

# Adoption Assistance for Children Adopted From Foster Care

If you are considering adopting a child from foster care, there is a good chance the child may qualify for either Federal or State financial assistance. The child's specific circumstances will determine eligibility for adoption assistance and the type for which they may qualify. The goal of adoption assistance is to support adoptive families so they can adequately meet a child's needs.

Recent Federal data show an estimated 122,216 children were awaiting adoption in fiscal year 2019.<sup>1</sup> This factsheet will help you explore your eligibility for assistance.

<sup>1</sup> Children's Bureau. (2020). [The AFCARS report: Preliminary FY 2019 estimates as of June 23, 2020 \(27\)](#). U.S. Department of Health and Human Services, Administration for Children and Families.

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## ADOPTION ASSISTANCE AND ELIGIBILITY

The Federal Adoption Assistance and Child Welfare Act of 1980 established a program of financial and medical assistance to help promote adoptions from foster care, reduce financial barriers to adoption, and help adoptive families meet their adopted children's needs. This adoption assistance is also called a subsidy and is available for children who meet certain eligibility requirements, including that the child is deemed as having special needs due to their physical, mental, or developmental disabilities or because there are other factors that may make it harder to find an adoptive family. Some children in foster care may have conditions that are the result of their early infant or childhood experiences. This may include physical or mental health disorders, learning difficulties, or related developmental delays that require ongoing treatment or specialized medical, therapeutic, or educational attention. Special needs don't necessarily have to be medical or physical. Many States provide adoption assistance to children of color, children who are older, or those who are being adopted with brothers and sisters. Each State can determine what factors or conditions a child must have in order to be considered to have special needs for purposes of establishing eligibility for adoption assistance.<sup>2</sup>

A child who is eligible for Federal adoption assistance is entitled to receive both an adoption assistance subsidy and medical assistance (such as Medicaid) if the child is adopted by a family that the State deems appropriate for that child. If the child is eligible, you are entitled to receive ongoing monthly payments while the child is in your care and you are responsible for the child. The assistance may last until the child reaches the age of majority, which in most States is age 18—although some States provide Federal adoption assistance up to age 21. Adoption assistance may also include a one-time payment to help you cover at least a portion of your adoption expenses. Depending on the State and the child's circumstances, assistance may include other support services, such as child or respite care, or services that address the child's specific developmental needs. These services must be listed and included in the adoption assistance agreement to ensure that they are provided to the child.<sup>3</sup>

<sup>2</sup> Children's Bureau. (2019). [I want to adopt a child from foster care. Am I eligible for adoption assistance \(also called adoption subsidy\)?](#) U.S. Department of Health and Human Services, Administration for Children and Families.

<sup>3</sup> Children's Bureau. (2018). [Child Welfare Policy Manual, 8.2A, Title IV-E Adoption Assistance Program, Agreements.](#)

## Adoption Tax Credits

In addition to the Federal and State adoption assistance programs, families who adopt children from foster care are eligible for a tax credit. Tax benefits include a tax credit for qualified adoption expenses and an exclusion from income for employer-provided adoption assistance. The tax credit is based on a family's income and tax situation. While the tax credit is limited to the year in which the adoption is finalized, credit exceeding a family's tax liability can be carried forward for up to 5 years.

For more information, see the [IRS page on Adoption Credit and Adoption Assistance Programs](#).

## TYPES OF ADOPTION ASSISTANCE

Children may qualify for Federal or State adoption assistance. Some States provide adoption assistance for children who do not qualify for Federal assistance. In most cases, the benefits are the same whether the subsidy is Federal or State, but there are occasionally some differences related to receiving Medicaid. For example, some States do not provide Medicaid for children who are only eligible for State-funded adoption assistance unless there is a disability that warrants; however, all children who are eligible for Federal adoption assistance are categorically eligible for Title XIX Medicaid or an equivalent type of health coverage .

<sup>4</sup> [Title IV-E Adoption Assistance 'Applicable Child' Eligibility Criteria](#); section 473 of the Social Security Act; Child Welfare Policy Manual, §8.2B.

Among other critical eligibility criteria, in order to qualify for a Federal adoption subsidy, the child you are adopting must be eligible for adoption assistance under title IV-E of the Social Security Act by meeting the following criteria for having special needs:<sup>4</sup>

- The State has determined the child cannot or should not be returned to the parents' home.
- The State has identified a specific factor or condition, or a combination of factors, that make it reasonable to conclude that the child cannot be placed with the adoptive parents without adoption assistance and Medicaid; or the child meets the medical or disability eligibility criteria for Federal Supplemental Security Income (SSI).
- The State has made a reasonable but unsuccessful effort to place the child without Federal adoption assistance and Medicaid (unless this is against the child's best interests). If an adoptive parent informs the State that they are not able to adopt the child without assistance, this prong of the special needs test will be met as to the child's eligibility.

For more information on how you may qualify for Federal title IV-E assistance, see the Child Welfare Policy Manual's [Section 8.2B, Title IV-E, Adoption Assistance Program Eligibility](#) and the Children's Bureau [Information Memorandum on Title IV-E Adoption Assistance 'Applicable Child Eligibility Criteria](#). If your child does not qualify for Federal assistance, they might be eligible for State-funded adoption assistance. Child Welfare

Information Gateway maintains [a State-by-State adoption assistance database](#) that seeks to answer questions about State policies on adoption assistance and postadoption services, including the following:

- What is your State's definition of "special needs?"
- What are the eligibility criteria for your State-funded adoption assistance program?
- What is the maximum amount a family can receive in one-time, nonrecurring adoption expenses from your State?
- When can the adoption assistance payments and benefits begin in your State?
- Does your State enter into deferred adoption assistance agreements?
- What mental health services are provided by your State?
- Does your State provide additional finances for medical or therapeutic needs not covered under the State medical plan for children receiving adoption assistance?
- What is your State's process for applying for a fair hearing?

A **fair hearing** is a legal, administrative procedure that provides a forum for settling certain types of disputes between applicants for Federal adoption assistance or recipients and the public agency that administers the program. If you think a decision is unfair, you may be able to request a fair hearing to resolve the dispute. See [Information Gateway's database](#) for State-specific policies on fair hearings.

The Children's Bureau offers [a webpage on adoption assistance](#). Child Welfare Information Gateway also hosts [a webpage on adoption assistance](#) that may be helpful as you explore eligibility for assistance.

## SECURING ADOPTION ASSISTANCE

When a child is in the placement and care responsibility (custody) of a State foster care agency, that State is responsible for determining and entering into the adoption assistance agreement with prospective parents regardless of where they live. If the adoption is approved, the agency will draw up an adoption assistance agreement for the prospective adoptive parents to sign. As the prospective parent, you can negotiate the terms of the financial assistance, which must not exceed the amount that the child would have received while in foster care. You also should discuss and negotiate services that you believe the child needs or will need in the future. Each State has its own procedure for initiating and completing the adoption assistance agreement, including how the monthly payment amount is negotiated.

The adoption assistance agreement must be finalized, signed, and in effect at the time of, or prior to, finalizing an adoption. With rare exceptions, it is highly unusual to obtain an adoption subsidy after an adoption has been finalized if the adoption assistance agreement was not in effect at the time that the adoption was finalized. Federal law allows for the terms of the assistance agreement to be renegotiated if the circumstances of the adoptive family and needs of the

child change over time. In the event that a medical, developmental, or mental health need surfaces after an adoption is finalized, adoptive parents can seek to renegotiate the terms of the adoption assistance agreement with the State to address the child's needs. For the most part, once the agreement is finalized, the agency cannot change the agreement unless the parents concur with such a change. Consult Information Gateway's [adoption assistance database](#) for more information.

### **DEFERRED ASSISTANCE**

Depending on the State placing the child, the State may want to negotiate with the parents to defer adoption assistance/financial support until it is needed to meet a child's needs or until the child's disabilities are diagnosed. This is most often used when families are adopting a young child with potentially high risks for developing a medical or psychological condition. In these cases, the State may provide Medicaid and reimbursement of nonrecurring adoption expenses, without providing a monthly payment. Your adoption assistance agreement may specify the events or conditions that would initiate the need for services or activate the monthly payment option. An adoptive parent also may decline a financial subsidy that the State offers. Psychiatric reports and other documentation are often required to justify the need for a subsidy. In some States, parents can choose to defer financial assistance until needed for specific services.

For State-specific information, see [Does Your State Enter Into Deferred Adoption Assistance Agreements?](#) on Information Gateway's State-specific adoption assistance database.

### **When Adopting a Child From Out-of-State or Moving to Another State**

If you are adopting a child from another State, and the State agency has responsibility for placement and care (custody) of a child, that State is responsible for entering into the adoption assistance agreement and paying the title IV-E adoption subsidy. This applies even if the child is placed in an adoptive home in another State. If, however, the State agency does not have responsibility for the child's placement and care (custody), the adoptive parents' State of residence is responsible for determining whether the child is eligible for adoption assistance; entering into the adoption assistance agreement; and paying the subsidy, consistent with the way public benefits are paid in other programs. Children retain their eligibility for adoption assistance and Medicaid across State lines; however, the details of the child's Medicaid service are likely to change if your family relocates to another State after adopting. For more information, see Information Gateway's webpages on [Adopting Children From Other States or Jurisdictions](#) and [Interjurisdictional Placements](#).

## APPEALING AN ADOPTION ASSISTANCE DECISION

In general, you can use your State's fair hearing and appeals process if you do not agree with the decision on adoption assistance. The agency that enters into the adoption assistance agreement is required to inform you about the appeals process. Some families choose to work with an attorney or seek help from an advocacy organization representing children with special needs during this process. For more information on the fair hearings process, see [What Is Your State's Process for Applying for a Fair Hearing?](#) on Information Gateway's State-specific adoption assistance database.

## RESOURCES

Below are some additional resources for prospective adoptive parents:

- [Adoption-Friendly Workplace](#), a webpage of the Dave Thomas Foundation for Adoption, which lists the top 100 companies for employer-provided adoption benefits and compares financial reimbursement and paid leave policies
- [Benefits.gov](#), the official benefits website of the United States Government

- [Child Welfare Policy Manual: Title IV-E](#)
- [Adoption Assistance & Financial Support](#), a webpage on Raise the Future (formerly the Adoption Exchange), a nonprofit child welfare organization created to promote safety and permanence for children in foster care
- [National Foster Care and Adoption Assistance Directory](#), an Information Gateway database
- [State Adoption Assistance Specialists](#), an Information Gateway webpage
- [Title IV-E Adoption Assistance](#), a Children's Bureau webpage

## SUGGESTED CITATION:

Child Welfare Information Gateway. (2020). *Adoption assistance for children adopted from foster care*. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau.



U.S. Department of Health and Human Services Administration for Children and Families Administration on Children, Youth and Families Children's Bureau



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