

How To Negotiate An Adoption Assistance (Subsidy) Agreement

Federal and State law and regulation require that adoption assistance agreements be negotiated to meet the individual needs of each child. Further, parents have the right to re-open negotiations and ask for a new agreement any time the child's needs or the family circumstances change. There is no limit to how often or how many times any agreement can be negotiated. However, federal and State regulations do limit the subsidy amount to what the agency would have to pay to maintain the child in foster care.

When is the subsidy negotiated?

Both federal and State law and regulations require that an adoption assistance agreement must be entered into prior to the finalization of the adoption. Ideally, adoption assistance should be negotiated several months prior to the anticipated finalization date.

What may be taken to the negotiation process?

Documentation of the child's special needs such as medical records, prescription histories, psychological evaluations, school records, and the information about risk factors and special needs listed in the documents given to you by the adoption agency.

In addition to the child's level of disability, family circumstances can be taken into account during the negotiation process. "Family circumstances" is defined as the family's ability to incorporate the expense of the child's needs into the family budget. (A parent's income may not be used to determine qualification or subsidy dollar amount.) Once an adoption assistance agreement has been established, changes in family circumstance such as losing a job, relocation to another state, divorce or changes in the child's situation can also be the basis of a request to **renegotiate** the contract.

The prospective adoptive parents can have an attorney review the subsidy agreement to ensure that the child's best interests are addressed. The attorney's fees and other expenses related to the review of the title IV-E adoption assistance agreement may be reimbursed up to \$2,000, as part of nonrecurring expenses of adoption.

Can I bring someone with me to the negotiation process?

Yes. As above, you may bring an attorney or another interested person to the negotiation session. The attorney's fees related to the review may be reimbursed up to the \$2,000 limit as part of nonrecurring expenses of adoption.

Do I have to use the county agency attorney for the adoption/adoption assistance process?

No. You can retain any attorney you choose. Any fees incurred that fall under the Nonrecurring Expenses category may be reimbursed up to the \$2,000 limit. Any expenses incurred in excess of the \$2,000 limit will be your responsibility, but may be eligible for a tax credit under the Federal Adoption Tax Credit.

Is the \$2,000 Nonrecurring Expense limit negotiable?

No. According to federal regulation, while a county children and youth agency may not limit reimbursement for a single category of Nonrecurring Adoption Expenses, federal and State regulations limit the total amount the county may reimburse to \$2,000. Adoptive parents who apply for reimbursement of the Nonrecurring Expenses of adoption must be reimbursed for any of the eligible nonrecurring adoption expenses, up to \$2,000, when they adopt a child with special needs. If the adoptive parents choose to use the entire \$2,000 for an attorney, no other eligible non-recurring expense can be paid.

Are there limits to the amount of monthly adoption assistance that my child can receive?

Yes. The amount of the adoption assistance payment cannot exceed the amount the county children and youth agency would have paid, if the child remained in a foster family home or if s/he had been in a foster family home. Reimbursement from the Adoption Assistance Program is not available for any service or item covered under Medicaid or for any service or item that Medicaid has determined is not medically necessary. This includes any part of the current foster care per diem being billed to Medicaid to pay for medical or behavioral services provided by the foster parent. Foster parents who provide ‘therapeutic’ or specialized care for children with severe behavioral or medical needs, and who plan to adopt such children, need to understand that the monthly adoption subsidy amounts may be less than per diems partially funded by Medicaid.

What if I, the pre-adoptive/adoptive parent, do not agree with the agency?

Should negotiations break down; the county children and youth agency should request mediation by the regional office of the Department of Public Welfare’s Office of Children, Youth and Families. If the mediation is unsuccessful, the county agency must provide written notification of their decision to the adoptive family. If the adoptive family is dissatisfied with the county agency decision relating to adoption assistance, they may file a written appeal within 15 calendar days of the mailing date of the county agency’s adverse decision.

When can adoption subsidy be appealed?

According to federal and State regulations, the following situations constitute grounds for a fair hearing:

1. Relevant facts regarding the child, the child's background or biological family were known and not presented to the adoptive parents prior to the finalization of the adoption;
2. Assistance was denied based on a means test of the adoptive family;
3. An erroneous determination was made by the county agency regarding the child's eligibility status.
4. The availability of adoption assistance was not discussed with prospective adoptive parents.
5. There was a denial or reduction of service; or
6. Services were terminated or suspended.

Once an adoption assistance agreement is entered into with the county, can the adoption assistance payments be adjusted (either reduced or increased)?

With the concurrence of the adoptive parents, the amount of the assistance may be adjusted if the family's or child's circumstances change.