

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

DEC 30 2009

SPECIAL TRANSMITTAL

SUBJECT: Fostering Connections to Success and Increasing Adoptions Act of 2008 - Adoption Program Requirements

TO: County Children and Youth Administrators
Private Adoption Agencies

FROM: Richard J. Gold
Deputy Secretary for Children, Youth and Families



PURPOSE

The purpose of this transmittal is to inform County Children and Youth Agencies (CCYAs) and private adoption agencies of the new federal requirements that specifically impact the adoption program as a result of the passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections). Some of these requirements were introduced in a previous special transmittal released by the Office of Children, Youth and Families (OCYF) on February 24, 2009. However, this transmittal focuses solely on the provisions that directly affect adoption as well as provides model forms that may be used by agencies to implement the new requisites.

BACKGROUND

On October 7, 2008, former and then President George W. Bush signed the Fostering Connections to Success and Increasing Adoptions Act (Public Law 110-351)—the first comprehensive reform of federal child welfare financing in 28 years. This new legislation has built upon the Adoption and Safe Families Act to create additional support for good child welfare practices that help children and families achieve safety, permanency and stability in their lives. Included in Fostering Connections are provisions designed to increase federal funding for adoption assistance as well as new requirements that focus on the health and education status of children.

DISCUSSION

The Fostering Connections legislation authorizes states to claim federal funds for more children with special needs. In the first year, starting October 1, 2009, OCYF and CCYAs must begin phasing in an expansion of the Title IV-E Adoption Assistance Program to reach more eligible children with special needs. This expansion will begin with older children and with children who already have been in care for five years, and their siblings. These

populations of children are often the most difficult to place for adoption. Additional children will be phased in by age over the next eight years until all eligible children with special needs will be covered by October 1, 2017.

Apart from the new eligibility criteria, Fostering Connections establishes two new requirements for receipt of federal adoption assistance funding. The first mandates agencies to inform prospective adoptive parents of the availability of the adoption tax credit. The Federal Adoption Tax Credit was developed to help families defray adoption costs and to promote the adoption of foster care children. A Child Trends research brief published in 2007, however, showed vast underutilization of this benefit by families adopting children from foster care (only 18% of the children for whom the tax credit was claimed were adopted from foster care).

The second requirement directs OCYF and CCYAs to assure that each child, of compulsory school age, receiving Title IV-E Adoption Assistance is a full-time elementary or secondary school student, or is incapable of attending school due to a documented medical condition. According to this legislation, these two new mandates were to be implemented starting October 7, 2008.

Pennsylvania's Child Welfare Regulations Title 55, Pa. Code §3140, Subchapter C, regarding adoption assistance do not currently contain the new requirements outlined in this transmittal. OCYF will be working on updating these regulations to reflect the current requisites.

PROCEDURES

School Attendance Assurance:

- *Effective Date* – October 7, 2008 (As noted in the Special Transmittal released on February 24, 2009, due to this requirement being new for CCYAs, no licensing action will be taken for failure to implement this mandate prior to April 25, 2009.)
- *Requirement* – Assurances must be made that each child, of compulsory school age, who is receiving Title IV-E Adoption Assistance payments is a full-time student or is incapable of attending school due to a documented medical condition.
- *Instruction* – A question regarding attendance must be included in the CCYAs annual contact with the adoptive families receiving subsidy for a child of compulsory school age. Please see Attachment A for a model annual contact form that includes this information.

After the release of the February 24, 2009, Special Transmittal, the Administration for Children and Families provided the following guidance as to whether this requirement will have an impact on the child's eligibility

for Title IV-E Adoption Assistance. The Federal Child Welfare Policy Manual section 8.4 question 2 states that a child's eligibility for adoption assistance will not be impacted if the adoptive family: 1) Does not complete the annual contact form; or 2) Does not respond to the specific question regarding school attendance; or 3) Responds that the child is not attending school in accordance with sections 471(a)(30)(A) through (D) of the Social Security Act. Therefore, to meet this requirement in accordance with Federal and Pennsylvania policy, CCYAs must simply maintain a copy of the annual contact sent to the adoptive family requesting school attendance information in the child's file.

Federal Adoption Tax Credit

- *Effective Date* – October 7, 2008 (As noted in the Special Transmittal released on February 24, 2009, due to this requirement being new for CCYAs, no licensing action will be taken for failure to implement this mandate prior to April 25, 2009.)
- *Requirement* – Agencies must inform prospective adoptive parents of the federal adoption tax credit.
- *Instruction* – Notification of the federal adoption tax credit must be provided to all prospective adoptive parents, not just those that receive adoption assistance. Agencies must ensure that prospective adoptive parents are provided with information about their potential eligibility to claim the tax credit. Agencies must also maintain documentation in the child's file that this information was supplied. Please see Attachment B for a model information sheet that can be given to prospective adoptive parents to meet this requirement.

Promotion of Adoption of Children with Special Needs

- *Effective Date* – October 1, 2009 with certain criteria phased in through October 1, 2017
- *Requirement* – Agencies must begin to use the new Title IV-E Adoption Assistance eligibility criteria as outlined in the instruction section below.
- *Instruction* - Beginning October 1, 2009, a child with special needs who is "an applicable child" is eligible for Title IV-E monthly adoption assistance. The term "applicable child" primarily relates to the age of the child in the federal fiscal year the adoption assistance agreement is entered into. For Federal Fiscal Year (FFY) 2010 (which covers October 1, 2009, through September 30, 2010) children who meet the following new criteria are eligible for Title IV-E Adoption Assistance:
 - Meet the following three special needs criteria:
 1. Be free for adoption by means of termination of parental rights, parental death or a combination of the two;

And

2. Have at least one of the following special needs characteristics:
 - Be five years of age or older; or
 - Have a physical, mental or emotional condition or disability; or
 - Have a genetic condition indicating a high risk of developing a disease or disability; or
 - Be a member of a minority group; or
 - Be a member of a sibling group placed together in the same adoptive home.

And

3. Reasonable, but unsuccessful, efforts made to place the child with adoptive parents without providing adoption assistance.

And

- Be in the care of a public or licensed private agency;

And

- Be involuntarily removed from their home pursuant to a judicial determination that continuation in the home would be contrary to the welfare of the child;

Or

- Be removed pursuant to a voluntary placement agreement or voluntary relinquishment;

And

- Be a citizen or qualified alien of the United States (children who have special needs but who are not citizens or residents of the U.S. and were either adopted in another country or brought to this country for the purposes of adoption are categorically ineligible for adoption assistance, except if the child meets the eligibility criteria after the disruption of the international adoption);

And

- **Have met all the criteria for one of the three options below.**

OPTION 1

- Have attained the age of 16 or older prior to September 30, 2010;

And

- An adoption assistance agreement must have been entered into during federal fiscal year 2010.

Example of an "applicable child" based on age: The CCYA enters into an adoption assistance agreement on behalf of a 15-year-old child on October 15, 2009. The child will turn 16 years old on January 3, 2010. Because the child turns 16 in FFY 2010, the applicable age during that fiscal year, the "applicable child" eligibility requirements apply.

Example of a child that does not meet the definition of “applicable child” based on age: The CCYA enters into an adoption assistance agreement on behalf of a child who turns 15 on October 5, 2009. This child would not reach the applicable age of 16, before the end of FFY 2010 and would not be eligible as an “applicable child”. The child might be eligible for Title IV-E Adoption Assistance based on other criteria described below.

OPTION 2

- Have been in foster care under the responsibility of a CCYA for at least 60 consecutive months. The 60-consecutive-month period is any 60 consecutive months prior to the finalization of the adoption.

OPTION 3

- Is a sibling of a child who is “an applicable child” (by either meeting the age requirement of 16 or older prior to September 30, 2010, or by having been in foster care for at least 60 consecutive months);

And

- Is placed in the same adoptive placement as their sibling who meets the definition of “applicable child”.

It is important to note that the applicable age described in OPTION 1 (age 16 for FFY 2010) will decrease by two years every fiscal year until 2018. The following chart provides a breakout for the minimum applicable ages and corresponding federal fiscal years in which they become effective:

“In the case of federal fiscal year:	The applicable age of the child is:
2010 (10/1/09 – 9/30/10)	16
2011 (10/1/10 – 9/30/11)	14
2012 (10/1/11 – 9/30/12)	12
2013 (10/1/12 – 9/30/13)	10
2014 (10/1/13 – 9/30/14)	8
2015 (10/1/14 – 9/30/15)	6
2016 (10/1/15 – 9/30/16)	4
2017 (10/1/16 – 9/30/17)	2
2018 (10/1/17) or thereafter	Any age

If a child does not meet the "applicable child" criteria enumerated above, the child must meet the criteria outlined below to be eligible for Title IV-E monthly adoption assistance:

- Must meet the three special needs eligibility criteria enumerated earlier in this section;

And

- **Meet the criteria of at least one of the following four options:**

1. Be AFDC eligible at the time of their removal from the home of the specified relative from whom they were removed pursuant to a voluntary placement agreement or judicial determination to the effect that continuation in the removal home is contrary to the child's welfare;

Or

2. Child meets all medical and disability requirements of SSI at the time the adoption petition is filed;

Or

3. The child is in a foster family home or child care institution with their minor parent and the minor parent was removed from the home pursuant to either:

- a. An involuntary removal in accordance with a judicial determination to the effect that it was contrary to the child's welfare to remain in the home; or
- b. A voluntary placement agreement or voluntary relinquishment.

Or

4. The child was adopted and was determined eligible for Title IV-E Adoption Assistance in a prior adoption, and is available for adoption because the prior adoption has been dissolved or the child's adoptive parents have died.

In determining the child's eligibility for Title IV-E Adoption Assistance of a child receiving federally Subsidized Permanent Legal Custodianship (SPLC) payments, the placement of the child with the relative custodian and any SPLC payments made on behalf of the child shall be considered never to have been made. Thus, if a child is later adopted, the CCYA would apply the adoption assistance criteria for the child as if the permanent legal custodianship had never occurred. This applies where the permanent legal custodianship is dissolved and the child is later placed for adoption with the relative custodian or another individual.

Attachment C is a revised CY-61A that reflects the new Title IV-E Adoption Assistance criteria.

Any questions regarding this transmittal should be directed to Ms. Julie Mochon at 717-772-1585.