved in the offense of conviction should, in our view, result in a sentence that reflects the seriousness of this offense.

Respectfully submitted,

Rose Gill Hearn  
Commissioner

---

¹The Federal Bureau of Investigation also joined this investigation.
In 2010, the federal government paid $2,501,000,000 to states under the Adoption Assistance and Child Welfare Act. Hundreds of millions of dollars of that money may have been fraudulently collected by adoptive parents who no longer support their adoptive children, made possible because the U.S. Department of Health and Human Services has prohibited the states from even investigating the fraud. States have lost an equal amount of money.

The U.S. government has long provided funds to states to operate foster-care programs, initially under the federal Aid to Families with Dependent Children program (AFDC). Like Aid to Dependent Children (ADC), the foster care program provided a monthly stipend for each eligible foster child. Like ADC, the money was paid to the adult caretaker (the foster parent) for the support and benefit of the child. As soon as a child left foster care, the monthly payment ended, whether the child left foster care to be reunited with his or her parents or to be adopted by new parents.

An unintended consequence of the program was that it discouraged adoptions by foster parents. As soon as a foster parent adopted his or her foster child, the foster-care maintenance payments stopped. Many foster parents were of modest financial means and could not afford to support children without the foster-care maintenance payments. In addition, many foster children required a large amount of support because of their special health, behavioral, or other problems. Accordingly, many children who had no hope of ever returning to their parents simply languished in foster care because the foster parents who loved them could not afford to adopt them and lose the foster-care payments, and no other adults were willing to adopt children who had so many problems.

In 1980, Congress enacted the Adoption Assistance and Child Welfare Act, which, among its many provisions, created a statutory scheme to encourage people to adopt children with special
needs who were in the states’ foster-care program by providing subsidies for the adoptive parents. The explicit purpose of the adoption assistance program, as articulated by the U.S. Department of Health and Human Services (HHS) Children’s Bureau, is to “remove barriers and contribute to an increase in adoption of children with special needs.” The statute implements its purpose by providing matching federal funds to state programs. The matching federal funds are contingent on a state “plan approved by the Secretary” of HHS, with the requirement that the state “administer, or supervise the administration of, the program.” 42 U.S.C. § 671(a)(2); see Administration for Children’s Families (ACF), HHS, Programs and Funding: Title IV-E Adoption Assistance.

The statute authorizes adoptive parents in participating states to receive reimbursement for one-time, nonrecurring adoption expenses and for monthly maintenance payments for the ongoing expenses associated with caring for the children. The amount of the monthly adoption subsidy payment for a child is determined by an agreement between the prospective adoptive parent and the state. It states that the amount may be readjusted periodically, “with the concurrence of the adopting parents,” but may never be greater than the amount that the child would receive if he or she had remained in foster care. 42 U.S.C. § 673(a)(3).

The agreement between the adopting parent and the state is a “written agreement, binding on the parties to the agreement” that “specifies the nature and amount of any payments, services, and assistance to be provided under such agreement.” 42 U.S.C. § 675(3)(A).

A 2008 study conducted by the National Resource Center for Family-Centered Practice and Permanency Planning found that maintenance payments are around $400 to $900 per month. The average base amount nationwide is about $350 a month. The federal government generally reimburses the states for 50 percent of the payments, although in some cases it pays a larger percentage. In 2010, according to tables released by the Administration for Children and Families, the federal government paid $2,501,000,000 to states for adoption assistance, including one-time reimbursements and monthly maintenance payments. Thus, states probably paid about $2 billion of their own money in adoption assistance payments.
Federal statutes 42 U.S.C. § 673 and 42 U.S.C. § 675 mandate that states terminate adoption assistance payments when any one of three events takes place:

The child ages out of the program by turning 18, if healthy—although states may, at their option, extend the program adoption assistance program to age 19, 20, or 21—or 21 if handicapped;

The state determines that the adoptive parent is no longer legally responsible for supporting the child; or

The state determines that the adoptive parent is no longer actually supporting the child.

Adoptive Parents’ Failure to Support Their Children

While there may be many reasons that a parent is no longer supporting his or her adopted child under the age of 18, the most common scenario is that the child has stopped living with the parent. That may be the result of a divorce in which the state makes adoption assistance payments to one parent while the other parent has custody. More common are the cases where the child has left the home. Many children adopted from foster care run away from their adoptive parents or are forced out by them. The children may be put with another adult, return to their birth parents, return to foster care, live on the streets, or be incarcerated.

Because ACF guidance to states allows little room for states to monitor adoption assistance recipients’ eligibility, there is no data on the total number of children who prematurely leave the homes of parents receiving adoption assistance. Available data suggest that the number of adopted children who do not live with their adoptive parents until they turn 18 is significant. Nina Williams-Mbengue, program director at the National Conference of State Legislatures, found that 10–25 percent of pre-adoptive placements disrupt before adoption proceedings are finalized, and 10–15 percent of adoptions dissolve after they are finalized. Some practitioners believe that the numbers are much higher. That substantial fraction should not be surprising; children adopted out of foster care tend to have serious emotional and physical scars from their “frequent displacement, exposure to drugs and alcohol from birth and at other points in their lives and other forms of abuse.” Nina Williams-Mbengue, Moving Children Out of Foster Care, The Legislative Role in Finding Permanent Homes for Children [PDF].
Some adoptive parents find raising such children too difficult and voluntarily surrender those children. In other cases, the children run away, either because they want to live without restrictions or because of abuse in the adoptive home. Indeed, some states, such as Wisconsin, even define categories of “hard to place children” who are eligible for adoption assistance, in part, by their tendency to run away. A child who is moderately difficult to care for may “run away four to seven times a year and three or four days at a time,” while a child who requires intensive care may “run away for long periods of time (eight or more times a year and five or more days at a time.)” North American Counsel on Adoptable Children, Wisconsin State Subsidy Profile, Question 4.

Diane Riggs of the North American Council on Adoptable Children has pointed out that pressure on states to increase adoption rates may in fact be leading to an increase in the number of adoptions that fail as states encourage adoptions by foster parents who are not actually capable of meeting the children’s needs. Diane Riggs, Plan, Prepare, and Support to Prevent Disruptions. In the 1990s, disruption rates after adoption “for children with physical, mental health and developmental problems, range from approximately 10% to approximately 25%.” (Sheena Macrae, Ed., Disruption & Dissolution: Unspoken Losses [PDF]. For an extensive discussion on subsidized adoption failures, see Dawn J. Post and Brian Zimmerman, “The Revolving Doors of Family Court: Confronting Broken Adoptions.” 40 Cap. U. L. Rev. 437 (2012).

**Oversight of Adoption Assistance Payments**

As stated above, federal law requires a state to terminate adoption assistance payments when the state determines that the adoptive parent is no longer actually supporting the child. The statute does not explicitly provide a mechanism for a state to make such a determination. The sole provision in the statute is for self-reporting on the part of the adoptive parent: Persons “who have been receiving adoption assistance payments . . . shall keep the State . . . informed of circumstances which would, pursuant to this subsection make them ineligible for the payments, or eligible for the payments in a different amount” (42 U.S.C. § 673(a)(4)(B)).

Other federal benefit programs do not rely solely on the recipients to advise the government when they are no longer eligible for benefits. Many recipients simply will not advise the government and continue to receive benefits, even if they are no longer eligible. While knowingly accepting government benefits to which one is not entitled is, of course, a crime, many other federal-benefit programs do not rely on recipients’ honesty, combined with the threat
of criminal prosecution, to ensure that people stop receiving the benefits when they become ineligible. Instead, many programs contain explicit provisions for the administrators of the programs to determine individuals' continuing eligibility for benefits on a recurrent basis.

The Temporary Assistance for Needy Families (TANF) program requires states to develop procedures to track the income of people receiving payments through state TANF programs, efforts to gain employment, and the number of children living in a household, but the Social Security Act supplies no rules on what those procedures should be. States develop their own procedures to track benefits recipients and discourage fraud—for example, the Supreme Court noted in the 1971 case Wyman v. James that California had instituted a home-visit requirement in order to discourage fraud. The Social Security Act also does not explicitly allow states to condition benefits on cooperation with state monitoring procedures. Nonetheless, it is common practice for states to condition welfare eligibility on consent to home visits by a government employee, and the Court found in Wyman that mandatory home visits for welfare recipients do not violate the Fourth Amendment. The intrusiveness of home visits varies by state. San Diego’s 100% Project requires TANF recipients, even those whose documentation is up to date and who are not suspected of committing fraud, to consent to home visits to verify their eligibility. The unannounced home visits, during business hours, include an interview and a 5- to 10-minute walk through the house by plainclothes investigators from the district attorney’s office. Other TANF programs, such as Montana’s, require a home visit only if, for instance, the recipient fails to or is unable to attend a mandatory meeting or eligibility interview.

The Supplemental Security Income program, which provides benefits to disabled, indigent adults and children, does not rely solely on self-reporting by beneficiaries. Rather, the statute itself authorizes the Commissioner of Social Security to determine how often to determine recipients’ eligibility for benefits and the amount of benefits for which they are eligible.

Even the Social Security program, which provides insurance benefits to disabled workers and their dependents who have paid into the system through Federal Insurance Contributions Act (FICA) withholding, does not rely on self-reporting by beneficiaries. Instead, the government reviews disability determinations at least once every three years.

There is no language in the Adoption Assistance Act suggesting that self-reporting is the exclusive means of authorized oversight. On the contrary, 42 U.S.C. § 673(a)(4)(A) prohibits states from issuing payments to parents no longer supporting the adopted children, saying that a
“payment may not be made . . . with respect to a child . . . if the State determines that the child is no longer receiving support from the parents or relative guardians.” (emphasis added). The statute imposes on adoption assistance recipients the duty to report to the state if their circumstances change, but it does not provide guidance on how the state should act to make continuing eligibility determinations.

The fact that the statute contemplates individualized Adoption Assistant Agreements to govern the details of assistance payments and allows states to develop their own plans for implementing the statute suggests that Congress intended to leave significant discretion to the states in implementing their adoption assistance programs.

**Federal Policy on Enforcement**

The official U.S. policy on re-determination of eligibility for adoption assistance is found in the HHS Child Welfare Policy Manual. In Q&A format, the manual states:

1. Question: What are the requirements for redeterminations of title IV-E adoption assistance eligibility?
   Answer: The title IV-E adoption assistance program does not require redeterminations of a child’s eligibility. . . .

2. Question: Some States are requiring adoptive parents to complete annual renewals of their adoption assistance agreements. Does title IV-E require the State or local agency to perform annual renewals or eligibility redeterminations for adoption assistance?
   Answer: No. There is no Federal statute or provision requiring annual renewals, recertifications or eligibility re-determinations for title IV-E adoption assistance.

While the Child Welfare Policy Manual itself does not prohibit states from re-determining eligibility (though it explicitly does not require states to re-determine eligibility), the HHS ACF has taken the extraordinary step of barring states from periodically re-determining eligibility for adoption assistance payments: “ACF advised against any intensive or intrusive inquiry into an adoptive family’s life. . . . ACF informed [New York State] that the state cannot terminate or suspend adoption assistance if the adoptive parents fail to reply to the state’s request for
information.” Therefore, while the state may request information from the adoptive parents relating to the continued eligibility for adoption assistance benefits, the adoptive parents may ignore such requests with impunity. New York State Office of Children & Family Services, Administrative Directive, 09-OCFS-ADM-11 [PDF], Adoption Subsidy and Education Requirements for Adoptive Children (May 7, 2009).

HHS spokesperson Shari Brown stated the agency’s position even more bluntly, saying that “suspensions or reductions in a title IV-E adoption assistance payment are not permitted without the concurrence of the adoptive parents. . . .” Email message from Shari Brown to David J. Lansner, October 11, 2011.

The HHS interpretation of the statute thus makes it extremely difficult for the states to carry out their obligation to determine whether the adoptive parent is actually supporting the child. Indeed, at least one state has concluded that, even if the state knows that the adoptive parent is not supporting the child, the state is prohibited from suspending adoption assistance payments to the parent. In Ohio, even if an adopted child goes into foster care and the government is supporting the child, the state may not suspend adoption assistance payments to the parents. The most that the state of Ohio believes it can do in such a situation is to “renegotiate” the amount of the adoption assistance payment “with the concurrence of the adoptive parent.” See the Adoption Subsidy and Policy Blog.

The reason that HHS gives for prohibiting states from carrying out their statutory responsibility to determine whether the adoptive parent is no longer supporting the child and is consequently no longer entitled to adoption assistance benefits is that adoption assistance benefits are an “entitlement.” If states impose harsher requirements than those contemplated by Congress, they will deprive people of adoption assistance who are entitled to it under the Social Security Act. Therefore, ACF warned, while “attestations and affidavits by the adoptive parents” are “acceptable means of verifying support” (they fall under the self-reporting requirement quoted above), the state should not carry out “any intensive or intrusive inquiry into an adoptive family’s life.” 09-OCFS-ADM-11, p. 4.

Federal Policy Interferes with States’ Ability to Enforce Law, Prevent Fraud

The term “entitlement” refers to a property interest, created by statute, which may not be discontinued as long as the beneficiary remains eligible to receive it. The U.S. Supreme Court first used the term in the 1970 case Golberg v. Kelly in connection with welfare benefits,
specifically Aid to Families With Dependent Children. Six years later, in Matthews v. Eldridge, the Supreme Court also ruled that Social Security Disability benefits are an entitlement. While the Supreme Court has not reached the issue, the Ninth Circuit has ruled in the 2005 case ASW v. Oregon that adoption assistance benefits are an entitlement.

The fact that a benefit statute creates a property interest, or an entitlement, does not, however, mean that the recipient of those benefits is entitled to receive benefits in perpetuity. Rather, as the Supreme Court held in both Goldberg v. Kelly and Matthews v. Eldridge, it means only that the state may not deprive the individual of benefits without due process of law. As long as the state provides the recipient with notice and an opportunity to be heard at a meaningful time and in a meaningful manner, it satisfies the recipient’s procedural due-process rights. Thus, even if adoption assistance benefits are an entitlement, the fact of entitlement merely guarantees that recipients are entitled to some kind of hearing prior to the termination of their benefits. The fact of entitlement does not guarantee that recipients will win their hearings and continue to receive benefits, even if they are no longer eligible.

Moreover, the fact that both welfare and Social Security disability benefits are entitlements does not prohibit the state or federal government from determining whether the recipients continue to be entitled to receive benefits—a decision that, if negative, would trigger the procedural due-process requirements of notice and an opportunity to be heard. Nor should the states be precluded from determining whether adoption assistance recipients continue to be eligible for those benefits. Requiring adoption assistance recipients to complete and return to the state a questionnaire once a year providing information as to whether they continue to support their adopted children does not run afoul of the due-process clause. Nor does it interfere with either the recipients’ entitlement to receive benefits as long as they remain eligible or the recipients’ right to notice and an opportunity to be heard if the state determines that the recipients’ eligibility has ceased.

**A Proposed Solution**

While HHS apparently believes that it would be unconstitutional to require adoption assistance recipients to complete a brief questionnaire once a year and that failure to do so would trigger the due-process requirements of notice and a hearing on the termination of their benefits, other procedures exist in analogous situations. Congress recently expanded the adoption assistance program to include benefits to relatives who become legal guardians for children under “kinship guardianship programs.” See 42 U.S.C. § 673(d). The kinship guardianship program mirrors the adoption assistance program in numerous ways, including the requirement that benefits will be
terminated when the state determines that the relative guardian is no longer providing any support for the child. 42 U.S.C. §673(a)(4)(A)(iii).

The state of New York has a procedure for re-determining eligibility for benefits under its Kinship Guardian Assistance Program (KinGAP). New York permits localities to take the following steps when there is “reasonable cause to suspect that the relative guardian . . . is no longer providing any support for the child.”

“[R]equire the relative guardian(s) to submit documentation” or attend a meeting to “address[] and verif[y] the continuing responsibility of the relative guardian to support the child and the provision of support of the child by the relative guardian(s).” In determining how to investigate a given case, social services must consider the individual circumstances of the relative guardian and child, such as availability for meetings and employment situation.

“If the relative guardian is unable to make the scheduled meeting for reasons beyond the guardian’s control, the district must provide the relative guardian with one additional opportunity to meet in accordance with the standards set forth in this section.”

The relative guardian’s “failure to provide the requested documentation within the period requested or to meet with social services district staff as directed, may be a ground for termination of the kinship guardianship agreement and stopping payments of kinship guardianship assistance.” See the New York State Office of Children and Family Services, Administrative Directive, Transmittal 11-OCFS-ADM-03, Kinship Guardianship Assistance Program (KinGAP), pp. 20–21, April 1, 2011 (Revised July 6, 2011).

New York procedures also warn that “any follow-up letter sent by the social services district [must] indicate the consequences of failure to follow up in the manner prescribed by the social services district.” This procedure gives recipients numerous opportunities to verify their continuing eligibility for benefits.

Suspension of benefits based on a recipient’s failure to respond to one request for documentation of continuing eligibility might create a risk of erroneous deprivation of benefits. However, if a recipient fails to respond to multiple requests for documentation and interviews, as New York procedures for KinGAP outline, a state could reasonably suspect that the recipient is not responding because he or she is hiding a change in circumstances. The risk of erroneous deprivation would be less. Moreover, as the Court stated in Joint Anti-Fascist Comm. v. McGrath and quoted in Matthews v. Eldridge, the “essence of due process is the requirement that ‘a person in jeopardy of serious loss (must be given) notice of the case against him and
Several requests for documentation and notices would give a recipient ample opportunity to defend his or her position.

Conclusion

The HHS limitation on how states may enforce adoption assistance eligibility requirements has no legal basis. Neither the Social Security Act nor the Constitution restricts states from requiring recipients to submit to annual interviews or minimally intrusive inquiries as to their continuing eligibility for benefits. Neither the statute nor the Constitution bars states from suspending or terminating payments when recipients fail to submit documentation verifying their continued eligibility for adoption assistance. By supporting state efforts to collect data on the number of failed adoptions by proactively monitoring adoption assistance recipients, both the federal government and the states can ensure that only individuals who remain eligible for adoption assistance benefits continue to receive them. This is no small matter, considering the cost of the adoption assistance program and the number of adoptive parents who stop supporting their adopted children at some point during the children’s minority. Such a policy also has the potential to reallocate significant sums of money that would otherwise be wasted on fraud to services that increase the number of successful adoptions—the very purpose of the adoption assistance program.

Keywords: litigation, children’s rights, adoption, Adoption Assistance and Child Welfare Act, subsidies, fraud

Carolyn A. Kubitschek and David J. Lansner are partners at Lansner & Kubitschek in New York, New York.

Copyright © 2015, American Bar Association. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. The views expressed in this article are those of the author(s) and do not necessarily reflect the positions or policies of the American Bar Association, the Section of Litigation, this committee, or the employer(s) of the author(s).
March 25, 2014

Nick Nehamas
Columbia Journalism School
nan2129@columbia.edu

Re: FOIL #13-153

Dear Mr. Nehamas:

This letter is in response to the two Freedom of Information Law (FOIL) requests, combined into FOIL #13-153, you submitted to the New York State Office of Children and Family Services (Office) on December 17 and December 19, 2013. Your request was delineated into four separate and distinct requests regarding foster children in New York who were adopted but are now back in the New York State foster care system. As such, the Office organized its response to address each of your four separate and distinct requests.

Your first request asked if OCFS tracks the number of foster children who were adopted but are now back in the New York State foster care system. I can advise you that the Office does not possess any records responsive to your first request. As such, the Office has no records to provide in response to your request.

Your second request asked how much money New York State disburses annually in post adoption subsidies. I can advise you that the Office does not possess any records responsive to your second request. As such, the Office has no records to provide in response to your request.

Your third request was for a letter sent by OCFS to the federal government asking to what extent it can investigate cases of potential adoption subsidy fraud, and the response received by OCFS. Please see the attached record in response to your third request. No redactions were made to this record and no pages were removed.

Your fourth request asked how much money New York State receives from the federal government for a successfully completed adoption, and if other bonuses apply for other forms of permanent placement. I can advise you that the Office does not possess any records responsive to your fourth request. As such, the Office has no records to provide in response to your fourth request.

If you conclude that any part of your request has been inappropriately denied or withheld, you have a right to appeal. Such an appeal should be directed in writing within thirty days of the date of this letter to:

Tori Kowek, Esq.
Records Access Appeals Officer
New York State Office of Children and Family Services
52 Washington Street, Room 135 North
Rensselaer, NY 12144-2796

Sincerely,

[Signature]

Craig Sunkes, Esq.
Records Access Officer
Stupp, John (OCFS)

From: Walker Bryce, Karen (OCFS)
Sent: Wednesday, August 29, 2007 4:50 PM
To: Brown, Larry (OCFS); Prochera, Lee (OCFS)
Cc: Stupp, John (OCFS); Lynch, Jane (CCFS); Martinez, Nancy (OCFS)
Subject: Adoption Assistance Questions
Attachments: Picture (Metafile)

August 29, 2007

Junius Scott
Program Manager
Administration for Children and Families
Office of State and Youth Programs
Youth and Family Services Division
26 Federal Plaza Room 4114
New York, New York 10278

Re: Adoption Assistance Questions

Dear Mr. Scott:

The New York State Office of Children and Family Services (OCFS) is sending this letter to pose the following questions to the federal Department of Health and Human Services regarding the administration of the Title IV-E adoption assistance program. These questions relate to the standards set forth in section 473(a)(4)(B) of the Social Security Act and the termination of adoption assistance either because the adoptive parent is no longer providing any support for the adopted child or the adoptive parent is no longer legally responsible for the support of the adopted child.

OCFS would like to confirm that it is acceptable for the State or local government agency responsible for administering the adoption assistance program to evaluate, on an annual basis, whether an adoptive parent is still providing any support for the adopted child and is legally responsible for the support of the child. If so, may that evaluation include the requirement that the adoptive parent submit an affidavit or other attestation that the adoptive parent is providing some support and remains legally responsible for the support of the child? May the State or local government agency inquire of the adoptive parent what support is provided for the adopted child as part of such an affidavit or attestation and, if necessary, require the adoptive parent to provide clarification of the level and form of support provided? (Note: we are not proposing to establish criteria on how the adoption assistance payment is spent as addressed in your agency’s response to a question in section 8.2D.1 of the Child Welfare Policy Manual, but we propose to address criteria to assess the adoptive parent’s compliance with federal law in regard to the continuation of adoption assistance.) May the State or local government agency require face to face contact with the adoptive parent to discuss these issues? May the State or local government agency responsible for the administration of the adoption assistance program also require that the adoptive parent submit supporting documentation related to the adoptive parent’s provision of support and continued obligation to support the child such as school attendance records, report cards and other documents that demonstrate that the adoptive parent is caring for the child? May the State or local government agency contact other collateral sources directly to obtain documents if the information provided by the adoptive parent is questionable?

Regarding the issue of whether the adoptive parent is providing any support for the child, may the State establish a minimal dollar amount of what may be considered “any support” for the purpose of continuing adoption assistance payments? If yes, what is a federally acceptable minimum? May the State establish a qualitative standard as to what is considered as support for a child? May the State establish a standard that provides that the support must be directly related to the daily needs of the child and exclude indirect costs incurred by the adoptive parent, such as the transportation costs of the adoptive parent to visit an adopted child who is in foster care?

May the State or local government agency responsible for the administration of the adoption assistance program suspend adoption assistance payments if the adoptive parent fails to submit the above referenced affidavit/attestation and/documentation when requested or responds with information that is questionable and/or not verifiable? May adoption assistance payments be terminated if there is a failure to respond in a satisfactory manner after more than one attempt by the State or local government agency to obtain the requested information?

Your earliest response to these questions is greatly appreciated.

Very truly yours,
Karen Walker Bryce, Esq.
Deputy Commissioner and General Counsel

This communication, together with any attachments hereto or links contained herein, is for the sole use of the intended recipient(s) and may contain information that is confidential, privileged, or legally protected, and as such is not a public document. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution or use of this communication is STRICTLY PROHIBITED. If you have received this communication in error, please notify the sender immediately by return e-mail message and delete the original and all copies of the communication, along with any attachments hereto or links herein, from your system.
November 21, 2007

Ms. Karen Walker Bryce, Esq.
Deputy Commissioner and General Counsel
New York State Office of Children
And Family Services
Capital View Plaza
52 Washington Street
Rensselaer, New York 12144

Dear Ms. Walker Bryce:

The New York State Office of Children and Family Services (OCFS) has raised several questions related to whether and how a State agency may evaluate an adoptive parent’s support of a child who is receiving Federal adoption assistance under §473 of the Social Security Act (the Act). Specifically, you asked if such an evaluation may include the following: affidavits or attestations, documentation of the level and form of support if necessary, face-to-face meetings, documentation such as school records, or records obtained from collateral sources. In consultation with our Children’s Bureau in the Administration for Children and Families (ACF), I am providing our response.

It is difficult to provide definitive guidance as to whether the State would be violating Federal adoption assistance policy or law absent a specific State proposal. The adoption assistance program is an entitlement, and as such, the State may not impose additional criteria beyond the Federal requirements. ACF also suggests that New York consider any proposal to evaluate a parent’s support to a child in the context of promoting good adoption practice, as well as the impact that an intensive inquiry into an adoptive family’s life may have on the long-term goal of permanency for a child.

Federal law and policy do not prohibit a State from conducting periodic evaluations that may include requiring an adoptive parent to submit an affidavit or attestation that confirms the parent’s continued support for, or responsibility of, an adopted child. Such evaluations are permissible as long as they are consistent with §473 of the Social Security Act and with §8.D2.1, Q#1 of the Child Welfare Policy Manual (CWPM), which prohibits a State from requiring a family to provide an “accounting for the expenditures” that the family incurs. Once the adoption assistance agreement is in effect, decisions about expenditures are at the discretion of the parent and are not subject to further agency approval or oversight. OCFS states that its intent is not to violate this policy in seeking verification that an adoptive parent is providing support to a child. However, ACF is concerned that a proposal to seek information beyond a general affirmation that the parent is providing support or remains legally responsible to provide support to the child could result in a more intensive and intrusive inquiry than the Adoption Assistance program contemplates.
It is incumbent upon adoptive parents to keep the State informed of material changes that might impact the parent’s support, but a State cannot terminate or suspend adoption assistance if the adoptive parents fail to reply to the State’s request for information (§473(a)(4)(B)). Section 473(a)(4)(B) of the Act identifies only three circumstances under which an adoption assistance subsidy may be terminated or suspended including if the State determines that the parents are no longer legally responsible for the support of the child or when the adoptive parents are no longer providing support to the child (See also, CWPM §8.2D.5, QA #1). Furthermore, a State will not jeopardize its Federal financial participation if it fails to collect assurances that an adoptive parent is providing support or remains legally responsible to provide support.

OCFS also asked whether a State can 1) establish a minimal dollar amount or a qualitative standard of what may be considered “any support,” and 2) require the support be related to the daily needs of the child while excluding certain indirect costs.

The answer to both inquiries is no. Neither Federal law nor policy provides that States may establish what amount of money constitutes “any support” for the purpose of continuing adoption assistance payments. We have explained at 8.2D.5 QA #2 of the CWPM that “any support” broadly includes any type of financial support and that the State may continue adoption assistance payments where a parent is providing “some form of financial support” to the child. As such, a State cannot exclude the indirect costs associated with providing support to a child, nor may it limit the definition of “any support” to a child’s daily needs.

As always, the Regional Office is available for other questions and/or need for assistance that you may have as you continue your efforts to improve outcomes for children and families in New York State. Please do not hesitate to let me know or have your staff contact Shari Brown of my staff at (212) 264-2890, ext. 125 or Shari.Brown@acf.hhs.gov.

Sincerely,

Junius Scott
Regional Program Manager
Children’s Bureau Regional Program Division
Adoption Subsidy Termination Trends Across States

Narrative

Prepared by: The Children’s Law Center

Number of states responded: 25

Notice Requirement

22 out of 25 states require adoptive parents to provide notice to the agency when the adoptive parents are no longer legally responsible for the child.

22 out of 25 states require adoptive parents to provide notice to the agency when the adoptive parents are no longer providing support to the child. The same 22 states.

15 out of 25 states require adoptive parents to provide notice to the agency when the child is no longer residing in the adoptive home. 4 out of those 15 states specifically refer to when child is in out-of-home care/placement. 2 out of 15 states require notice after child has been out of the adoptive home for 30 days. 1 out of 15 states require notice when child is out of home due to court action. 1 out of 15 states require notice when child is out of home due to a substantiated abuse or neglect finding.

19 out of 25 states require a notice in writing.

- Adoptive parents required to provide notice when “no longer legally responsible” for child:
  1. Alaska
  2. California
  3. Colorado
  4. Connecticut
  5. Delaware
  6. Georgia
  7. Hawaii
  8. Idaho
  9. Iowa
 10. Minnesota
 11. Nebraska
 12. Nevada
 13. New Jersey
 14. New Mexico
 15. North Dakota
 16. Ohio
 17. Oklahoma
 18. South Carolina
 19. Tennessee
 20. Texas
 21. Vermont
 22. Wyoming
3. Colorado
4. Connecticut
5. Delaware
6. Georgia
7. Hawaii
8. Idaho
9. Iowa
10. Minnesota
11. Nebraska
12. Nevada
13. New Jersey
14. New Mexico
15. North Dakota
16. Ohio
17. Oklahoma
18. South Carolina
19. Tennessee
20. Texas
21. Vermont
22. Wyoming

- Adoptive parents required to provide notice when child is no longer in the home:
  1. Alaska
  2. California
  3. Colorado (removed from home and placed into out-of-home care)
  4. Delaware (child’s location if not residing in the home)
  5. Georgia
  6. Minnesota (residence of child outside adoptive home for a period of more than 30 consecutive days)
  7. Missouri (child moves out of home, absence of child from home as a result of court action for any length of time or for any other reason for a period of more than 30 days)
  8. Nevada
  9. New Mexico (child is removed from home and placed in out-of-home care due to substantiated report of child abuse or neglect)
  10. Oklahoma (adoptive child no longer resides in adoptive parent’s home and is in a placement such as a therapeutic or family foster care home, with a relative, or in temporary placement outside home)
  11. South Carolina (child is moved from home, either voluntarily or involuntarily, to an out of home placement such as a foster home, therapeutic foster home, residential treatment facility, or home of a friend or relative)
  12. South Dakota
  13. Tennessee
  14. Texas
  15. Vermont (change of address for child)
Adoptive parents required to provide notice of other conditions:
1. Florida (any significant change of circumstances which would relate to our child’s continued need for subsidy)
2. Georgia (change in custodial status of child – 30 day notice)
3. Missouri (legal emancipation, termination of parental rights)
4. South Dakota (Change in child’s needs, change in parents’ circumstances)
5. Tennessee (child enters or exits foster care)
6. Vermont (child is removed from custody of parents for more than 45 days, parental rights have been terminated)

Adoptive parents required to provide notice within a specified amount of time:
1. California (Immediately)
2. Colorado (Immediately)
3. Connecticut (Within 30 days of event)
4. Delaware (Immediately or 7 days if child is no longer residing in home)
5. Florida (Immediately)
6. Georgia (10 business days)
7. Idaho (Immediately)
8. Iowa (Immediately)
9. Minnesota (Within 30 days of change)
10. Missouri (10 days of change)
11. Nebraska (Immediately)
12. Nevada (within 30 days)
13. New Jersey (Immediately)
14. New Mexico (2 weeks of change)
15. North Dakota (Immediately)
16. Ohio (within 15 days of change)
17. Oklahoma (within 2 weeks of event)
18. South Carolina (within 10 working days)
19. South Dakota (within 30 days of event)
20. Tennessee (immediately)
21. Texas (30 days)
22. Vermont (as soon as possible, no later than 30 days)

Requires notice in writing:
1. Alaska
2. Colorado
3. Connecticut
4. Delaware
5. Georgia
6. Hawaii
7. Idaho
8. Iowa
9. Minnesota
10. Missouri
11. Nebraska
12. Nevada
13. New Jersey
14. New Mexico
15. Oklahoma
16. South Carolina
17. Tennessee
18. Texas
19. Vermont

Consequences of Overpayment or Fraud

- Addresses recovering overpayment in contract and/or policies:
  1. California
  2. Georgia
  3. Hawaii
  4. Idaho
  5. Minnesota
  6. Missouri
  7. New Mexico
  8. Oklahoma
  9. South Carolina
 10. Tennessee
 11. Texas

- Does not address recovering overpayment in contract and/or policies:
  1. Alaska
  2. Colorado
  3. Connecticut
  4. Delaware
  5. Florida
  6. Iowa
  7. Nebraska
  8. Nevada
  9. New Jersey
 10. North Dakota
 11. Ohio
 12. South Dakota
 13. Vermont
 14. Wyoming

- Warns of legal action
  1. Florida (There is nothing to prevent court from ordering adoptive parents to contribute toward cost of child’s care in out of home care situation)
  2. Georgia (Overpayment will be collected through mutual agreement. If unsuccessful, Department has authority to pursue other legal remedies)
3. Minnesota (authority to collect overpayment through mutual agreement. If unsuccessful collection, authority to pursue other collection efforts)
4. South Carolina (may institute an action to recover payments wrongfully received)
5. Tennessee
- Warn of criminal consequences in contract and/or policies:
  1. Georgia
  2. Hawaii
  3. Minnesota
  4. New Jersey (failure to notify Child Protection and Permanency of any change in circumstances may result in possible referral to law enforcement)
  5. Oklahoma
  6. Tennessee
- Does not warn of criminal consequences in contract and/or policies:
  1. Alaska
  2. California
  3. Colorado
  4. Connecticut
  5. Delaware
  6. Florida
  7. Idaho
  8. Iowa
  9. Missouri
  10. Nebraska
  11. Nevada
  12. New Mexico
  13. North Dakota
  14. Ohio
  15. South Carolina
  16. South Dakota
  17. Texas
  18. Vermont
  19. Wyoming

**Review**

- There will be a review:
  1. Alaska
  2. Missouri
- Review with timeframe (e.g., annual, biennial, etc.):
  1. California (child's needs reassessed every 2 years)
  2. Colorado (every 3 years)
  3. Connecticut (biennial/every 2 years)
  4. Delaware (annually)
  5. Hawaii (biennially/every 2 years)
  6. Idaho (annually or sooner at request of adoptive parents)
7. Nevada (annually)
8. New Mexico (annual)
9. North Dakota (annually)
10. Ohio (annual)
11. Oklahoma (annually)
12. Tennessee (periodically)
13. Wyoming (annual)

• Review when change in circumstance/when needed only:
  1. Iowa (family may request review of agreement whenever there is a change in family’s circumstances or a change in child’s needs)
  2. Minnesota (Parties to agreement may request modification of agreement, in writing, at any time)
  3. New Jersey (agreement remains in effect unless there is a need for change or child reaches age 18. Adoptive family affirms legal responsibility and financial support of child on receipt of annual notice regarding adoptive family’s legal responsibilities)
  4. Vermont (review shortly before child turns 16. Can be reviewed more often if needs of child or circumstances of parents change)

• Does not mention a review:
  1. Florida
  2. Georgia
  3. Nebraska
  4. South Carolina
  5. South Dakota
  6. Texas

Termination With or Without Parental Consent

• State can unilaterally terminate if “no longer legally responsible” or “no longer providing support”:
  1. Alaska
  2. California
  3. Florida
  4. Georgia (If at any time the adoptive parent does not show financial support of the child, Case Manager shall document lack of financial support and immediately send a letter of termination of adoption assistance which ends Adoption Assistance benefits immediately)
  5. Iowa (If there is sufficient information to recommend terminating subsidy, the case is presented to the adoption supervisors and a consensus decision is reached to terminate or not)
  6. Nebraska
  7. New Jersey
  8. New Mexico
  9. North Dakota
  10. Ohio
  11. Oklahoma
12. South Dakota
13. Tennessee
14. Texas
15. Vermont

- Does not mention parental consent or unilateral termination by State:
  1. Colorado
  2. Connecticut
  3. Delaware
  4. Hawaii
  5. Idaho
  6. Minnesota
  7. Missouri
  8. Nevada
  9. Oklahoma
  10. South Carolina

**Child Residing Out of Home**

- Child in foster or residential care does not automatically suspend/terminate subsidy payment:
  1. Alaska
  2. Florida (Many children who return to foster care have judge ordered child support)
  3. Georgia (Permanency plan is reunification and family’s ongoing legal and financial responsibility for child can be established. Meeting held within 30 days of entering foster care. Parent must show financial support of child. If child is to remain living with individual other than adoptive parents, the adoptive parents must continue to maintain legal (no TPR or voluntary surrenders) and financial support for child. The family must submit monthly documentation showing that a significant portion of the Adoption Assistance is being sent to the other family for the support of the child on a monthly basis)
  4. Iowa (Re-negotiate agreement to suspend or reduce payment to amount necessary to meet child’s needs in foster/residential care such as transportation for parents to participate in therapy sessions)
  5. Nebraska (Can terminate without parental consent only if child re-enters foster care and parents are no longer legally responsible or no longer providing support)
  6. New Jersey (refer family for child support when child enters out-of-home placement due to established or substantiated abuse or neglect finding)
  7. South Carolina (If child is moved to agency funded out of home placement through Adoption Preservation Services, parents agree to return all or part of monthly adoption subsidy payment to agency to assist in paying for child’s placement. Parents can only receive subsidy for child living outside home if they support child and provide documentation of that support)
  8. Texas (When child moves out or leaves home, parents must report change and provide evidence of continued ongoing financial support. If child returns to substitute care, parents continue to receive payments if still providing support for child and parental rights have not been terminated.)
9. Vermont (If child is temporarily not in family’s legal custody, department will negotiate with family to lower subsidy amount pending longer term plan until child returns home)

10. Wyoming (Subsidy cannot be terminated if child enters out of home care if family provides any support to child)

- May suspend
  1. South Dakota (May suspend adoption subsidy if child has been removed from adoptive home due to report of child abuse or neglect, child no longer resides with parents)

- Does not specify
  1. California
  2. Colorado
  3. Connecticut
  4. Delaware
  5. Hawaii
  6. Idaho
  7. Minnesota
  8. Missouri
  9. Nevada
  10. New Mexico
  11. North Dakota
  12. Ohio
  13. Oklahoma
  14. Tennessee

“No Longer Legally Responsible”

- State defines legally responsible:
  1. Connecticut (i.e., military service, emancipation)
  2. Delaware (TPR, emancipated minor, marriage, military enlistment)
  3. Florida (parental rights have been terminated or child becomes an emancipated minor, marries, or enlists in military)
  4. Georgia (parental rights legally terminated)
  5. Idaho (i.e., child married, died, or enlisted in military)
  6. Iowa (i.e., no longer child’s legal guardian, parental rights terminated, emancipated minor, marries, enlists in military)
  7. Nebraska (A parent is considered no longer legally responsible for support of the child when parental rights have been terminated or relinquished, or when the child becomes an emancipated minor, marries, or enlists in the military)
  8. Nevada (A parent is considered no longer legally responsible for the support of a child when their parental rights have been terminated or when the child becomes an emancipated minor, marries, enlists in the military or enters Agency foster care.)
  9. New Jersey (parental rights terminated, or child becomes emancipated minor, marries or enlists in military)
  10. North Dakota (parent whose rights have been terminated by court of law)
11. Ohio (A parent is not legally required to support child if child is emancipated. A child is emancipated if the child is self-supporting by paying for shelter, food, and clothing even though he or she may still reside with the adoptive parent)

12. Oklahoma (parental rights have been terminated or child becomes emancipated minor, marries, or enlists in military)

13. South Carolina (parental rights terminated, child becoming emancipated minor, marrying or enlisting in military)

14. Tennessee (for example: adoptive parent surrender parental right, child has married or gone into military. Considered no longer legally responsible when parental rights have been terminated or when child becomes emancipated minor, marries, or enlists in military)

15. Vermont (No longer have legal custody, terminated parental rights)

16. Wyoming (for example: parental rights have been terminated, child becomes emancipated minor, marries, or enlists in military)

- States that terminate adoption subsidy when “no longer legally responsible” for child, but do not specify what the term means in either the contract, employee manuals, or codified policies. Do not set the standard anywhere on how to ascertain what the termination condition means.
  1. Alaska
  2. California
  3. Colorado
  4. Hawaii
  5. New Mexico
  6. South Dakota
  7. Texas

- Uses term other than “legally responsible”:
  1. Minnesota (parental rights to child are legally terminated or a court accepted parent’s consent to adoption, permanent legal and physical custody or guardianship of child is transferred to another individual, child is determined an emancipated minor through legal action)
  2. Missouri (parent rights have been terminated, child is no longer in the legal custody of parent i.e., legally emancipated, married, or enlistment in military)

“No Longer Providing Support”

10 out of 25 states did not define the termination condition of no longer providing support

7 out of 25 states utilized the ACF Child Welfare Policy Manual language

3 out of 25 states defined support as “financial”

2 states include maintenance of home for child’s return

1 state excludes maintenance of home for child’s return

- State defines providing support:
  1. Delaware (no longer providing any financial support)
2. Florida (“Any support” includes various forms of financial support. I.e., family therapy, tuition clothing, maintenance of special equipment in the home, services for the child's special needs. Parents involved in child’s treatment and anticipate return of child to their home. I.e., visiting child in out of home care, paying child support, maintaining home for child’s return – Mirrors Federal policy/ACF Child Welfare Policy Manual)

3. Idaho (i.e., the child has permanently left the family home)

4. Missouri (Financial. Payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs – Federal policy/ACF Child Welfare Policy Manual)

5. Nebraska (any support is defined as various forms of financial support, such as: (1) Child support payments; (2) Clothing purchases; (3) Incidental items; (4) Transportation, meals, and lodging for visits with the child and/or to participate in family therapy; (5) Expenses for long distance phone calls. Maintenance of the home is not included as support. If the family is providing any of these forms of support but the amount of money spent on them appears to be less than the subsidy amount, the worker must discuss with the family the possibility of reducing the maintenance payment.)

6. Nevada (financial support)

7. New Jersey (Support may include monies for the care of the child, but also costs for services, visitation, etc.)

8. Ohio (An adoptive parent is not supporting the child if adoptive parent is not providing shelter, food, clothing, child support, or any support regardless of the physical location of child)

9. Oklahoma (“Any support” includes various forms of financial support. I.e., family therapy, tuition clothing, maintenance of special equipment in the home, services for the child's special needs. Parents involved in child’s treatment and anticipate return of child to their home. I.e., visiting child in out of home care, paying child support, maintaining home for child’s return – Mirrors Federal policy/ACF Child Welfare Policy Manual)

10. South Carolina (Financial. Payment for out of home placement, family therapy, tuition, clothing, maintenance of special equipment in the home, or services for child’s special needs. – Mirrors Federal policy/ACF Child Welfare Policy Manual)

11. Tennessee (provide no support for child. As long as adoptive parents are providing some form of financial support, adoption subsidy can remain in effect)

12. Vermont (Not contributing any form of support to child. If adoptive parents are involved in treatment, visitation, court and payment of child support or can show receipts for purchasing clothes, special activities, or payments to the custodian of child, Vermont may negotiate a lesser amount of subsidy)

13. Wyoming (Providing support may include clothing, tuition, maintenance of special equipment in home, services for child’s special needs, participation in treatment and gifts to child. – Similar to Federal policy/ACF Child Welfare Policy Manual)

- States that terminate adoption subsidy when “no longer providing support” to child, but do not specify what the term means in either the contract, employee manuals, or codified policies. Do not set the standard anywhere on how to ascertain what the termination condition means.
  1. Alaska
2. California
3. Colorado
4. Connecticut
5. Hawaii
6. Minnesota
7. New Mexico
8. North Dakota
9. South Dakota
10. Texas

- Use term other than “provide (financial) support”
  1. Georgia (Finanically responsible for support. i.e., payments for out-of-home placement, family therapy, tuition, clothing, maintenance of special equipment in home, or services for the child's special needs – Similar to Federal policy/ACF Child Welfare Policy Manual)
  2. Iowa (No longer using maintenance payments to support child. i.e., payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs – Federal policy/ACF Child Welfare Policy Manual)

- Utilizes or Derives Meaning of “Support” From ACF Child Welfare Policy Manual/Federal Policy:
  1. Florida
  2. Georgia
  3. Iowa
  4. Missouri
  5. Oklahoma
  6. South Carolina
  7. Wyoming

Reinvestment of Adoption Incentive Payments/Adoption Bonuses

- Reinvests Adoption Incentive Payments from Federal Government on obtaining more adoption placements (pre-adoptive services):
  1. Alaska
  2. Missouri ($600,000 budgeted for Extreme Recruitment. Adoption Heart Gallery supports adoption efforts, legal costs for termination of parental rights. Fund contracted termination of parental rights attorneys to expedite timely TPR and Adoption. Recruitment media campaign with commercial advertisement and web banner.)
  3. Nevada (Funds are utilized in efforts to increase adoptions, recruit and retain foster/adoptive parents and share information about the importance of children in foster care finding adoptive families. Recruitment services and adoption worker trainings)
  4. North Dakota (support the adoption program, such as providing training for workers and/or adoptive families. Fund specific adoption program projects and to supplement provision of adoption services through contracted adoption service provider)
  5. Oklahoma (Swift Adoption Program reduces number of children awaiting adoptive placement)
  6. South Carolina (Concurrent Planning to increase adoption of children at earliest point in time. Planning Specialists. Seneca Family of Agencies search public records to identify
possible relatives of children in care. Heart Gallery provides enhanced targeted recruitment and family engagement. Heartfelt Calling provided expedited responses to inquiries about adoption. SC Youth Advocate Program for recruitment. Refresher training and technical assistance to Regional Adoption Services Offices. Microfilm adoption records to achieve permanent archiving)
7. Tennessee (Adoption preparation classes, community education, training opportunities)
8. Wyoming (Grants to certified adoption agencies to train staff members on adoption issues. Training for adoption professionals and parents.)

- Reinvests Adoption Incentive Payments on post-adoption services:
  1. Alaska
  2. Minnesota (post-adoption services, peer support group for adoptive families, expand availability of adoption-competent mental health and social service professional, helpline to ensure access to adoption-competent mental health services)
  3. Missouri ($600,000 for Adoption Resource Centers which were developed to create and utilize local and regional partnerships with other agencies providing similar services to maximize the funds available and avoid supplication or gaps in services. The types of services provided have included: Respite Care Resource Development and referral; Support Groups for Adopted Youth; Educational Advocacy Services; Crisis Intervention; Mental Healthy and Behavioral Services, including an Adoption Certificate program for adoption competent mental health professionals. In 2013 the program avoided 326 adoption disruptions. Also funds used to support attendance of foster and adoptive parents at North American Council on Adoption Children Conference.)
  4. Nevada (travel for adoptive placements and post placement supervision specific to interstate placement, especially cases involving privatized delivery of adoption services.)
  5. Tennessee (Support Adoption Services Contract with Harmony Family Center to provide specialized adoption counseling, crisis intervention services, support groups, respite care, relief team building, community education, training opportunities, individualized in-home care with Master’s-level clinicians. Free for families adopting out of foster care)
  6. Wyoming (adoptive parent/child needs, training for adoption professionals and parents, educational post-adoption materials for State Library. Archive adoption files.)

- Reinvests Adoption Incentive Payments on non-adoption related expenses:
  1. Colorado (foster care maintenance payments, child protection case work, other child welfare purposes)
  2. Missouri (guardianship subsidies)
  3. Nebraska (State Patrol-Fingerprinting, Case Review, NFC Contract)
  4. New Mexico (office supplies, professional services contracts, IT supplies, furniture, employee training & education, telecommunications, care & support, promotional items)
  5. South Carolina (Heartfelt Calling provided expedited responses to inquiries about fostering)
  6. Wyoming (foster care program)

- Reinvests Adoption Incentive Payments on Adoption Subsidies:
  1. Colorado
  2. Florida
3. Missouri
4. Wyoming

- States that have not responded/are not responsive/records do not exist:
  1. California
  2. Connecticut
  3. Delaware
  4. Georgia (records do not exist)
  5. Hawaii
  6. Idaho (the funds will be used to provide children and families any service which may be provided under parts B or E of the Social Security Act)
  7. Iowa (records do not exist)
  8. New Jersey (records do not exist)
  9. Ohio
  10. South Dakota
  11. Texas
  12. Vermont (records do not exist)

- States that have not received an adoptive incentive payment in at least a year:
  1. California
  2. Connecticut
  3. Delaware (last in FY 2011)
  4. Georgia
  5. Hawaii (last in FY 2011)
  6. Iowa
  7. Nebraska (last in FY 2010)
  8. New Jersey
  9. New Mexico (last in FY 2011)
  10. Ohio (in over 10 years)
  11. South Dakota (in several years)
  12. Vermont (since 2005)

Termination of Adoption Subsidies Data

- States that do not keep track of how many adoption subsidies are terminated due to parents being “no longer legally responsible” or “no longer providing support”:
  1. Florida
  2. Iowa
  3. Missouri
  4. North Dakota
  5. South Carolina

- States that do keep track of how many adoption subsidies are terminated due to parents being “no longer legally responsible” or “no longer providing support”:
  1. Vermont (From 1/14/14 to 9/12/14, Vermont has closed 109 adoption assistance cases. 4 cases were closed because parent was no longer providing any support. Other cases were closed because the terms of the adoption assistance agreement were met)
2. Wyoming (Terminates less than 3 per year. Provides 60-80 adoption subsidies per year)

- States that have not responded/not responsive:
  1. Alaska
  2. California
  3. Colorado
  4. Connecticut
  5. Delaware
  6. Georgia
  7. Hawaii
  8. Idaho
  9. Minnesota
  10. Nebraska
  11. Nevada
  12. New Jersey
  13. New Mexico
  14. Ohio
  15. Oklahoma
  16. South Dakota
  17. Tennessee
  18. Texas
A few weeks ago, we published a theory on how to track failed adoptions. It is something that no state currently does, and all states may have to do soon if certain federal legislation ever gains a presidential signature.

The theory is that if you could tally up the number of adoption subsidies that ended before a child reached 18, you could pinpoint most of the failed adoptions. There are only three reasons why a subsidy would be cancelled:

1. The child reached the age that the state cuts off adoption assistance (always 18 or over)
2. The adoptive parent is no longer legally responsible for the youth, and has had parental rights terminated.
3. It is proven that the adoptive parent is providing absolutely no support to the youth.

Our theory is that knowing the number of subsidies ended for reason number two would reveal the vast majority of adoptions that formally failed. Of course, the theory would only work if a city, county or state was in fact cutting off subsidies for that subsidy cut-offs

Two very smart readers contacted us to say that, at least in New York City, this is not the case. In fact, subsidy cut-offs might barely occur at all, exposing another potential blind spot in the child welfare process.

Dawn Post and Sarah McCarthy are attorneys with the Children’s Law Center of New York City, where 98 percent of adopted foster youth are followed by subsidies, which are paid in partnership with the federal government.

The two oversee the center’s Broken Adoptions Project, through which they represent young people who are no longer in the home of their adoptive parent and who never plan to return.

From an e-mail exchange with Post and McCarthy:

“Mr. Kelly proposes that disrupted adoptions be tracked by counting the number adoption subsidies that are cut off after a parent is no longer legally responsible for the youth and has had his or her parental rights terminated. This is a good idea in theory that, in practice, would dramatically undercount the number of failed adoptions.

For his proposition to work, the agencies that administer the subsidy...would need to actually enforce that the subsidy was being used for the child’s care, and move to terminate the rights of
adoptive parents who have put the child back in foster care and are not planning for the child’s return.

In practice, the circumstances under which adoptive parents had their parental rights terminated is rare and has, to our knowledge, only happened a few times in New York City. For further context around this issue, see this article.

The problem, they explain, is that there are plenty of adoptive parents who should have their rights terminated:

“Without exception, the broken adoption clients seen by the Project have known that their adoptive parent was receiving money for their support. Many of these young people have expressed a profound sense of outrage that an adult who no longer provides their care continues to receive government funds for their support.”

Post and McCarthy say they have represented “more than 80” children in this situation through the project, “all of whom were confused and dismayed to find that a person who no longer supported them would be receiving funds from the state government for their care.”

The only way for a youth to gain access to that money is to sue the former adoptive parent for child support. “Child Support Magistrates in New York City have been taking note of this problem, and have begun using child support orders to ensure that the money goes to the child or the child’s actual caretaker,” the two lawyers note.

The concern over fraudulent or erroneous continuation of subsidies may not be unique to New York City. The American Bar Association’s Litigation Section voiced concern in a 2012 brief that subsidies were unchecked for fraud.

While some states conduct routine reviews of subsidy recipients, the only federal requirement is that recipients self-report if they no longer support the adopted child. From the ABA:

“While knowingly accepting government benefits to which one is not entitled is, of course, a crime, many other federal-benefit programs do not rely on recipients’ honesty, combined with the threat of criminal prosecution, to ensure that people stop receiving the benefits when they become ineligible.”
The adoption subsidy system in New York State is subject to abuse by adoptive parents who no longer have adopted children in their care. This regular and visible abuse of the system is particularly concerning given the well-publicized case of Judith Leekin. In 2007, Leekin was charged in Florida for abuse and maltreatment of her eleven adopted children, all of whom she adopted in New York City. In addition to the abuse allegations, Leekin was charged in federal court for fraudulently obtaining adoption subsidies received from New York. Because the children adopted by Leekin all suffered from some physical or mental disability, she was eligible for and received elevated adoption subsidies for the care and maintenance of each child. In total, Leekin received approximately $1.68 million in adoption subsidies from the New York State Office of Children and Family Services (NYS OCFS).

Following this alarming case, stricter standards to monitor children who continue to live with the adoptive parents and to ensure that they are being properly cared have not been enacted. This is alarming because of the financial abuse which results in cases where these children are placed back into foster care. Placement can result from a voluntary placement, delinquency, PINS or abuse and neglect case. In these circumstances, adoptive parents continue to receive the adoption subsidy even though the child is no longer in the physical care of, or receiving support from, the adoptive parent, and the permanency plan is one other than return to the adoptive parent.

Prior to the adoption finalization adoptive parents sign an adoption subsidy and non-recurring expenses agreement. This agreement states that the subsidy payments will continue to be paid to the adoptive parent until the child’s twenty-first birthday provided that they support the child. The importance of the adoption subsidy is highlighted in the legislative intent of the law which created it. That is, to promote permanency and eliminate, if not substantially reduce, the number of hard to place children in long term foster care situations. Certainly, the legislature did not intend that the adoptive parents continue to receive subsidies for the care of these hard to place children when the children are returned to long-term foster care situations (precisely the situation that the subsidy was intended to avoid). However, because the adoptive parent continues to receive the adoption subsidy until the child’s twenty-first birthday, even if the adolescent is returned to foster care, there is no incentive for the adoptive parent to work on services to keep the child or, following placement, to plan for their return. As a result, a number of adolescents placed remain in care indefinitely.
It seems that the state only ends an adoption subsidy if an adoptive relationship is formally dissolved. While conceivably the city or state could sue the adoptive parent for child support, it is virtually unheard of. Because of its limited nature, the family court cannot vacate the adoption subsidy. As a result, unless the adoptive parent voluntarily stops accepting payments or turns over the adoption subsidy to the agency or to a new caretaker, the adolescent’s care is, in effect, paid for twice by taxpayers.

Ultimately, it is the adoptive parent’s responsibility to update the agency yearly regarding the child’s educational status. However, there is no affirmative obligation placed upon the agency to track the progress of the family. The agreement essentially assumes that the adoptive parent is going to be forthcoming about the parent’s relationship with and care of the child. Although it is possible that the failure to provide the educational status update would alert officials to investigate an adoptive child’s situation, it is unclear what would happen as a result and how that would occur. Additionally, the state is not required to verify educational documents submitted, thereby allowing individuals such as Leekin to submit fraudulent documents falsifying the children’s school records to receive monetary support without actually providing for the adopted children.

The indictment against Leekin by federal authorities seemed to make clear that had the state been aware of Leekin’s treatment of the children, as well as her abandonment of one of the children in particular, it would have ceased providing her with the adoption subsidy. A civil lawsuit filed against the city in 2009 on behalf of ten of the children (the eleventh disappeared while in Leekin’s care and is presumed dead) because of the city’s failure to effectively monitor the children and Leekin was recently settled for $9.7 million.

However, almost six years after Leekin’s scam was uncovered, this issue should have been addressed and better safeguards put in place to monitor children who have been adopted and the subsidies that are attached to them. This is not to say that there are not a lot of fabulous adoptive parents who remain committed and available no matter what the circumstance. Surely they would not be opposed to the state imposing stricter standards requiring agencies to follow up on adoptive parents to ensure that children continue to live with the adoptive parent they were placed with. In addition, NYS OCFS and NYC Children’s Services should create administrative procedures to suspend the adoption subsidy when children are placed back into care.

While state authorities may feel hamstrung by federal regulations to terminate the adoption subsidy, in the alternative, they should pursue collecting child support on behalf of the child that is no longer in the care of the adoptive parent receiving the subsidy.