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Administrative Directive

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To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Child Welfare and Community Services
Date:	October 24, 2019
Subject:	Changes in Adoption Subsidy: Medicaid under Provisions of COBRA, Subsidy Eligibility, and the Review and Approval of the Subsidy Agreement
Suggested Distribution:	Child Welfare Executive Directors and Supervisory Staff Directors of Social Services Child Welfare Supervisors and Adoption Supervisors Foster Care Supervisors Directors of Medicaid
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Attachments:	Adoption Subsidy and Non-Recurring Expenses forms (available online only – links supplied below)
Attachments Available Online	OCFS Intranet: http://ocfs.state.nyenet/admin/forms/adoption OCFS Internet: http://www.ocfs.state.ny.us/main/forms/adoption

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
01-OCFS-INF-03 06-OCFS-ADM-07 09-OCFS-ADM-11 10-OCFS-ADM-10 10-OCFS-ADM-11 14-OCFS-ADM-03 18-OCFS-ADM-07	87 ADM-22 OCFS ADM-02	18 NYCRR 360-3.3(a)(6), 421.24 427.6; 441.22	SSL 450-458	Eligibility Manual for Child Welfare Programs (rev 2018)	P.L. 96-272 42U.S.C. 673

Purpose

The purpose of this directive is to inform social services districts and voluntary authorized agencies of changes to New York State adoption subsidy policy. Those changes include:

A. Provision of Medicaid to Adoption Subsidy Eligible Children

This release clarifies state policy regarding non-Title IV-E subsidy eligible children who may qualify for Medicaid under the provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985. The categories of eligible children include children with special needs who meet the state's definition of hard-to-place and children who lose Title IV-E eligibility following adoption and otherwise meet the eligibility requirements for Medicaid under the provisions of COBRA.

B. Changes That Impact Subsidy Eligibility and the Subsidy Approval Process

This release implements the provisions of Chapter 469 of the Laws of 2007 that in certain situations allow adoption subsidy for a child freed for adoption subsequent to his or her 18th birthday; and for adoption subsidy to continue to the guardian or custodian of an adopted child whose parent(s) die prior to the child's 18th birthday. Also addressed in this release are the provisions of Chapter 518 of the Laws of 2006 that provide for the continuation of adoption subsidy payments for an adopted child between the ages of 18 to 21 to a legal guardian, or the adopted child, or to a representative payee, if the adopted parent(s) die after the child's 18th birthday. Although the provisions of Chapter 518 of the Laws of 2006 were previously presented in 06-OCFS-ADM-07, *2006 State Adoption, Termination of Parental Rights and Surrender Legislation*, the procedures needed to fully implement the statutory provisions are presented in this release.

This release implements changes that streamline the adoption subsidy approval process, including: a reduction in the documentation to be submitted with an initial application for an adoption subsidy agreement for a handicapped adoption subsidy; the expansion of the category of professionals from whom documentation can be accepted; the provision of a standard for "presumptive eligibility" for a handicapped adoption subsidy; and a clarification of the manner in which the twelve-month time frame is calculated for the hard-to-place adoption subsidy category. Also, the criteria for applying for a post-finalization amendment to an approved adoption subsidy agreement is revised to allow for a modification to any section of the adoption subsidy agreement due to a change in the child's condition, a change in the parent's personal situation, the need to correct an error made on the approved adoption subsidy agreement, and the need to implement state statutory changes that impact subsidy eligibility.

C. Adoption Subsidy Forms

New adoption subsidy agreement forms are being implemented with this release. Where applicable, the changes described in this release are reflected in the forms.

Note: Due to the number of changes presented in this release, a table of contents has been provided to aid in locating a particular topic.

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Background and Required Action

A. Medicaid Under the Provisions of COBRA to Children Eligible for State Adoption Subsidy

1. Background

Administrative Directive 87-ADM 22, *Implementation of the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985* (P.L. 99-272/COBRA), extended Medicaid under the provisions of COBRA to certain non-Title IV-E eligible children who are eligible for state adoption subsidy. Children eligible for COBRA were identified as children with special medical and rehabilitative needs, which make placement for adoption without Medicaid difficult. At that time, only those children who met the state's adoption subsidy definition of handicapped were deemed eligible for Medicaid under the provisions of COBRA.

Recent statewide efforts to increase permanency for foster children through adoption identified the lack of medical benefits for children who are hard-to-place and non-Title IV-E eligible as a barrier to the timely adoption of these children. Prospective adoptive parents have indicated their reluctance to adopt a child who has been in foster care without the availability of medical assistance for the child. Additionally, current literature on adoption indicates that adoptees with special needs will require some form of medical or rehabilitative care, particularly those children who have experienced extended periods in foster care.

In New York State, a small number of non-Title IV-E eligible children who are eligible for state adoption subsidy and not otherwise eligible for Medicaid qualify for State Medical Subsidy. This program provides for reimbursement for the costs of such care, services, and supplies as may be authorized under the state's Medicaid Program, after any third-party health insurance has been billed. However, the State Medical Subsidy program predates Medicaid and the concept of Health Maintenance Organizations (HMOs). Therefore, it does not include a medical insurance card, nor does it include providers similar to those provided by Medicaid or other third-party health insurance companies. The State Medical Subsidy program requires adoptive parents to pay for medical services for the adopted child and to submit receipts to the social services district for reimbursement. Furthermore, for a child to be eligible for State Medical Subsidy, he or she must meet the state's definition of a hard-to-place child and must be adopted by a person 62 years old or older or who is subject to mandatory retirement from his or her present employment within five years of the adoptive placement. Few adoptive parents fall into this category.

The New York State Office of Children and Family Services (OCFS) conducted further research on the changes in the federal Social Security Act as a result of the provisions of COBRA to ascertain whether children with special needs who meet the state's definition of hard-to-place are eligible for Medicaid under the COBRA provisions. Section 1902 (a) (10) (A) (ii) (III) of the Social Security Act and the federal regulations set forth in 42 CFR Part 435, Subpart C, allow a state to provide for "Optional Coverage of Categorically Needy Groups." Included in these groups are children under the age of 21 who have state adoption subsidy agreements (**other than an adoption subsidy agreement under Title IV-E**), and (1) it has been determined that the child cannot be placed with adoptive parents without Medicaid because the child has special needs for medical or rehabilitative care; and (2) the child was either eligible for Medicaid under the Medicaid

State Plan before the approval of the adoption subsidy agreement or would have been eligible for Medicaid before approval of the adoption subsidy agreement if the standards of the Title IV-E foster care program were used with the exception of the Title IV-A eligibility requirements. The State of New York has concluded that children who meet the definition of hard-to-place are children with non-medical special needs and, therefore, can be categorized as children with rehabilitative needs. The research of other states indicates that a number of states use the provisions cited above to provide Medicaid to non-Title IV-E eligible, non-handicapped state subsidy eligible children (children who would meet New York State's definition of hard-to-place) and classify these children as having rehabilitative needs.

Additionally, as a recent associate member of the Interstate Compact on Adoption and Medical Assistance (ICAMA), New York State (OCFS in collaboration with the New York State Department of Health [DOH]) has agreed to provide Medicaid, including Medicaid under the provisions of COBRA, to children moving into this state who have either a Title IV-E or a non-Title IV-E adoption subsidy agreement from another state (08-OCFS-INF-06). Included in this group of children are children who are hard-to-place due to rehabilitative need and are eligible under their state's adoption subsidy agreement for Medicaid under the provision of COBRA. As a result, NYS will provide Medicaid to hard-to-place children from other states with an eligibility status similar to the group of NYS children for whom Medicaid under the provision of COBRA is being requested.

As a result of this review, OCFS is providing clarification of its previous interpretation of the COBRA provisions. Children with special needs who are approved for state adoption subsidy because they meet the state's definition of hard-to-place as defined in 18 NYCRR 421.24(a)(3), and who were either (1) eligible for Medicaid under the state plan before the adoption agreement was entered into; or (2) would have been eligible for Medicaid before the adoption agreement was entered into, if the eligibility standards and methodologies of the Title IV-E foster care program were used without employing Title IV-A eligibility determination, qualify for Medicaid under the provisions of COBRA. Also, children who are handicapped or hard-to-place and who lose Title IV-E eligibility following adoption and who are eligible for state adoption subsidy, and children who become eligible for a state adoption subsidy following adoption, are to be evaluated for eligibility for Medicaid under the provisions of COBRA.

2. Required Action

Based on the effective date of this release, social services districts and voluntary authorized agencies must begin to use the policy as clarified by this release to identify those children eligible for state adoption subsidy who may be eligible to receive Medicaid under the provisions of COBRA. As previously stated, in addition to being eligible for state adoption subsidy, in order to qualify for Medicaid under the provisions of COBRA, a child must have been in receipt of Medicaid in the three months prior to the adoption subsidy agreement being signed, or would have been eligible for Medicaid during that period of time [see 18 NYCRR 360-3.3(a) (6)]. Virtually all children **in foster care**, with the exception of non-qualified immigrant children, will meet these criteria, as they have categorical eligibility for Medicaid as foster children.

Important Note: In a release from New York State Department of Health (GIS 05 MA/041 *Categorical Eligibility for Children in Foster Care*, 10/27/05), all social services districts were

informed that both Title IV-E and non-Title IV-E eligible foster children who are in the care and custody or the guardianship and custody of the social services commissioner, and are citizens or have satisfactory immigration status, are categorically eligible for Medicaid. The change was effective the date of the release retroactive to January 1, 2005. This means that all non-Title IV-E state subsidy eligible foster children in the care and custody or the guardianship and custody of the social services commissioner in the three months prior to the signing of the adoption subsidy agreement meet the COBRA eligibility requirement for Medicaid. Categorical eligibility for Medicaid **does not** apply to children who are eligible for state adoption subsidy and whose custody and guardianship are committed either to a certified or approved foster parent, or to a voluntary authorized agency. Also, for a foster child who was not previously eligible for Medicaid either under Title IV-E or the provisions of COBRA, this provision **is not** applicable where an amendment is being made to an adoption subsidy agreement that was executed before the effective date of the Medicaid State Plan Amendment, since categorical eligibility for Medicaid did not apply at the time the child was in foster care.

The specific subsidy cases impacted by the state's clarification of availability of Medicaid under the provisions of COBRA are described below.

State Adoption Subsidy Cases

Pre-Finalization Cases

These are cases in which the initial *Adoption Subsidy and Non-Recurring Expenses Agreement – Initial Application* (LDSS-4623A) is submitted and approved for a non-Title IV-E eligible hard-to-place adoption subsidy prior to the finalization of the adoption. These are children who are considered hard-to-place based on OCFS regulation 18 NYCRR 421.24 (a) (3).

Post-Finalization Cases

These are cases in which the initial adoption subsidy application is approved for a non-Title IV-E eligible handicapped or hard-to-place adoption subsidy following finalization of the adoption, or cases where, subsequent to the adoption, a child loses eligibility for Title IV-E Adoption Assistance. They include:

- *Pre-existing condition*: These are cases covered only by the provisions in state statute that make adoption subsidy available to a child where 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 existed prior to the child's adoption. These children are ineligible for Title IV-E Adoption Assistance. They are children who meet the state's definition of a handicapped child (18 NYCRR 421.24 (a) (2)) and also satisfy the standards set forth in 18 NYCRR 421.24 (b) (2) (i) (a) (1-3).
- *Loss of Title IV-E*: These are cases where (a) a handicapped child loses eligibility for Title IV-E Adoption Assistance and Medicaid at age 18, or where Title IV-E eligibility ends for a hard-to-place child at age 18; or (b) where a handicapped or hard-to-place child loses Title IV-E Adoption Assistance upon the death of the adoptive parent(s). Under the provisions of section 453 of the Social Services Law and OCFS regulation 18 NYCRR 421.24 (c) (18), these children are eligible for state maintenance subsidy until the age of 21.

Medicaid Eligibility Standards Under COBRA Provisions

State regulation 18 NYCRR 360-3.3 (a)(6) sets forth the standards to be used by social services districts and voluntary authorized agencies to determine whether a child who is ineligible for Title IV-E Adoption Assistance is eligible for Medicaid under the provisions of COBRA, as long as the child meets the citizenship or appropriate immigration status requirements for Medicaid:

- *The child must be approved for a non-Title IV-E (state-funded) adoption subsidy. This means that an adoption subsidy agreement has been executed on behalf of the child. The child must be under the age of 21 and his/her guardianship and custody must have been committed to a social services official, or a voluntary authorized agency, or to a certified or approved foster parent. Prior to the filing of the adoption petition, it has been determined that the child is ineligible for Title IV-E Adoption Assistance but eligible for state adoption subsidy. Exception: an application for state adoption subsidy may be made for a child following finalization of the adoption for a pre-existing condition unknown to the adoptive parent(s) prior to the adoption and a physician certifies that the child's handicap condition existed prior to the adoption.*

AND

- *A determination has been made that the child has a special need for medical or rehabilitative care and the child cannot be placed with adoptive parents without medical assistance. A child who meets the state's definitions of handicapped or hard-to-place for purposes of adoption subsidy is considered to have medical and rehabilitative needs in accordance with the federal Medicaid eligibility criteria for COBRA.*

AND

- *The child was in receipt of Medicaid in the three-month period prior to the adoption subsidy agreement being signed, or would have been eligible for Medicaid during that period of time based on the Title IV-E post-eligibility financial requirements or ADC standards and methodologies. For these cases, only the child's income and resources are used to determine eligibility for Medicaid. Unlike determining initial eligibility for Title IV-E foster care recipients, only financial determinations apply. Therefore, the child does not have to be deprived of parental support and care, as the income and resources of adoptive parents are not considered.*

Social services districts must refer to the Medicaid Unit those adopted children who are deemed eligible for Medicaid under the COBRA provisions. Medicaid should be authorized for these children following current procedures.

Documentation of Eligibility for State Subsidy

Social Services Districts

Social services districts must use the *Adoption Assistance Eligibility Checklist* (LDSS-3912, rev. 7/18) to determine and document a child's eligibility for either Title IV-E Adoption Assistance or State Adoption Subsidy. See Chapter IB and Appendix A of the *Eligibility Manual for Child Welfare Programs* (rev. 2018) for instructions on completing the checklist. Only if it is shown that the child failed to meet all of the requirements under Section II, Adoption Assistance Eligibility, and he/she

meets the requirements under Section III, State Adoption Subsidy, can the child be considered for Medicaid under the COBRA provisions.

The *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement - Initial Application* (LDSS-4623A) must be completed. In Section IV, Eligibility for Federal Adoption Assistance, the second box must be checked to indicate that the child is ineligible for Title IV-E Adoption Assistance. In Section V, Medical Assistance/Medical Subsidy, the appropriate box must also be checked to indicate that the child will receive Medicaid under the COBRA provisions. In the case of a post-finalization pre-existing condition, an *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement - Post-Finalization Request* (LDSS 4623B) must be completed for the child.

Voluntary Authorized Agencies

Voluntary authorized agencies must complete the *Adoption Assistance Eligibility Checklist* (LDSS 3912-A, rev. 3/02). Based on the responses to the checklist, the *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement - Initial Application* (LDSS-4623A) must be completed for the child.

The voluntary authorized agency should apply to the social services district where its principal office is located, for Medicaid on behalf of a child as soon as the child is placed in the agency's care. If the child is eligible for Medicaid, this may help to qualify the child for Medicaid under the provisions of COBRA, which specifies that the child be in receipt of or eligible for Medicaid in the three months prior to the adoption subsidy agreement being signed. To document that a child was in receipt of Medicaid in the three-month period prior to the adoption subsidy agreement being approved, the voluntary authorized agency should apply for Medicaid on behalf of the child as a family of one, as soon as the child is placed in the agency's care. For a handicapped child, the agency must submit an application to the Social Security Administration (SSA) to determine if the child is eligible for Supplemental Security Income (SSI) and, therefore, eligible for Title IV-E Adoption Assistance. If the child for whom the SSI application is being made were to be determined ineligible for SSI but eligible for Medicaid, eligibility for Medicaid would have been established in the requisite three-month period before the adoption subsidy agreement was approved. The final determination on whether the child satisfies the eligibility standards for the Title IV-E adoption assistance program will be made by OCFS.

Provision of Medicaid

A child who meets the eligibility standards for Medicaid under the COBRA provisions must be approved for Medicaid as part of the adoption subsidy agreement. Section V of the adoption subsidy agreement specifies the condition(s) that makes the child eligible for Medicaid under the provisions of COBRA and when Medicaid will begin. Medicaid under the provisions of COBRA extends to age 21, unless the adoption subsidy payments are terminated. For a child in the guardianship and custody of a voluntary authorized agency, the appropriate social services district must authorize Medicaid for the child. Additionally, upon the death of the adoptive parent(s), where maintenance subsidy payments are continued on behalf of the child, the social services district or OCFS must continue or authorize Medicaid under the provisions of COBRA.

Medicaid for NYS Subsidy Eligible Children Who Move to Another State - If an adoptive family decides to move to another state and their adopted child receives Medicaid under the COBRA provisions in New York State, the adoptive parents should check with the state to which they are moving to find out if Medicaid can be provided to the adopted child. Not all states will approve Medicaid for children who receive a state adoption subsidy and move into their state. However, with New York State's membership in ICAMA, there is an increased opportunity for reciprocity in the provision of Medicaid to New York State children who move to another state that is also a member of ICAMA. The purpose of ICAMA is to protect the medical benefits of special needs children with adoption subsidy agreements who move from one state to another. If the family is unable to obtain medical services utilizing New York State Medicaid, the county of origin or the county that authorized Medicaid under the provisions of COBRA for the child must provide the child with State Medical Subsidy, if the child is otherwise eligible (see *Eligibility Manual for Child Welfare Programs*, Chapter One, Part B for a detailed chart on cross-jurisdictional Medicaid responsibility).

Medicaid for Subsidy Eligible Children who move into NYS from Other States - As a member of ICAMA, New York State has agreed to provide Medicaid to children from other states with valid state adoption subsidy agreements that are eligible for either Title IV-E Adoption Assistance or state adoption subsidy. OCFS, in collaboration with DOH, has provided a release (08 OCFS-INF-06) that outlines the policy and procedures by which social services districts must provide Medicaid to out-of-state subsidy eligible children.

Recertification

There is no financial re-determination of the adopted child's Medicaid eligibility. Once the child is determined to be eligible for COBRA, the child continues to be eligible for Medicaid under the provisions of COBRA as long as he/she continues to receive adoption subsidy. However, the social services district must determine, on an annual basis, that the parents continue to be legally responsible for the support of the child and are providing such support. If the district determines that the parents are no longer legally responsible for the support of the child or providing any support to the child, the social services district must discontinue adoption subsidy. Since Medicaid under the COBRA provisions is based on eligibility for state adoption subsidy, when such subsidy ceases, the social services district must notify the Medicaid Unit that the child is no longer eligible for Medicaid under the COBRA provisions. As is current policy, a separate Medicaid eligibility determination must be done based on the child's new circumstances.

Children Ineligible for Medicaid Under COBRA Provisions - Determination of Eligibility for State Medical Subsidy

Where there is a determination that a child in either the guardianship and custody of a social services district or voluntary authorized agency is eligible for maintenance subsidy but is ineligible for Medicaid under the COBRA provisions, the social services district or voluntary authorized agency must determine if the child is eligible for State Medical Subsidy based on the following standards:

State Medical Subsidy Eligibility:

- *Handicapped*: Is a handicapped child as defined in 18 NYCRR 421.24(a) (2), and he/she is *ineligible* for Medicaid under the COBRA provisions.
- *Hard-to-place*: Is a hard-to-place child as defined in 18 NYCRR 421.23(a)(3), and he/she is *ineligible* for Medicaid under the COBRA provisions, and the child is being adopted by a parent age 62 or over or within five years of mandatory retirement from his or her present employment.

Note: The social services district should recommend to the adoptive parents of a hard-to-place child who is ineligible for either Medicaid or State Medical Subsidy that they inquire of their local department of social services about applying for Medicaid as a family so that there is the possibility of receiving Medicaid for the adoptive child through the family's eligibility. An adoptive family can apply for Child Health Plus B for the child who is ineligible for Medicaid, even if he/she does receive a Medical Subsidy. Medical Subsidy is not considered to be third-party health insurance.

Medical Subsidy Payments

The appropriate social services district (the district responsible for the adoption subsidy payments) must pay for the costs of medical care, services and supplies provided to a child eligible for State Medical Subsidy.

- These payments are available to the child until the child reaches the age of 21, if the adoptive parents continue to be responsible for and provide any support for the child.
- These payments are limited to the same costs of care, services and supplies as authorized under the state's Medicaid program for which the child or adoptive parents will not receive payment or reimbursement from insurance, medical assistance or any other third-party source.
- The social services district must make such payments either directly to a provider or as reimbursement to the adoptive parents for out-of-pocket payments for medical services for the adopted child not covered by third-party insurance or any other source. Providers do not have to be enrolled in the Medicaid program.

Note: Section V of the revised *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement* indicates the availability of State Medical Subsidy for those children who are ineligible for Medicaid under the COBRA provisions.

B. Changes That Impact Adoption Subsidy Eligibility and Approval Process**1. Background**

Prior to 2006, advocates for the adoption of older foster care youth indicated that there were inequities in the state's adoption subsidy laws that impacted either initial eligibility or continuation of adoption subsidy for youth between the ages of 18 and 21. State law and regulations failed to include provisions for adoption subsidy eligibility for a youth not freed for adoption prior to the age of 18. The legal definition of a child eligible for adoption subsidy applied only to a child freed for adoption prior to his or her 18th birthday. Therefore, while a youth freed for adoption prior to the age of 18 was considered eligible to receive adoption subsidy until the age of 21, a similar youth

freed for adoption after his or her 18th birthday was considered ineligible for adoption subsidy. Additionally, for the child adopted prior to the age of 18 and receiving adoption subsidy, in the event of the death of the adoptive parents, adoption subsidy payments would continue to a court appointed legal guardian. However, in the event of the death of the adoptive parent(s) of a non-handicapped youth between the age of 18 and 21 receiving an adoption subsidy, the state courts lacked the authority to appoint a legal guardian for the youth. As a result, not only did the youth suffer the loss of his or her adoptive parent(s), but also the loss of adoption subsidy.

Chapter 518 of the Laws of 2006 as implemented by 06-OCFS-ADM-07 provides for adoption subsidy to continue for an adoptee between the ages of 18 and 21 if the adoptive parents die after the child's 18th birthday. Payment is to continue to a legal guardian, or an adopted youth where the social services district has determined that the child "demonstrates the ability to manage such direct payments," or to a representative payee designated by the social services district. [The social services district may not select to continue adoption subsidy payments to a child's biological parent whose rights were terminated or who executed a surrender.](#)

Chapter 469 of the Laws of 2007 provides for the approval of an adoption subsidy on behalf of a child who is freed for adoption subsequent to his or her 18th birthday when a termination of parental rights proceeding was properly commenced before the child's 18th birthday. In addition, the chapter provides for the continuation of adoption subsidy payments to the legal custodian of a child under the age of 18 upon the death of the child's adoptive parent(s). Retroactive adoption subsidy payments from the death of the child's adoptive parent(s) are to be provided to the legal guardian or custodian if he or she cared for the child prior to the issuance of the letters of guardianship or the order granting custody.

OCFS is also implementing several changes recommended by an in-house subsidy committee established as part of the Adopt Now Workgroup to expedite and streamline the adoption subsidy approval process. These changes will complement and re-enforce OCFS's policy to limit required documentation for subsidy applications where there is no recent change in a child's condition and the adoption subsidy maintenance rate requested is the same as the foster care board rate that is being paid on behalf of the child.

The changes include a reduction in the type and amount of medical and psychological documentation that must be submitted with an application for a handicapped adoption subsidy. Also, after review and evaluation of other disciplines' procedures for assessing or diagnosing a child's physical, mental and emotional condition, and the qualifications of the staff responsible for such assessments, OCFS has modified its policy regarding professionals from whom documentation for adoption subsidy can be accepted. For conditions where OCFS regulations do not specify that a diagnosis must be from a physician, psychiatrist or psychologist, the OCFS Bureau of Permanency will accept an assessment of a child's handicap from a "qualified professional" from selected disciplines whose definitions of a handicapped child comply with the minimum standard established by OCFS regulations. Also, to determine eligibility for a handicapped subsidy, a standard has been established for "presumptive eligibility." This standard applies to conditions that have been previously diagnosed as permanent or long-term, or for which

no current cure is available and would not require current documentation to meet the requirements for a handicapped subsidy.

OCFS, in certain circumstances (as specified later in this release), has revised the manner in which the twelve-month time frame for the hard-to-place adoption subsidy category of emotional attachment is calculated. For those circumstances, the time in placement with the same foster-adoptive parent(s) does not have to be consecutive months but can equal a total of twelve months prior to the signing of the *Adoptive Placement Agreement* (LDSS-0570).

The criteria and procedures for the provision of a post-finalization amendment to an approved adoption subsidy agreement have been revised. The revisions will allow a district to modify a fully executed agreement based on documented changes in the child's condition, changes in the parent(s)' personal circumstances, fair hearing decisions, and changes in federal and state statute that impact eligibility, as well as provide a means for the correction of an error made on the *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement - Initial Application* (LDSS-4623A).

2. Required Action

Change in the Definition of a Child for the Purpose of Adoption Subsidy Eligibility for Youth Between the Ages of 18 and 21

A social services district must provide adoption subsidy payments on behalf of a child under the age of 21 and freed for adoption after his or her 18th birthday where

- the petition to free the child was filed prior to the child's 18th birthday, and
- an order granting guardianship and custody of the child was issued to a social services district, voluntary authorized agency or foster parent, and
- the child consented to the transfer of guardianship and custody to the social services district, voluntary authorized agency or foster parent subsequent to the child's 18th birthday.

Continuation of Adoption Subsidy Payments Upon the Death of the Adoptive Parent(s)

The appropriate social services district must continue adoption subsidy payments on behalf of an adopted child upon the death of the adoptive parent(s) (sole or surviving adoptive parent or both adoptive parents). [The social services district may not select to continue adoption subsidy payments to a child's biological parent whose rights were terminated or who executed a surrender.](#) Selection of a payee is based on the following criteria:

Child in receipt of adoption subsidy is under the age of 18 when his or her adoptive parent(s) dies:

- Adoption subsidy must continue to either a legal guardian or a legal custodian on behalf of the adopted child, upon the issuance of a letter of guardianship or an order of custody, until the child's 21st birthday.

- If the legal guardian or legal custodian was the caretaker of the adopted child prior to the issuance of the letters of guardianship or the court order granting custody, the adoption subsidy payments must be made retroactively from the time of the death of the adoptive parent(s).

Child in receipt of adoption subsidy is over the age of 18 but under the age of 21 when his or her adoptive parent(s) dies.

Upon notification of the death of the adoptive parent(s) who was receiving adoption subsidy payments on behalf of the child who is over the age of 18, the social services district responsible for the adoption subsidy payment must notify the child of the procedures for continuing adoption subsidy and the child's right to be involved in the process. The process for continued payments includes the following:

- *Payments to a legal guardian*, preferably a relative or another adult who has a relationship with the child, is willing to take on the responsibility for child, and the child consents to his or her appointment. The social services district may not select to continue adoption subsidy payments to a child's biological parent whose rights were terminated or who executed a surrender.
- *Payments to the child*, if there is no person to serve as guardian or the child does not consent to the appointment of a guardian, and the social services district determines that the child "demonstrates the ability to manage such direct payments."
- *Payment to representative payee*, if the social services district determines that the child does not demonstrate the ability to manage direct subsidy payments. The social services district must certify the adoption subsidy payments to the representative payee with instructions that the payments must be used strictly for the adopted child.

Designation of the Representative Payee: The social services district responsible for the adoption subsidy payments may not select as payee a child's biological parent whose rights were terminated or who executed a surrender. The social services district may select:

An employee of the social services district who will be responsible for receipt of the adoption subsidy payments, and the social services district must make a determination that there is no conflict of interest with the employee performing the duties and obligations as a representative payee.

The social services district where the child resides, if different from the social services district responsible for the provision of adoption subsidy. *Such district may designate one of its employees* as the representative payee to receive the adoption subsidy on behalf of the child, if such district determines that the employee has no conflict of interest in performing the duties and obligations of a payee.

A voluntary authorized agency with a prior history with the child, where the social services district does not have sufficient or appropriate staff to function as a payee, and it is determined that designation of the agency as the payee is in the best interest of the child.

An individual other than an employee of the social services districts with either responsibility for the adoption subsidy payments or where the child resides. The social services district with responsibility for adoption subsidy payments for the child may not select as payee a child's biological parent whose rights were terminated or who executed a surrender. The social services district must use the following criteria in the selection of an individual as a representative payee:

- Consult with the child and give his or her preferences significant weight only where it will not conflict with the best interest of the child. Note: The child may appeal the refusal of the social services district to certify an individual preferred by the child to serve as representative payee by requesting a fair hearing pursuant to section 4 of the Social Services Law.
- Investigate the suitability of the individual and determine that the individual has no conflict of interest in performing the duties of the payee by:
 - proof of identity and social security number,
 - personal interview of the individual to investigate any possible conflicts, and
 - determination of the individual's ability to appropriately manage the adoption subsidy payments on behalf of the child.
- Certify the individual upon completion of the investigation and make a determination that the person meets the qualifications to serve as a representative payee and will serve the best interests of the child.
- Notify the child of the decision to certify the representative payee, and
 - provide contact information within 5 days of the decision to certify the representative payee, and
 - provide retroactive adoption subsidy payments for the child if the child turns 21 while awaiting the certification of the payment. The child is entitled to retroactive payment since the death of the adoptive parent (s) after the child's 18th birthday.
- Require the representative payee to submit an annual report by December 31st of each year describing the use of the adoption subsidy payments. Other reports may be requested as needed. If the representative payee fails to submit the annual report, the social services district may require the payee to appear in person to collect the payments.
- Retain a centralized file and periodically update the address and social security or taxpayer identification number of a representative payee.
- Revoke the certification of a representative payee if
 - it is determined that the payee misused the payments intended for the benefit of the child,
 - the payee fails to submit timely reports or to appear in person as required by the social services district after such failure, or
 - it is the request of the adopted child and is based on a good cause.

Process to Continue Adoption Subsidy Payments: For adoption subsidy payments to continue upon the death of an adoptive parent(s) who was receiving such payments, the legal guardian or custodian, or the adopted child between the ages of 18 to 21, or the representative payee must submit an amendment to the adoption subsidy agreement previously approved between the social services district or OCFS and the adoptive parent(s). A description of the amendment and the instructions for completing and submitting the amendment to the social services district and OCFS's Bureau of Permanency Services (BPS) for approval are provided below and also in Section C of this release. Once the amendment is approved, the individual or entity receiving the adoption subsidy payments is subject to the provisions of the original agreement.

Changes in the Adoption Subsidy - Review and Approval Process

Handicapped Subsidy-Required Documentation

Guidelines for the documentation that must be submitted with an *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement - Initial Application* (LDSS-4623A) for a handicapped subsidy have been revised as follows:

*Application for a maintenance adoption subsidy level that is **the same** as the foster care board rate:*

Current OCFS policy requires that this type of application must be reviewed only to verify that the documentation supports the standard for satisfying the definition of a handicapped child as set forth in OCFS regulations 18 NYCRR 421.24 (a) (2). The following changes have been made regarding the documentation that must be submitted to support this type of application:

- **A One-Page Document** from a physician, psychologist, psychiatrist, or a "qualified professional," where applicable, that includes the diagnosis or assessment of the child's physical, mental or emotional condition or disability that would constitute a significant obstacle to the child's adoption is considered sufficient documentation to be submitted for approval of the application for a handicapped subsidy. The diagnosis or assessment must meet one of the handicapped criteria outlined in 18 NYCRR 421.24 (a) (2). Important Note: *Medical information that does not clearly specify the child's diagnosis or condition should not be submitted as documentation.*
- **Qualified Professional:** OCFS has added "a qualified professional" to the list of professionals from whom documentation can be submitted to support an application for a basic handicapped subsidy. A qualified professional is a New York State-licensed nurse practitioner or physician's assistant or a professional staff from the Office of Mental Retardation and Developmental Disabilities (OMRDD), the Office of Mental Health (OMH), or the Social Security Administration (SSA) who meets the credentials required by his or her organization to make an assessment or diagnosis of a child's condition and eligibility for services.

For these applications, agencies are not required to submit additional documentation to demonstrate the need for or frequency of hospitalization or the degree of physical care, treatment,

or follow-up care required, since the subsidy level/rate the child will be receiving will not be evaluated. However, for audit purposes, the documentation in the child’s case record must support the foster care board rate and the subsidy level approved by the district for the child.

- **Presumptive Eligibility** (for adoption subsidy of a handicapped child): For cases where a child has previously been diagnosed by one of the professionals noted in this section with a handicapping condition or disability that is considered permanent or incurable with surgery or treatment currently available, the documentation to be submitted with the application for adoption subsidy does not have to be dated within 12 months of the submission date. A one-page document from a physician, psychologist, psychiatrist, or qualified professional (if the rate requested is for a basic handicap subsidy) that includes a diagnosis or description of the child’s condition and an indication that the condition is permanent or considered incurable will be considered sufficient documentation to determine that the child is handicapped, irrespective of the date the assessment/diagnosis was made.

OCFS has established the following list of pediatric conditions and illnesses that are considered permanent or incurable, and they meet the requirements for presumptive eligibility for a basic handicapped subsidy. While the list is comprehensive, it is not all-inclusive. Therefore, when a child is diagnosed with a permanent condition that is not on the list, the documentation must indicate that the child’s condition is permanent or considered incurable. The list of presumptive conditions includes:

<ul style="list-style-type: none"> • Loss or deformation of facial features, torso or extremities • Total or Severe Deafness • Permanently or Legally Blind • Severe Speech/Language Impairment • Traumatic Brain Damage • Autism • HIV/AIDS • Cerebral Palsy • Down Syndrome • Chronic Heart Condition/Disease • Sickle-Cell Anemia • Schizophrenia • Insulin Dependent Diabetes 	<ul style="list-style-type: none"> • Systemic Lupus Erythematosus • Chronic Kidney Failure (Uremia) • Muscular Dystrophy • Myasthenia Gravis • Cystic Fibrosis (CF) • Chronic Obstructive Pulmonary Disease • Paraplegia or Quadriplegia (partial or complete paralysis of both arms or legs) • Polymyositis and Dermatomyositis (weakness and muscle wasting; person becomes wheelchair bound) • Tay-Sachs Disease (neuro degenerative disorder)
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Note: Conditions such as traumatic brain damage, cerebral palsy, Down syndrome and others differ in the level of severity from one child to another. Where a level of subsidy is being requested higher than what the child is receiving in foster care, the documentation must indicate the severity of the child’s condition and the degree or level of treatment required to care for the child. As previously indicated, the documentation needed to confirm that a permanent or persistent condition meets the regulatory definition of a handicapped child is no longer required to be dated within twelve months of the date of application submission. *However, to best serve the needs of foster children, social services districts are expected to comply with the requirements for completing*

*periodic, individualized medical assessments and examinations as outlined in 18 NYCRR 441.22 and in the manual on **Health Services for Children in Foster Care**.*

*Application for a subsidy rate **higher than the child's foster care board rate***

- **A one-page document** that includes a diagnosis of the child's handicapping condition, the severity of the condition, and the degree or level of treatment required to care for the child will be considered sufficient to meet the documentation requirements for these applications. Additional pages may be submitted, if necessary, to provide the required information; however, pages of extraneous information on testing or treatment should not be submitted as documentation.
- Where a diagnosis or documentation is required for a special or exceptional request for adoption subsidy, in accordance with 18 NYCRR 427.6, it **must** be from a licensed **medical doctor/physician, psychiatrist or psychologist**, and **must** support the rate being requested.

Recommendation: In accordance with OCFS regulations 18 NYCRR 427.6, a social services district has the responsibility for establishing a schedule of rates for normal/basic, special, or exceptional foster care services. The "applicable board rate" for a child approved for adoption subsidy, as described in 18 NYCRR 421.24 (a) (5), is determined by the social services district based on the foster care board rate paid, or would have been paid, on behalf of the child. The social services district has the responsibility to periodically review the needs of a foster child and to adjust the foster care board rate to reflect the current needs of the child. To help expedite the review and approval process for adoption subsidies, *OCFS recommends that when necessary to reflect a change in the needs of the child, the district should change the foster care board rate for the child **before and not at the time** the application is submitted for adoption subsidy.*

Hard-to-Place Subsidy - Emotional Attachment

To qualify as a hard-to-place child under 18 NYCRR 421.24 (a) (3) (iii) (f), the child must be in the care of his or her current foster parent(s) for 12 **consecutive months or more immediately preceding the execution of the most recent Adoption Placement Agreement (APA)** and the child must have developed a strong attachment to his or her foster parent(s). *OCFS is clarifying that in certain circumstances, where the child has been temporarily out of the foster home prior to the signing of the APA, such absences will not be counted as part of the 12 months, nor will they be considered a break in foster care with the same foster parent(s).* OCFS staff will not restart the clock to day one but will accept the total months in care with the same foster parent before the signing of the APA if the child was absent from care only for any of the following reasons:

- Period of trial discharge for less than six months prior to the signing of the APA
- Temporary placement(s) in residential facility or hospital for less than 90 days prior to the signing of the APA
- Runaway episode(s) during which the child remained in the care and custody or custody and guardianship of the district prior to the signing of the APA

Consequently, when an application is submitted to OCFS's BPS for a hard-to-place subsidy based on an emotional attachment, if there has been a break(s) in the placement of the child with the foster parent(s) who is/are applying to adopt, the documentation submitted with the application must reflect one or more of the reasons listed above for the 12 months to be calculated as total time in care with such parent(s).

Note: A new adoption subsidy agreement must be submitted if a change is requested to the approved *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement* **prior to finalization** of the adoption.

Post-Finalization Changes to the Adoption Subsidy Agreement

A request for a change in the approved adoption subsidy agreement following finalization of the adoption requires the modification of the adoption subsidy agreement to reflect those changes. This is necessary since the adoption subsidy agreement provides, once signed and approved, "it constitutes a contract between the adoptive parent(s) and the social services district subject to the laws of the State of New York and the regulations of OCFS." This means the provisions of the adoption subsidy agreement are enforceable for the lifetime of the agreement. *Consequently, any change in the provisions of the adoption subsidy agreement must be documented and made a part of the agreement.*

An amendment to the adoption subsidy agreement modifies the relevant terms of the original adoption subsidy agreement to reflect the approved change or changes to the original provisions. OCFS policy has provided for two types of amendments, (1) an **Upgrade Amendment** which is a request for an "increase in the subsidy payments based on the worsening of a known condition, or identification of a pre-existing condition which was not known by the adoptive parent(s) prior to finalization of the adoption," and (2) a **Technical Amendment** which is "a request for the name on the original approved agreement to be changed due to a change in the marital status of the adoptive parent(s) or a transfer of guardianship due to the death of the adoptive parent(s)." Currently adoptive parents or, upon the death of the sole or surviving adoptive parent, the legal guardian can request an amendment to an approved adoption subsidy agreement.

OCFS is hereby revising its policy to allow for additional circumstances whereby an amendment to the adoption subsidy agreement may be requested. Recent state statutory changes provide for continuation of adoption subsidy upon the death of the adoptive parent(s) to a legal custodian, representative payee or the adult adoptee. Also, a process is needed to correct mistakes made by the social services district, voluntary authorized agency, or OCFS on the approved agreement that impacts the type of subsidy or the level of payments for which the child is eligible. Any of these post-finalization changes require an amendment to the approved adoption subsidy agreement. The two amendment forms have been modified to incorporate the changes. The **Technical Amendment** will be used only for a change in the payee's name or to add another adoptive parent to the agreement. ***It is no longer to be submitted for a change in payee due to the death of the adoptive parent(s).*** The title, **Upgrade Amendment** has been changed to **Upgrade or Substantive Amendment** to reflect additional circumstances for the use of the form. This form is to be submitted for a request to change the level of the subsidy payment due to the worsening of

the child's condition or manifestation of a handicapped condition, or to change the payee due to the death of the parent(s), or to change the level of payment or type of eligibility due to a fair hearing decision or to correct an error on the approved adoption subsidy agreement following finalization of the adoption.

- *Technical Amendment* (LDSS-4623 C-1 rev. 2009): to be submitted when there is a change only in the name of the adoptive parent or the addition of a payee due to
 - o a change in marital status, and/or
 - o the adoption of the child by a second parent.

Note: **Do not** submit the *Technical Amendment* form for a change in payee due to the death of the parent (sole or surviving adoptive parent or both adoptive parents).

- *Upgrade or Substantive Amendment* (LDSS-4623C-2, rev. 2009): to be submitted for a request that will result in a change in the level of the subsidy payment or type of eligibility due to any of the following:
 - o A change in the child's condition
 - o The death of the adoptive parent(s)*
 - o A fair hearing decision
 - o An error in initial eligibility determination.

***Note:** Eligibility for Title IV-E Adoption Assistance ends with the death of the adoptive parents. As a result, the child is no longer categorically eligible for Medical Assistance (MA). The social services district responsible for the adoption subsidy payments must make a determination of whether the adoptee is eligible for MA under the provisions of COBRA or for state medical subsidy. (See section A "Post Finalization Cases – Lost of Title IV-E".)

Effective Date for an Amendment of an Adoption Subsidy Agreement: The effective date for changes due to an amendment will depend on the reason for the change:

- **Change in child's condition:** effective date is the date of the completed amendment.
Note: Parents should submit a request for an amendment to the approved subsidy agreement to the social services district for a change in the subsidy payments based on documentation that indicates a change in the child's condition as soon as the documentation is received from the physician or qualified professional, but no later than two years of receipt of the information.
- **Change due to death of adoptive parent(s):** (1) Where the child is under the age of 18 and the court appoints a legal guardian or custodian for the child, the effective date for continuation of adoption subsidy is the date of the issuance of the letter of guardianship or an order of custody. Where the guardian or custodian was the caretaker of the child prior to the issuance of the letter of guardianship or the court order granting custody, such payments must be made retroactively from the date of the death of the adoptive parent(s); (2) Where the child is between the ages of 18 and 21, at the time of the death of the adoptive parent(s), the effective date for continuation of adoption subsidy payments is retroactive to the date of the death of the parents to a legal guardian, or directly to the child, or to the representative payee. In either case, **the**

social services district responsible for the adoption subsidy payments may not select as payee a child's biological parent whose rights were terminated or who executed a surrender.

- **Correction of an error:** Following finalization of the adoption, to correct a mistake in the adoption subsidy agreement made by the social services district, voluntary authorized agency or OCFS that impacted the type of eligibility, rate of payment, or effective date, the effective date of the amendment must be retroactive to the effective date of the original adoption subsidy agreement.
- **Change based on a fair hearing decision:** The effective date is the date specified by the fair hearing official.
- **Change in statute or regulations:** The effective date is the effective date of the statute or regulation.

Further Modification to the Amended Adoption Subsidy Agreement

OCFS policy allows for a subsequent request to be made to modify an amended adoption subsidy agreement as long as a child continues to be eligible for adoption subsidy and the adoptive parent(s) is responsible for the support of the child or is providing any support.

OCFS will apply the same provisions to a subsequent request to modify an amended Adoption Subsidy Agreement from a legal guardian, legal custodian, representative payee, or an adoptee over the age of 18 who is in receipt of adoption subsidy payments due to the death of the adoptive parent(s). All provisions of the original adoption subsidy agreement, except those explicitly changed by the amendment, remain in full force and effect and are binding on the individuals who signed the amendment. This means that the provisions in the original adoption subsidy agreement that pertained to the adoptive parents extend to the new payee. It includes Section VII, "Adjustment of Maintenance Payment," which provides that adoptive parent(s) may request a change in the amount paid under this agreement.

Note: The procedures described above for requesting a change in an approved adoption subsidy agreement apply to all subsequent requests for a change in the amended agreement.

A representative payee or adult adoptee should report any changes that may warrant a request for a change in the amended adoption subsidy agreement to the social services official to whom they are accountable for the appropriate use of the adoption subsidy payments. The appropriate social services official should instruct the representative payee or the adult adoptee on the procedures for submitting the amendment to their office for review and or approval prior to the LDSS submitting the amendment to OCFS for final review and approval.

Note: Please see Section C below for the instructions for applying for a *Technical Amendment or Upgrade or Substantive Amendment* to the *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement* form.

C. Forms - Adoption Subsidy and Non-Recurring Adoption Expenses Agreement

1. Background

The former *Adoption Subsidy Agreement* (LDSS-4623) and the former *Agreement for Non-Recurring Adoption Expenses* (LDSS-4623A) have been combined into form LDSS-4623, [Adoption Subsidy and Non-Recurring Adoption Expenses Agreement – Cover Sheet](#). There are two forms to be used for an initial adoption subsidy request, one for a request prior to the finalization of the adoption, and one for a request following finalization of the adoption when a pre-existing condition is evident. Also, two separate forms have been designed for post-finalization amendments to the agreement.

Where appropriate, the forms reflect the changes in OCFS policy set forth in this release on eligibility for Medicaid under the provisions of COBRA; changes to streamline the documentation to be submitted with a subsidy application; changes in the criteria for post-finalization amendments; and changes to implement statutory changes related to subsidy eligibility for a youth freed after the age of 18, or the continuation of adoption subsidy upon the death of the youth's adoptive parents. Links to the forms are included below and at the end of this directive. Templates of the forms are available on the OCFS Internet and Intranet.

2. Required Action

Description of Subsidy Forms and Summary of Important Changes:

Cover Sheet (LDSS-4623 rev. 2009)

This form is only for OCFS's (BPS) use and must be submitted with an application for adoption subsidy or an application for an amendment to an approved agreement. It contains identifying and case specific information and is not to be given to the adoptive parent(s) with their copy of the agreement. It is completed by the social services district and forwarded to OCFS's BPS Services with the adoption subsidy agreement.

Initial Application (LDSS-4623A rev. 2009)

This form must be used by the social services district or voluntary authorized agency when a prefinalization subsidy application is being made for a child in the care and custody or custody and guardianship of the authorized agency. Please note the following important changes to this form:

Section II - Purpose of the Agreement. The following new statement was added: "New York State provides that an application for an adoption subsidy may be accepted before the child is completely freed for adoption, but final approval of the application may not be granted until the child is completely freed for adoption." This statement is meant to inform parents and local districts that, although New York State law allows an application to be submitted for a child prior to the child being freed for adoption, the final approval of the application is contingent on the child being completely freed for adoption (i.e., both birth parents' rights have been severed).

Section III - Type of Subsidy Condition. The note on the bottom of this section no longer specifies that documentation of the handicapped diagnosis must be from a physician, psychiatrist or psychologist, but as required by OCFS. Please see section B of this release for information on

the documentation to submit, based on whether the application is for a basic, special or exceptional handicapped subsidy rate.

Section IV - Eligibility for Federal Adoption Assistance: This section addresses whether the child is eligible for federal Title IV-E Adoption Assistance. The information is obtained from the completed *Adoption Assistance Eligibility Checklist* (LDSS-3912) that must be completed prior to completing the agreement.

Note: For children in the custody and guardianship of a voluntary authorized agency, the criteria for eligibility for Title IV-E Adoption Assistance are outlined in 01-OCFS-INF-03. Also, see LDSS-3912A (rev. 3/02) *Eligibility for Adoption Assistance*.

Section V - Medical Assistance / Medical Subsidy: This section has been revised to reflect Medicaid eligibility under the COBRA provisions for special needs hard-to-place children. A note has been added to clarify who is responsible for providing Medicaid if the child moves to another state following finalization of the adoption. In the case of a Title IV-E eligible child who moves to another state following the adoption, the new state of residence is responsible for providing Medicaid for the child. For a child eligible for Medicaid under the provisions of COBRA who moves to another state, the new state of residence may or may not provide Medicaid. As noted in section A of this release, the adoptive parents should check with the state to which they are moving to find out if Medicaid can be provided to the adopted child. Not all states will approve Medicaid for children who receive state subsidy and move into their state. However, as a result of NYS's membership in ICAMA, it is expected that states that are members of ICAMA will provide Medicaid to NYS children who move into their state. If the child is unable to receive Medicaid, the responsible district is responsible for providing State Medical Subsidy to the child where the child is otherwise eligible for State Medical Subsidy.

The information on State Medical Subsidy has been modified to clarify that State Medical Subsidy is available only to a handicapped or hard-to-place child who is neither categorically eligible for Medicaid nor meets the eligibility requirements for Medicaid under the COBRA provisions. Additionally, if the child is hard-to-place, he/she can only receive State Medical Subsidy if the adopting parent is age 62 years or older, or subject to mandatory retirement from his or her present employment within five years of the adoptive placement.

The boxes to be checked specify if the child is eligible for Medicaid or Medical Subsidy or is ineligible for any medical services or assistance.

Section VI - Maintenance Subsidy Calculations: The information in this section has been rearranged. The initial section combines information from the previous Part C and Section VIII. This information includes the child's current foster care board rate, the requested adoption subsidy rate, and the effective date of the adoption subsidy. Part A applies to social services districts that do not consider the parents' income in calculating the subsidy rate. There is no itemized list for calculating the total per diem rate. Part B is for agencies that use the parents' income to calculate the subsidy rate. The itemized list has been shortened. For further clarification, see the notes at the bottom of Parts A and B.

Section VII – Adjustment of Maintenance Payment: The information in the note in this section, which applied to the process for granting increases or changes to the adoption subsidy agreement, has been omitted. The information more appropriately applies to the amendment forms.

Section VIII - Non-Recurring Adoption Expenses (new section): This section addresses the eligibility criteria for non-recurring adoption expenses that previously comprised LDSS-4623A. It is combined with the adoption subsidy agreement to make it easier for the social services district and the prospective adoptive parents to complete and sign the agreement prior to finalization of the adoption and avoid any issues with Title IV-E eligibility. As a result of this change, OCFS's BPS will approve the application for non-recurring adoption expenses as part of the initial application.

LDSS and contract voluntary authorized agency: Copies of receipts for reimbursement of nonrecurring expenses are no longer to be submitted to OCFS's BPS for review and approval. The social services district is responsible for the review and approval of receipts for non-recurring expenses and the one-time payment to the adoptive parents and/or the adoptive parents' attorney. The adoptive parents have up to two years from the date of the final adoption decree to submit documentation of their non-recurring expenses for payment (see the description for LDSS-4623D).

Voluntary authorized agency with guardianship and custody: The process for approval of nonrecurring expense remains the same. The voluntary authorized agency must submit copies for the receipts for reimbursement of non-recurring expenses to OCFS's BPS for review and approval. *Sections IX, X, XI, and XII:* Are signature pages, but also included in these sections are the boxes to allow the social services district, voluntary authorized agency or OCFS to indicate approval or denial of the adoption subsidy agreement, and a line to include the adoption subsidy maintenance level.

Appendix A - Summary of NYS's Adoption Subsidy and Non-Recurring Adoption Expenses Programs: Has been revised to include the changes in the Social Services Law and regulations regarding a child eligible for adoption subsidy subsequent to his or her 18th birthday and the continuation of adoption subsidy to children under and over the age of 18 upon the death of his or her adoptive parents, and provisions related to non-recurring adoption expenses. Also included is the new requirement that the adoptive parent(s) provide an annual certification of the education status of a school-aged adopted child (09-OCFS-ADM-11).

Post-Finalization Request (LDSS-4623B, rev. 2009)

This form must be used when adoptive parents are requesting a subsidy application for the first time following the finalization of the adoption. There are two types of requests:

- An initial request for a pre-existing condition that the adoptive parents first became aware of subsequent to the adoption and a physician certifies that the condition existed prior to the child's adoption

- A fair hearing ruled that the child is entitled to adoption subsidy

Note: A child who is approved to receive adoption subsidy following finalization of his or her adoption is not eligible to receive Title IV-E Adoption Assistance, unless the child has been determined eligible for such assistance as a result of a fair hearing decision. If the child is eligible for a handicapped maintenance subsidy, the child will receive Medical Assistance under the provisions of COBRA, if otherwise eligible. If the child is not eligible for Medical Assistance, the child is eligible to receive State Medical Subsidy until the age of 21. Where a fair hearing decision has determined that a child was eligible for either a Title IV-E handicapped or hard-to-place subsidy prior to finalization of the adoption, the child will receive Title IV-E Maintenance and Medical Assistance.

Amendment Forms: LDSS-4623C-1 and LDSS-4623C-2 (rev. 2009)

An amendment is used when an adoptive parent, or upon the death of the sole or surviving adoptive parent, a legal guardian or legal custodian, the representative payee or the adoptee over the age of 18 request a change to the approved *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement* following finalization of the adoption. Also, an amendment is used to correct a mistake made by the social services district, voluntary authorized agency, or OCFS on the approved agreement that impacts the type of subsidy for which the child is eligible, or the level of subsidy payments.

Note: a **subsequent request** for a change to the approved, amended adoption subsidy agreement will require the submission of a new amendment request and the required documentation as described below. See Section B (2) "Post Finalization Changes."

Technical Amendment (LDSS-4623 C-1 rev. 2009)

This form is to be used when there is a request for the following changes to the adoption subsidy agreement, which **do not** require a change in the level of payment:

- To add another adoptive parent to the agreement when the adopted child is adopted by a step-parent, or
- To change the name of the adoptive parents on the agreement due to a change in marital status, or
- To change the name of a legal guardian or custodian, or representative payee, due to a change in marital status (modification of amended agreement).

Documentation to Be Submitted

- o Adoption of the child by a stepparent requires a copy of the *Order of Adoption*.
- o A name change due to the marriage, or separation, or divorce of the adoptive parent or payee requires a copy of the *Certificate of Marriage, Separation Agreement, Divorce Decree* or *Court Order Granting the Name Change*, whichever is applicable.

Upgrade or Substantive Amendment (LDSS-4623 C-2 rev. 2009)

This form is to be used when there is a request following finalization of the adoption for an adjustment in the level of the subsidy rate or eligibility based on any of the following:

- A worsening of a condition known to the parents at the time of the adoption, or the development of a handicapped condition not identified in the original adoption subsidy agreement and current documentation supports the higher rate being requested
- To add a legal guardian or custodian, adoptee, or representative payee upon the death of the adoptive parent(s)
- To correct an error made in the executed adoption subsidy agreement
- To make a change due to provisions in statute or regulation that impact the child's subsidy eligibility
- A fair hearing decision

Documentation to Be Submitted With the Completed Amendment:

- o To change the payee for the adoption subsidy payments upon the death of the adoptive parent(s) to a legal guardian or custodian, or representative payee or adoptee, requires a copy of the *Order Appointing Legal Guardian or Custodian*, or a copy of the document indicating that a representative payee or the adoptee (between the ages of 18 and 21) has been appointed by the social services district and a copy of the adoptive parent's *Death Certificate(s)*; and verification of the adopted child's age.
- o For an increase in the subsidy rate from basic handicapped to special or exceptional based on a worsening of the child's condition, the supporting documentation must include the physician's current diagnosis and verification that the child's condition, as described in the Subsidy Agreement or child's medical history, has worsened. The documentation must specify the severity of the child's condition(s) and the level of care required to meet the needs of the child.
- o For a change in the subsidy rate from hard-to-place to basic handicapped due to the development of a physical, personality or behavioral problem, psychiatric disorder, or serious intellectual incapacity due to a congenital or pre-existing condition not evident at the time of adoption, a qualified professional or physician must provide documentation that the child's condition was congenital or pre-existing prior to adoption. For a condition that qualifies the child for a special or exceptional rate, the physician, psychiatrist or psychologist must certify the child's diagnosis is congenital or existed prior to the adoption and indicate the degree of care needed by the child.
- o To correct an error, the social services district must submit a letter or memo to OCFS's BPS indicating the error that was made and what is being changed by the amendment.
- o To enforce the decision of a fair hearing, submit the copy of the Administrative Law Judge's (ALJ) decision.

Note: A copy of the original adoption subsidy agreement must be attached to the amended agreement to verify the initial diagnosis and subsidy rate, or to show that an error was made, or that the child qualifies for a change in eligibility based on statutory or regulatory provisions. For a subsequent **request** to amend the agreement, a copy of the approved amended agreement must be attached to the new request along with required documentation. The same amendment forms are to be used by both the social services district and the voluntary authorized agency.

Non-Recurring Adoption Expenses Reimbursement Form (LDSS-4623D rev. 2009)

This form is to be used by social services districts to document the receipts for and payment of nonrecurring expenses within the required two years of the finalization of the adoption. Expenses must be reasonable and directly related to the adoption. Receipts must be submitted with the request from the adoptive parent(s) for reimbursement of non-recurring expenses. **Exception:** for non-recurring adoption agreements signed *prior to implementation of the new form*, social services districts must continue to submit page 2 of the signed *Non-Recurring Adoption Expenses* (LDSS-4623A, rev. 3/02) with the necessary documentation to OCFS's BPS for approval.

Instructions for Completing the Agreement: The social services district official or voluntary authorized agency representative **and** the adoptive parent(s), or legal guardian, or custodian, or adoptee, or representative payee must complete the applicable *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement* or amendment. All parties must sign and date the agreement or amendment prior to submission to the Office of Children and Family Services, Bureau of Permanency, 52 Washington Street, Room 323N, Rensselaer, NY 12144. The *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement* or amendment must be submitted in **triplicate** with one copy of supporting documentation. Where an amendment is being submitted, a copy of the fully executed and approved *Adoption Subsidy and Non-Recurring Adoption Expenses Agreement* must be submitted with the amendment. The forms are fill-able templates and available on the OCFS intranet for local districts and on the Internet for voluntary authorized agencies. Use the following links to access the forms (press Ctrl key and left mouse button simultaneously).

OCFS Intranet: <http://ocfs.state.nyenet/admin/forms/adoption>

OCFS Internet: <http://www.ocfs.state.ny.us/main/forms/adoption>

Systems Implications

Medicaid should be authorized for these children using case type 20 and Categorical Code 33, "Non IVE Adoption/Special Needs," to identify adopted children receiving Medicaid under the COBRA provision. **Note:** Please use the WMS systems instructions found in Chapter IB (pp. 1-49 to 1-51) of the ***Eligibility Manual for Child Welfare Services (rev. 2018)***.

Additional Information

Forms that have been revised based on changes in this release, available online:

The former *Adoption Subsidy Agreement* (LDSS-4623) and the former *Non-Recurring Adoption Expenses* (LDSS-4623A) have been combined into form [LDSS-4623, Adoption Subsidy and Non-Recurring Adoption Expenses Agreement – Cover Sheet](#). Five other new forms have been added using the same base form number (4623) and adding A through D to differentiate between the five related forms:

- a) Initial Application (LDSS-4623A)
- b) Post Finalization Request (LDSS-4623B)
- c) Technical Amendment (LDSS-4623C-1)
- d) Upgrade or Substantive Amendment (LDSS-4623C-2)
- e) Non-Recurring Adoption Expenses Reimbursement Form (LDSS-4623D)

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/s/ Lisa Ghartey Ogundimu

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