



Office of Children and Family Services

Adoption Subsidy Program

Report 2008-S-106



Thomas P. DiNapoli

Table of Contents

	Page
Authority Letter	5
Executive Summary	7
Introduction.....	9
Background	9
Audit Scope and Methodology	10
Authority.....	11
Reporting Requirements	11
Contributors to the Report	11
Audit Findings and Recommendations	13
Review of Subsidy Payments.....	13
Recommendations	15
Agency Comments	17

State of New York Office of the State Comptroller

Division of State Government Accountability

August 18, 2010

Ms. Gladys Carrion, Esq.
Commissioner
Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144

Dear Ms. Carrion:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Office of Children and Family Services' *Adoption Subsidy Program*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

Our objective was to determine whether adoption subsidy payments to adoptive parents were supported and in compliance with governing regulations.

Audit Results - Summary

The Office of Children and Family Services (OCFS) oversees New York State's child welfare system, including the Adoption Subsidy Program (Program). The purpose of the Program is to locate and maintain stable and permanent alternative homes for hard-to-place and handicapped foster children. The OCFS Adoption Services Bureau (Adoption Services) oversees the activities of the 58 county social services districts which administer the Program including entering into adoption subsidy agreements with adoptive parents and issuing actual subsidy payments to these parents.

New York State Social Services Law (Law) provides for adoption subsidy payments (payments) to adoptive parents of hard-to-place or handicapped children. Payments are made on a monthly basis to help the adoptive parent provide a safe and healthy environment for the child. Payments are to cease when either the child reaches the age of 21; the adoptive parent is no longer legally responsible for the support of the child; or the child is no longer receiving any support from the adoptive parent.

We reviewed a sample of adoption subsidy agreements and payments and concluded that payments were supported and were in compliance with governing regulations when children were placed in the Program. However, we also found \$214,593 in payments that appear to be inappropriate and may be recoverable. Of this amount, \$180,783 was paid to provide support for 25 children who are reported as being deceased per various government records. OCFS stopped payments for 21 of the 25 children. If subsidy payments are inappropriate for the remaining four children, they should be discontinued immediately to prevent another \$423,880 in payments from being made to these parents until their respective children would have attained the age of 21.

We also found \$33,360 paid to one household after the adopted person had turned 21 years old as a result of incorrect date of birth information. If payments continue to this household, the parents will inappropriately receive an additional \$55,041 based on the incorrect date of birth.

We also found that OCFS needs to improve its monitoring efforts to ensure that ongoing subsidy payments, once initiated, are appropriate. OCFS officials agree with our recommendations and note that they have already begun to implement them.

Our audit report contains two recommendations.

This report, dated August 18, 2010, is available on our web site at: <http://www.osc.state.ny.us>

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Office of the State Comptroller

Division of State Government Accountability

110 State Street, 11th Floor

Albany, NY 12236

Introduction

Background

The Office of Children and Family Services (OCFS) was established in 1998 to promote the well-being and safety of children, families and communities and to oversee the State's child welfare system. For example, OCFS oversees the Adoption Subsidy Program (Program). The goal of the Program is to locate and maintain stable and permanent alternative homes for hard-to-place and handicapped foster children. Under New York State Social Services Law (Law), the Program includes subsidy payments to assist adoptive parents in the care and support of these children. The Adoption Subsidy Bureau (Adoption Services) is the unit within OCFS that oversees the Program. The Program is administered by local social service districts (Districts).

To obtain subsidy payments, the adoptive parent(s) must enter into an adoption subsidy agreement (agreement) with a District, or a voluntary authorized agency (i.e. a not-for-profit agency that provides foster care services). The agreement contains Program eligibility criteria, medical documentation and historical information to support that a child is hard-to-place or handicapped. The agreement also identifies the amount of the subsidy payment.

The amount of the monthly payment depends on whether the child's handicap and/or placement history is classified as a basic needs level, special needs level or exceptional needs level. For example, from October 1, 2006 through March 31, 2007, the maximum monthly subsidy payment amount was \$493 for basic needs children, \$1,080 for special needs children and \$1,637 for exceptional needs children. For the period April 1, 2008 through June 30, 2008, the maximum monthly subsidy payment amount was \$709 for basic needs children, \$1,140 for special needs children and \$1,729 for exceptional needs children. If a District chooses to pay adoptive parents a monthly subsidy exceeding the established maximums, it will not receive reimbursement from the State for the excess amount. The subsidy payments continue until the child's 21st birthday unless the adoptive parent is no longer legally responsible for the support of the child, or is no longer providing any support to the child.

In addition to monthly subsidy payments, the Program provides for a one-time payment of up to \$2,000 per adopted child for non-recurring expenses involved in the adoption process, such as legal and medical costs. For the period January 21, 2007 through August 14, 2008, Adoption Services approved 3,457 requests for reimbursement of adoption expenses totaling \$4.9 million.

As of December 31, 2008, the adoptive parents of 44,887 children in New York were receiving adoption subsidy payments. The total cost for these payments from January 1, 2008 through December 31, 2008 was \$494.2 million. The federal, State and local share of these payments for this period was \$211.6 million, \$211.9 million and \$70.7 million, respectively.

District staff use the State's Welfare Management System to enroll children into the Program and the OCFS uses several databases to capture all relevant Program-related information, including payment agreements and personal identifying information about adoptive parents and children.

Audit Scope and Methodology

Our audit determined whether adoption subsidy payments were supported and in compliance with governing regulations. This audit covered the period from January 1, 2007 through January 30, 2009.

To accomplish our objectives, we reviewed New York State Social Services Law and New York Codes, Rules and Regulations. We reviewed Title IV-E of the Social Security Act and adoption subsidy policies and procedures. We also interviewed OCFS and local District officials, including New York City's Administration for Children Services. We visited the Albany and Onondaga District offices.

We examined a random sample of 50 out of 7,322 proposed adoption agreements for the period January 2, 2007 through September 4, 2008 to determine whether the agreements were supported with all relevant Program data and payment approvals. We reviewed a random sample of 50 of the subsidy payments made to the adoptive parents of 49,859 children covered by the program during calendar year 2007, to determine whether the payments were correct based on the placement-classification of the child and the child's date of birth. We also reviewed 50 randomly selected expenses of the 3,457 non-recurring adoption expenses for the period January 21, 2007 through August 14, 2008, and selected an additional two expenses for review that reportedly exceeded the maximum payment amount of \$2,000, to determine whether they were appropriate.

To identify deceased children whose adoptive parents were inappropriately receiving subsidy payments, we asked the New York State Department of Health (Health) to match the names of the 49,859 children in the Program to New York State's computerized file of death certificates. We also matched the social security numbers recorded for 11,590 placed children, to the social security numbers identified in the Veris Social Security Number Validation Services (Veris), to determine if the social security numbers for children placed in the program were identified by Veris as for deceased persons.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

**Reporting
Requirements**

A draft copy of this report was provided to OCFS officials for their review and comment. Their comments were considered in preparing this final report and are included in their entirety at the end of the report.

**Contributors to
the Report**

Major contributors to this report include Frank Patone, Donald Geary, Todd Seeberger, Michael Cantwell, Thierry Demoly, Matt Luther, and Sue Gold.

Audit Findings and Recommendations

Review of Subsidy Payments

We concluded that the documentation for a sample of 50 children placed in the Program was sufficient to support their eligibility for Program subsidy payments at the time of placement. However, we also found that \$214,143 of adoption subsidy was overpaid for certain children because, subsequent to their placement, they had deceased or had exceeded the maximum Program eligibility of 21 years of age. If the deaths of the children had not been detected and associated subsidy payments had continued until the children reached their 21st birthday as shown on Program records, additional overpayments of \$423,880 would have resulted.

Deceased Children

We provided the New York State Department of Health (Health) with a list of the names, dates of birth and available social security numbers for 49,859 children whose adoptive parents received subsidy payments during calendar year 2007. We asked Health to match the list to their computerized file of death certificates. The match identified 19 children with names matching those who had deceased according to Health's records. However, as of January 2, 2009, according to OCFS records, \$125,045 of subsidy payments had been made to the adoptive parents subsequent to the date of death of the children. For example, one child reportedly died on March 4, 2006, yet the adoptive parents received \$32,550 of subsidy payments after the date of death through December 7, 2007. Another child reportedly deceased on January 18, 2006, yet \$24,809 of subsidy payments were made after this date through June 1, 2007.

It is important to note that not all of the matching names had matching social security numbers. Accordingly, OCFS must follow-up to fully establish that the individuals we found with matching names on both records are, in fact, true exceptions. In this regard, it should be further noted that, as of January 2, 2009 and subsequent to our match, subsidy payments had stopped for 17 of the 19 children. If subsidy payments are inappropriate for the remaining two children, and continue until they become ineligible for the Program upon their 21st birthday, an additional \$119,256 in potential overpayments would result.

In another test, we compared the names of 11,590 children with social security numbers in the OCFS database to the names of children identified in a software product known as the Social Security Validation Services (Veris). Veris is used to check the validity of social security numbers and to determine if a given social security number is assigned to a deceased

person. This test yielded six more children for whom subsidy payments totaling \$55,738 appeared to have continued after their date of death through September 30, 2008. Subsequently, payments stopped for four of the six children. If subsidy payments are inappropriate for the remaining two children and continue until they become ineligible for the Program upon their 21st birthday, an additional \$304,624 in potential overpayments would result.

Child Eligibility

In a test of the accuracy of date of birth information and classification status for 50 children placed under the Program, we noted one instance where the birth date of a child was incorrectly entered into the Welfare Management System (WMS - establishes recipient eligibility) as January 9, 1994, when according to supporting documentation, it should have been January 9, 1984. As result, the subsidy payments for this child should have stopped as of January 2005 when the child reached age 21 but instead were programmed to continue for 10 additional years. As of the time of our audit, \$33,360 had already been overpaid for this child. If the inappropriate payments continued until the child reached age 21 as shown in WMS, then an additional \$55,041 of overpayments would result.

OCFS officials stated that the accuracy of the WMS data is dependent on the training and supervision of District level staff who perform the data entry.

Our findings are similar to ones included in a prior audit report to the OCFS (96-S-2, issued February 4, 1997). In the prior report we recommended that OCFS officials perform matching tests like the ones presented in our current audit. However, OCFS has only recently begun to act on this recommendation.

One - Time Payments

To receive a one-time payment for non-recurring adoption expenses, documentation of the legal services and/or other expenses incurred during the adoption process must be provided to the District or authorized agency within two years of the date of the final adoption decree. Documentation is then forwarded to Adoption Services for approval. The District then makes the payments to the adoptive parents.

To determine whether there was adequate documentation to support these expenses, we sampled 52 one-time payments (50 at random and two that reportedly exceeded the maximum amount of \$2,000). We reviewed the available supporting documentation maintained by Adoption Services and determined that all 52 of the sampled expenses had adequate support. The

two payments that reportedly exceeded the \$2,000 limit were data input errors. Also, one District (Nassau) overpaid an adoptive parent by \$450. The expense was approved for \$1,050 but the payment was made for \$1,500. Nassau adoption officials believed this occurred because of a transposition error. OCFS officials did not indicate that they would seek to recover this overpayment.

Program Monitoring

Due to privacy issues and Federal regulations, OCFS is limited in what it can do to verify several of the subsidy payment eligibility requirements. For example, District offices prepare periodic “obligation letters” that adoptive parents are required to sign and submit asserting that they continue to provide for children placed with them; that those children continue to reside with them; and that those children, if school age, are actually attending school. OCFS is prohibited from challenging the parents’ assertions. Further, OCFS cannot discontinue payments if a written assertion is not received.

However, as discussed previously in this report, other tools do exist that OCFS could employ to ensure that placed children have not deceased while their parents continue to receive subsidy payments, or that incorrect dates of birth have been established at the District level. In response to our draft report, OCFS officials inform us that OCFS staff have begun to use such tools.

- Recommendations**
1. Investigate all overpayments identified in our audit report and make appropriate recoveries.
 2. Establish appropriate tools and techniques to periodically verify the accuracy of key eligibility data used to support subsidy payments.

Agency Comments



May 7, 2010

**New York State
Office of
Children & Family
Services**

www.ocfs.state.ny.us

Mr. Frank Patone
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street -11th Floor
Albany, NY 12236

David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Dear Mr. Patone:

This is the Office of Children and Family Services' (OCFS) response to the draft audit report, 2008-S-106, Adoption Subsidy Program received from the Office of the State Comptroller (OSC) on April 7, 2010. OCFS appreciates this opportunity to provide clarification on some material contained in the report and information and updates on the various efforts and initiatives OCFS has taken in this program area.

The OSC report contains detailed descriptions on the various testing and sampling of Adoption Subsidy payments which OSC reviewed. This work resulted in the development of two specific OSC recommendations:

Recommendation 1 - Investigate all overpayments identified in the OSC audit report and make appropriate recoveries.

OCFS is providing the audit findings to the responsible local social services districts. The Administration for Children's Services (ACS) has already received, and has been requested to verify, the findings and take appropriate actions. The districts need to document the date of death for the 25 children identified as being deceased. A birth certificate, or other valid documentation, should be reviewed for any child paid past age 20. OCFS will offer technical assistance to local districts in the calculation of proper adoption subsidy payments and the appropriate mechanisms by which recoveries can be pursued when warranted.

Upon verification of the OSC findings, the district should determine that payments are no longer being made. Claims adjustments to the non-reimbursable category for all payments that cover service periods beginning on the date of death or the child's 21st birthday should be made. For the two non-recurring payments that exceeded \$2,000 claims adjustments should be pursued as applicable. In the example provided in the audit report, Nassau County should make a \$450 adjustment to the non-reimbursable category since this payment amount was not approved. In the other non-recurring payment cited, since federal



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Frank Patone
May 7, 2010
Page 2

Title IV-E rules limit non-recurring Title IV-E claims to \$2,000 per child, payment amounts exceeding \$2,000 should be adjusted to an appropriate claiming category other than Title IV-E.

Recommendation 2 - Establish appropriate tools and techniques to periodically verify the accuracy of key eligibility data used to support subsidy payments.

It is important to note that many of the initiatives underway to address adoption subsidy payment concerns started before the audit findings were developed. OCFS is fully committed to verification of adoption subsidy payment accuracy. A summary of some of the more significant activities underway to help achieve this objective include:

OCFS actions include the identification of over 49,000 New York City foster children paid adoption subsidy from 1999 to present. OCFS has also recently completed a similar search for Westchester and Nassau counties. Based on the foster care matches, OCFS was able to establish that a significant number of New York City Adoption Subsidy (NYCAS) children could potentially receive (or were scheduled to receive) subsidy past their 21st birthday. ACS and the New York City Department of Investigations (DOI) have been involved in follow-up activities.

Specifically, OCFS provided ACS (with assistance from DOI) with a file which identified NYCAS parents who have, or are at risk of, receiving payments on behalf of individuals who are 21 years of age or older. The foster care matching process described above enables OCFS to provide ACS with a list of 413 children whose adoption dates of birth were more than 30 days younger than their listed foster care date of birth. That information enabled OCFS to identify individuals for whom payments were made in error for extended periods of time.

It is noteworthy that less than five percent of NYCAS children have social security numbers in Welfare Management Services (WMS). OCFS has been matching demographic data from WMS NYC (non-services and Medicaid) and WMS Non-Services to NYCAS children in an attempt to identify social security numbers. Approximately 10,000 social security numbers have been matched for NYCAS children. OCFS plans on continuing and expanding this matching process to the rest of the state.

Frank Patone
May 7, 2010
Page 3

OCFS has been working with the New York State Department of Health (NYSDOH) in establishing a matching process for New York State Adoption Subsidy children to death certificate electronic records for both the NYSDOH and the New York City Department of Health (NYCDOH). An agreement on the method by which that information will be shared with local districts is pending. A small test file which had been sent to NYSDOH was successfully processed on April 16, 2010. The next file submitted will include the addition of social security numbers that have been identified, multiple records for adoption subsidy records where OCFS has identified that the foster care date of birth differed from the adoptive date of birth, and separate records using the foster care demographic when they varied from the adoption subsidy record. Thereafter, the possible matches will need to be reviewed to eliminate deaths that occurred after adoption subsidy payments ended. NYSDOH has informed OCFS that the entry of death certificates into their data base may take from two to six months from the actual date of death. OCFS will monitor matching information and distribute pertinent material to local districts for additional review and appropriate action. In view of these factors, OCFS will complete these match runs on at least a quarterly basis. This timeframe is a key component of the periodic verification structure and process that OCFS is developing. This process should identify inappropriate adoption subsidy payments more quickly and result in additional reductions of inappropriate adoption subsidy payments.

Additionally, OCFS has begun analysis of data where the adoption level of difficulty (rate) data has changed post adoption. OCFS is also examining the feasibility of partnering with an organization that has death information throughout the country (e.g., Veritas, Social Security Administration). Expanded access to social security numbers is a critical component of developing and sustaining accurate data matches. The results of these matches will be shared with appropriate OCFS and local district staff. All of these steps are designed to enhance risk assessment and control of the adoption subsidy payment process.

Another concern raised in the audit report involved non-recurring payments. Federal Title IV-E regulations limit claims for non-recurring adoption subsidy payments to \$2,000. OCFS conducted a review of non-recurring adoption payments for New York City children where the

Frank Patone
May 7, 2010
Page 4

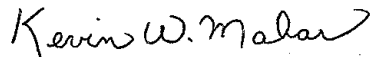
cumulative amount paid per child exceeded \$2,000 in the Benefits Issuance Control System (BICS). It should be noted that this review was based on the universe of BICS New York City non-recurring payment records paid under service type 80, having a service date within the past five years where the cumulative amount exceeded \$2,000. A desk review was completed and found that most of the payments exceeding \$2,000 were actually payments made on behalf of multiple children paid under one Child Identification Number (CIN) in BICS. There were only a small number of instances where cumulative payments appear to exceed the threshold. OCFS also identified several large checks made out to attorneys and then voided and reissued on BICS. OCFS is pursuing a review of ACS bank statements to be certain that the initial checks were not cashed.

The OSC report also addresses the issue of program monitoring and the limitations privacy issues and federal regulations impose on the Adoption Subsidy program. OCFS has attached copies of correspondence with the federal Department of Health and Human Services on this topic. A change in federal law, the Fostering Connections to Success and Increasing Adoption Act of 2008, requires that New York State ascertain the educational status of school-age adopted children who are in receipt of adoption assistance. OCFS used the opportunity of this change in federal law, consistent with the guidance provided by the federal government noted above, to amend OCFS regulation (18 NYCRR 421.24(c)(19) to require social services districts, on an annual basis, to require adoptive parents in receipt of adoption subsidy to provide a certification on the status of the adopted child. The adoptive parent must certify that he or she continues to provide any support (the federal standard) of the adopted child and continues to be legally responsible for the support of the child. In addition, where the adopted child is school age, the adoptive parent must certify that the child is attending school, had completed compulsory education or is not capable of attending school on a full-time basis due to the child's medical condition, in which case the adoptive parent must produce information that describes the child's incapacity as documented by a medical professional. A model certification form was issued by OCFS directive 09-OCFS-ADM-11. Consistent with the federal guidance noted above, the administrative directive provides guidance to social services districts in regard to following up with adoptive parents who fail to respond.

Frank Patone
May 7, 2010
Page 5

The administration of the Adoption Subsidy Program is a high priority at OCFS. This program provides valuable service and support to needy families throughout New York State. OCFS is confident that the detailed testing and matching processes that are currently in use and being developed will significantly improve the monitoring and review of Adoption Subsidy payments. OCFS remains committed to the continuing assessment and refinement of the processes and protocols associated with this program to better serve the children and families in New York State in the most effective manner possible.

Sincerely,



Kevin W. Mahar
Director
Office of Audit and Quality Control

Enclosures

cc: William T. Gettman, Jr.
Thomas S. Tipple
Karen Walker-Bryce
Laura Velez
Brenda Rivera

Stupp, John (OCFS)

From: Stupp, John (OCFS)
Sent: Wednesday, June 25, 2008 1:08 PM
To: Stupp, John (OCFS)
Subject: FW: Adoption Assistance Questions
Attachments: Picture (Metafile)

August 29, 2007

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

Re: Adoption Assistance Questions

Dear Mr. Scott:

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

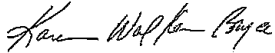
OCFS would like to confirm that it is acceptable for the State or local government agency responsible for administering the adoption assistance program to evaluate, on an annual basis, whether an adoptive parent is still providing any support for the adopted child and is legally responsible for the support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

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

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

Your earliest response to these questions is greatly appreciated.

Very truly yours,



Karen Walker Bryce, Esq.
Deputy Commissioner and General Counsel

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for
Children and Families

Region II
26 Federal Plaza, Rm 411
New York, NY 10278

November 21, 2007

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

Dear Ms. Walker Bryce:

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

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

Federal law and policy do not prohibit a State from conducting periodic evaluations that may include requiring an adoptive parent to submit an affidavit or attestation that confirms the parent's continued support for, or responsibility of, an adopted child. Such evaluations are permissible as long as they are consistent with §473 of the Social Security Act and with §8.D2.1, Q#1 of the Child Welfare Policy Manual (CWPM), which prohibits a State from requiring a family to provide an "accounting for the expenditures" that the family incurs. Once the adoption assistance agreement is in effect, decisions about expenditures are at the discretion of the parent and are not subject to further agency approval or oversight. OCFS states that its intent is not to violate this policy in seeking verification that an adoptive parent is providing support to a child. However, ACF is concerned that a proposal to seek information beyond a general affirmation that the parent is providing support or remains legally responsible to provide support to the child could result in a more intensive and intrusive inquiry than the Adoption Assistance program contemplates.

Page 2 – Karen Walker Bryce

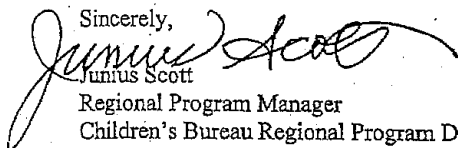
It is incumbent upon adoptive parents to keep the State informed of material changes that might impact the parent's support, but a State cannot terminate or suspend adoption assistance if the adoptive parents fail to reply to the State's request for information (§473(a)(4)(B)). Section 473(a)(4)(B) of the Act identifies only three circumstances under which an adoption assistance subsidy may be terminated or suspended including if the State determines that the parents are no longer legally responsible for the support of the child or when the adoptive parents are no longer providing support to the child (See also, CWPM §8.2D.5, QA #1). Furthermore, a State will not jeopardize its Federal financial participation if it fails to collect assurances that an adoptive parent is providing support or remains legally responsible to provide support.

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

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

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

Sincerely,



Junius Scott

Regional Program Manager
Children's Bureau Regional Program Division



David A. Paterson
Governor

NEW YORK STATE
OFFICE OF CHILDREN & FAMILY SERVICES
52 WASHINGTON STREET
RENSSELAER, NY 12144

Gladys Carrión, Esq.
Commissioner

Administrative Directive

Transmittal:	09-OCFS-ADM-11
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	May 7, 2009
Subject:	Adoption Subsidy and Education Requirements for Adopted Children
Suggested Distribution:	Directors of Service Adoption/Post Adoption Supervisors Staff Development Coordinators
Contact Person(s):	Any questions concerning this release should be directed to the appropriate Regional Office: Buffalo Regional Office – Mary Miller (716) 847-3145 Mary.Miller@ocfs.state.ny.us Rochester Regional Office – Linda Kurtz (585) 238-8201 Linda.Kurtz@ocfs.state.ny.us Syracuse Regional Office – Jack Klump (315) 423-1200 Jack.Klump@ocfs.state.ny.us Albany Regional Office – Kerri Barber (518) 486-7078 Kerri.Barber@ocfs.state.ny.us Spring Valley Regional Office – Pat Sheehy (845) 708-2498 Patricia.Sheehy@ocfs.state.ny.us NYC Regional Office – Patricia Beresford (212) 383-4873 Patricia.Beresford@ocfs.state.ny.us Native American Services – Kim Thomas (716) 847-3123 Kim.Thomas@ocfs.state.ny.us
Attachments:	Attachment A – Model Letter regarding Parental Certification of Continued Support and Educational Status of Child Attachment B – Model Form: Parental Certification of Continued Support and Educational Status of Child (OCFS-7069)
Attachment Available Online:	Yes

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 421.24 (c) (19)	SSL§453 (1) (c)	Eligibility Manual for Child Welfare Programs	

I. Purpose

The purpose of this Administrative Directive (ADM) is to provide guidance to social services districts about new requirements regarding adoption subsidy and education-related provisions enacted by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 [Fostering Connections Act] (P.L. 110-351) and implementing state regulations, currently in effect on an emergency basis. In addition, this ADM will remind social service district officials of the requirement, on an annual basis (formerly, on a biennial basis), to issue in written form a reminder to adoptive parents in receipt of adoption subsidy payments of their obligation to support the adopted child and to notify the social services official if they are no longer providing any support or are no longer legally responsible for the support of the adopted child. Lastly, this ADM provides a model letter and certification form pertinent to these requirements.

II. Background

When a child is adopted with subsidy, as part of the signed adoption subsidy agreement between the adoptive parents and the social service district, the adoptive parents are informed that they are obligated to notify the social services district of any changes in the residential or dependency status of the child, including circumstances which would make them ineligible for adoption subsidy.

The Fostering Connections Act places great emphasis on educational matters for foster and adopted children. The Fostering Connections Act requires assurances applicable to each child eligible for Title IV-E funding who has attained the minimum age for compulsory education under state law. In implementing the federal law, the applicable New York State standards will apply to all foster children and children in receipt of adoption subsidy, irrespective of whether or not they are eligible for Title IV-E. For a foster child, the assurances will be provided by the social services district or voluntary authorized agency with case management, case planning or casework responsibility. However, in regard to an adopted child, the adoptive parents must provide the required assurances.

For adopted children in receipt of adoption subsidy who are of school-age under the laws of the state in which the child resides, the adoptive parents must certify that the adopted child is one of the following:

- a full-time elementary or secondary student ;
- has completed secondary education; or
- is incapable of attending school on a full-time basis due to the adopted child's medical condition, which incapacity is supported by annual information submitted by the adoptive parents as part of this certification.

For purposes of this certification, an elementary or secondary school student means an adopted child who is:

- enrolled, or in the process of enrolling, in a school which provides elementary or secondary education, in accordance with the laws of the jurisdiction in which the school is located;
- instructed in elementary or secondary education at home, in accordance with the laws of the jurisdiction in which the adopted child's home is located; or
- in an elementary or secondary independent study education program, administered by the local school or school district, in accordance with the laws of the jurisdiction in which the adopted child's school or school district is located.

Effective December 31, 2008, the Office of Children and Family Services (OCFS) filed regulations on an emergency basis to implement various provisions of the Fostering Connections Act, and re-filed such regulations effective March 26, 2009. OCFS regulation 18 NYCRR 421.24(c)(19), provides that the social services official must on an annual basis (formerly biennial basis), in a written notification, remind the adoptive parents of their obligation to support the adopted child and to notify the social services official if the adoptive parents are no longer providing any support or are no longer legally responsible for the support of the child. In addition, OCFS regulation 18 NYCRR 421.24(c)(19) requires that the adoptive parents provide a certification of the education status of the school-age adopted child.

III. Program Implications

As part of Title IV-E State Plan requirements to implement section 204 of the Fostering Connections Act, OCFS must attest to how the provisions regarding school attendance of children adopted with subsidy are being implemented. Failure to comply could result in the loss of at least a portion of the state's Title IV-E reimbursement.

This ADM and the attached Model Letter and Model Certification form provide social services districts with a means and process to meet the requirements. In addition, in the near future, OCFS will modify Appendix A of the adoption subsidy agreement, so that adoptive parents understand prospectively that they will be asked annually to certify as to the educational status of the adopted child.

It is important to understand the ramifications of replies and how to address the circumstance when a reply is not received. Although the expectation is that all adoptive parents will reply; practically, there will always be some who do not reply. Furthermore, questions have been raised regarding when submission of additional proof (relevant to both support and school attendance) beyond certification, can, or should, be requested.

OCFS has been advised by the federal Administration for Children and Families (ACF) that because the federal adoption assistance program is an entitlement, the state may not impose additional criteria beyond the federal requirements. Furthermore, ACF advised against any intensive or intrusive inquiry into an adoptive family's life. However, attestations and affidavits by the adoptive parents were stated by ACF as being acceptable means of verifying support. ACF informed OCFS that the state cannot terminate or suspend adoption assistance if the adoptive parents fail to reply to the state's request for information. Taking this guidance from ACF, OCFS concludes that a certification may be used in regard to the education status of the adopted child and that adoption subsidy may not be suspended or terminated for the failure to respond to the request for certification.

IV. Required Action

Social services districts, on an annual basis, are to send the Model Letter, or a comparable letter, to adoptive parents receiving adoption subsidy. Social services districts are to enclose the Model Certification form, or comparable form, instructing the adoptive parents to complete, sign and return the form, according to the instructions on the form. A reasonable time for the return of the form should be indicated in the letter or on the certification form. In the event the form is not returned by the suggested due date, it is recommended that the form be sent a second time. If there is no response to the second inquiry, where possible a phone call is recommended. In no event should an adoption subsidy be suspended or terminated due to failure to reply.

If at any time, or in response to the inquiry, the social services district is advised that the adoptive parent(s) are no longer legally responsible for the adopted child, or that the adoptive parent(s) do not provide any support for the adopted child, the WMS case must be closed and subsidy payments must cease as of the date of the change of circumstance, in accordance with section 453(1)(c) of the SSL. The adoptive parent(s) must be given written notice of the termination of subsidy payments and their right to a fair hearing to challenge termination. Examples of such change in circumstance that warrant termination include, but are not limited to: a child's marriage, a child's death, a child entering into the military, and any other circumstance whereby adoptive parent(s) are not providing any support to the child. Follow-up inquiry may be necessary to determine the

precise date to terminate adoption subsidy payments and/or arrange for any necessary recovery of over payments.

As before, copies of all inquiry letters, and all responses replying to the inquiry, are to be retained as part of the adoption subsidy payment record for at least six years from issuance of the inquiry letter, and accessible for potential audit purposes.

With regard to the educational status of the school-age adopted child, if a reply is received indicating the child has a medical condition which incapacity makes the child unable to attend school full time, the child's condition must be documented by a physician, or a physician's assistant or nurse practitioner under the supervision of a physician, or a licensed psychologist. Upon failure to receive this documentation, every effort should be made to seek it.

If the social services district is informed that the school-age child has not completed compulsory education, is not a full-time student as defined above, or is incapable of attending school on a full-time basis due to the medical condition of the child, as supported by required documentation, subsidy must continue to be paid, as long as the adoptive parents are providing any support for the child and the adoptive parents continue to be legally responsible for the support of the child.

However, in such cases, the social services district should consider whether it is appropriate to make a report of suspected child maltreatment on the basis of educational neglect to the Statewide Central Register of Child Abuse and Maltreatment. Every effort should be made to confirm the educational status of the child before making such a report. OCFS does not recommend that a report be made only on the basis of the failure of the adoptive parents to provide a response or where the response does not adequately demonstrate that the child is a full-time student, has completed his/her compulsory education or has a medical condition that prevents the child from attending school on a full-time basis. The failure to respond would not, in and of itself, constitute reasonable cause to suspect educational neglect. The social services district would need additional information providing reasonable cause to suspect that the child was not receiving an education in compliance with the compulsory education requirements of the Education Law and that the adoptive parents were at least to some degree responsible for the failure of the child to receive an education.

If, based on additional information collected, the social services district has reasonable cause to suspect that the child is being educationally neglected, then a report to the Statewide Central Register of Child Abuse and Maltreatment is appropriate.

V. Systems Implications

None

VI. Additional Information

For any youth, whose adoptive parents have died or sole surviving adopted parent has died prior to the eighteenth birthday of the adopted child and for which an adoption subsidy is currently being paid to a legal guardian or legal custodian, or for any youth over the age of 18 for which an adoption subsidy is currently being paid to the legal guardian, the child him- or herself or to a representative payee, it is the districts obligation to determine annually whether the youth is still dependent upon the adoption subsidy, and for youth who have not graduated from high school, the youth's educational status.

The attached Certification form [OCFS-7069 (4/2009)] will be made available on the OCFS internet and intranet forms site.

VII. Effective Date

This directive is immediately effective, retroactive to December 31, 2008, the date of initial filing of the emergency regulations which implement the requirements of the Fostering Connections Act.

/s/ Nancy W. Martinez

Issued By:

Name: Nancy W. Martinez,

Title: Director

Division/Office: Strategic Planning and Policy Development

**Attachment A
MODEL LETTER**

Re: _____
(Child's Name)

Dear _____:

_____ County Department of Social Services is required to determine on an annual basis that you continue to be legally responsible for the support of your adopted child and are still providing any support. We are also required to verify the educational status of your adopted child.

According to our records, the child listed above is under 21 years of age and you are receiving a subsidized adoption payment for him/her.

If your child's adoption has been finalized please provide the child's adopted name on the enclosed form. Otherwise, the child's birth name should be provided. If the adoption has been finalized, please indicate the date of the finalization.

As provided in your adoption subsidy agreement, it is your responsibility to inform us as of any changes in the residential or dependency status of your adopted child that would make the child ineligible for adoption subsidy, including if you cease to be legally responsible for this child, or you are no longer providing any support for him/her. Unauthorized overpayments that result from failure to notify us are subject to recovery.

After providing the requested information on the attached form, please sign and indicate your current address and telephone number in the spaces provided. This certification serves to confirm your current mailing address and telephone number so that your subsidy payments will not be delayed due to an inaccurate mailing address.

Thank you for your prompt cooperation.

If you have any questions or require assistance in completing the attached form, please contact:
_____ at () _____.

We are requesting that you complete the form enclosed with this letter and return it to us no later than (insert date).

Sincerely,

_____ Department of Social Services

Attachment

ATTACHMENT B MODEL FORM

For District Use _____ Date sent: ____/____/____
 Child's Name: _____

Parental Certification of Continued Support and Educational Status of Child

I/We hereby certify that the information provided by me/us is true and accurate to the best of my/our knowledge involving the child listed below for whom I/we are receiving monthly adoption subsidy payments for him/her from _____ County Department of Social Services.

PLEASE PROVIDE MISSING INFORMATION

Child's Name: _____ Child's Date of Birth: ____/____/____

Date Adoption Finalized: ____/____/____

At Home: ☐ Yes ☐ No

Date Left Home: ____/____/____

1. I/We are still legally responsible for the above named child. *(check one)* ☐ Yes ☐ No
2. I/We continue to provide any support for him/her. *(check one)* ☐ Yes ☐ No
3. To be completed **only** where the adopted child is school-age in accordance with the laws where the adopted child resides. The above named child is: ☐ Yes ☐ No
(check only one box).
 - ☐ a full-time elementary or secondary student;
 - ☐ has completed secondary education; or
 - ☐ not attending school full time.

If the above named child has not completed secondary education, please check the box which best describes his or her educational status:

- ☐ enrolled, or in the process of enrolling, in a school which provides elementary or secondary education

School Name and Address: _____

School district name: _____

For District Use: _____ Date sent: ____ / ____ / ____

Child's Name: _____

☐ instructed in elementary or secondary education at home.Name and address of supervising school: _____

_____☐ in an elementary or secondary independent study education program, administered by the local school or school district.Name and address of administering school or school district: _____

_____☐ incapable of attending school on a full-time basis due to the adopted child's medical condition.*(If this box is checked, please submit as part of this certification, information which describes the incapacity that prevents full time school attendance. The child's condition must be documented by a physician, or a physician's assistant or nurse practitioner under the supervision of a physician, or a licensed psychologist).*

Please sign below and complete information with current address and telephone number. Your reply is appreciated no later than ____ / ____ / ____

Signatures: _____

(Adoptive Parent 1)

(Adoptive Parent 2)

Date: ____ / ____ / ____

Address: _____

Street Address

City

State

Zip Code

Telephone #: (____) _____
(Area Code)

A prepaid envelope is enclosed for the return of this document. If there are questions, please contact:

_____, at (____) _____