

## **Adoption Assistance Program A Fact Sheet Prepared by the Youth Law Center**

### **What is the Adoption Assistance Program?**

The Adoption Assistance Program (AAP) is designed to support permanence for children in foster care who would not be adopted without financial assistance.<sup>1</sup> Although federal financial participation is available for qualifying adoption assistance benefits under Title IV-E of the Social Security Act, California has one adoption assistance program and one set of program requirements that include both federally eligible and non-federally eligible children.<sup>2</sup>

### **Who is eligible for AAP?**

Virtually every child adopted from foster care is eligible for AAP in California. Children who are unlikely to be adopted without financial or medical assistance because of their age (over 3), membership in a minority or sibling group, medical condition, disability or adverse parental background (of a medical or behavioral nature that can affect the child's development) are eligible for adoption assistance if they are under the supervision of a child welfare agency.<sup>3</sup> However, children involved in an agency adoption who have been certified by the county child welfare agency as at risk of dependency may also be eligible for AAP, even if they never actually entered the foster care system.<sup>4</sup> A child must be a United States citizen or a "qualified alien" to be eligible for AAP.<sup>5</sup>

Children with disabilities involved in independent adoptions (under Family Code section 8524) may also be eligible for AAP if they meet the requirements for Supplemental Security Insurance (SSI).<sup>6</sup>

Relative caregivers and other prospective adoptive parents are eligible to receive adoption assistance, regardless of income. "Means testing" of prospective adoptive parents in determining a child's AAP eligibility is prohibited.<sup>7</sup> Children who receive AAP

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<sup>1</sup> Cal. Welf. & Inst. Code §§ 16115, 16115.5, 16118–16120.1, 16121, 16121.05-16122-16123; 42 U.S.C. § 673.

<sup>2</sup> Cal. Welf. & Inst. Code § 16120; CDSS Manual of Policy & Procedures (MPP) – Adoption Users Manual § 35326. Available at: <http://www.cdss.ca.gov/ord/entres/getinfo/pdf/ad1101.pdf> (The regulations in the Adoption Users Manual may also be found in Title 22 of the California Code of Regulations—22 Cal. Code Regs. §§ 35000 *et seq.*).

<sup>3</sup> Cal. Welf. & Inst. Code § 16120.

<sup>4</sup> Cal. Welf. & Inst. Code § 16120 (i)

<sup>5</sup> Cal. Welf. & Inst. Code § 16120(l). If the child is a "qualified alien" as defined in 8 U.S.C. § 1641 certain eligibility restrictions may apply if the child is placed with an unqualified alien.

<sup>6</sup> Cal. Welf. & Inst. Code § 16120(j) & (k).

<sup>7</sup> Cal. Welf. & Inst. Code §§ 16119(d) (1), 16120.1(b).

remain eligible if they are adopted again if the previous adoptive parents die or if the previous adoption is dissolved.<sup>8</sup>

### **What type of assistance is available?**

AAP provides financial assistance and Medi-Cal eligibility.<sup>9</sup>

Adoptive parents may receive cash payments that include:

- (1) A one-time payment, up to \$400, to cover court costs associated with the adoption;<sup>10</sup> and
- (2) Monthly payments up to, but not exceeding, the amount the child would have received in a foster family home, including the age related state-approved foster family home rate and any applicable specialized care increment.<sup>11</sup> Children who receive Regional Center services are eligible for benefits up to the “dual agency rate.”<sup>12</sup>

AAP will cover the cost of placement of the child in a group home or residential treatment facility if placement is necessary for the temporary resolution of mental or emotional problems related to a condition that existed prior to the adoptive placement.<sup>13</sup>

### **How is the amount of assistance determined?**

The amount of the AAP payment is a negotiated amount between the adoptive parents and the agency based on the child’s needs otherwise covered in AFDC-FC payments and the circumstances of the adopting family.<sup>14</sup> The “circumstances of the family” includes the family’s ability to incorporate the child into the household in relation to their lifestyle, standard of living and future plans and to their overall capacity to meet the immediate and future plans and needs, including education, of the child.<sup>15</sup>

The maximum AAP payment varies depending on the date of the initial adoption assistance agreement.

- (1) If the initial adoption assistance agreement was signed between October 1, 1992 and December 31, 2007, the payment cannot exceed the basic foster care maintenance payment rate structure in effect on December 31, 2007, that would have been paid based on the age-related state-approved foster family home rate,

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<sup>8</sup> Cal. Welf. & Inst. Code § 16120(m)

<sup>9</sup> Cal. Welf. & Inst. Code § 16119; MPP Adoption Users Manual § 35337(a) (10).

<sup>10</sup> Cal. Welf. & Inst. Code § 16120.1.

<sup>11</sup> Cal. Welf. & Inst. Code § 16121.

<sup>12</sup> Cal. Welf. & Inst. Code §§11464,16121(c).

<sup>13</sup> Cal. Welf. & Inst. Code §16121(b).

<sup>14</sup> Cal. Welf. & Inst. Code §§ 16119 & 16121; MPP Adoption Users Manual § 35333.

<sup>15</sup> Cal. Welf. & Inst. Code § 16119(d) (2).

and any applicable specialized care increment, for a child placed in a licensed or approved family home.<sup>16</sup>

- (2) If the initial agreement was signed between January 1, 2008 and December 31, 2009, the payment cannot exceed the basic foster care maintenance payment rate structure in effect on December 31, 2009, that would have been paid based on the age-related state-approved foster family home rate, and any applicable specialized care increment, for a child placed in a licensed or approved family home.<sup>17</sup>
- (3) If the agreement was signed between January 1, 2010 and June 30, 2011, the payment cannot exceed the basic foster care maintenance payment rate structure in effect on June 30, 2011, and any applicable specialized care increment, that the child would have received while placed in a licensed or approved family home.<sup>18</sup>
- (4) For agreements signed on or after July 1, 2011, the payment amount cannot exceed the basic family home rate plus any applicable specialized care increment established as a result of a federal court order in *California State Foster Parents Association v. Lightbourne*.<sup>19</sup> The current amount of these rates is posted on the California Department of Social Services website.<sup>20</sup>
- (5) For dual agency youth, if the agreement was signed before July 1, 2007 the dual agency rate is based on regional center rates in effect before that date, unless the rate is lower than the current statutory dual agency rate and then the maximum is the higher current statutory dual agency rate.<sup>21</sup> For agreements signed on or after July 1, 2007, the payment amount cannot exceed the dual agency statutory rate set forth in Welfare & Institutions Code section 11464.<sup>22</sup>

The adoptive parents and agency enter into an adoption assistance agreement that sets forth the amount and duration of the payments as well as the responsibilities of all parties under the agreement.<sup>23</sup> The AAP agreement must be signed before the adoption is finalized.<sup>24</sup> If the adoptive family does not need financial assistance at the time of the adoptive placement but anticipates they may need assistance in the future or want to establish Medi-Cal coverage for the child, they should enter into a deferred adoption assistance agreement or a “Medi-Cal only” agreement.<sup>25</sup>

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<sup>16</sup> Cal. Welf. & Inst. Code § 16121(a)(1)

<sup>17</sup> Cal. Welf. & Inst. Code § 16121(a)(2).

<sup>18</sup> Cal. Welf. & Inst. Code § 16121(a)(3).

<sup>19</sup> Cal. Welf. & Inst. Code § 16121(a)(4).

<sup>20</sup> See the Rates and Audits Branch website. <http://www.cdss.ca.gov/inforesources/Foster-Care/Foster-Care-Audits-and-Rates>

<sup>21</sup> Cal. Welf. & Inst. Code § 16121(c).

<sup>22</sup> Cal. Welf. & Inst. Code § 11464 and § 16121(c).

<sup>23</sup> MPP Adoption Users Manual § 35337 (AAP agreement required contents).

<sup>24</sup> Cal. Welf. & Inst. Code § 16120(g).

<sup>25</sup> Cal. Welf. & Inst. Code §§ 16119(b), 16121(d)(1).

## Can the amount of the monthly AAP assistance payments be changed?

Families receiving AAP payments may request an increase in the AAP payment up to the maximum amount allowed under the AAP agreement if the child's needs or the family's circumstances change.<sup>26</sup> Once the adoption assistance agreement is signed, payments **cannot** be decreased or terminated without the adoptive parents' consent unless:

- (1) The adoptive parents are no longer legally responsible for the child's support; or
- (2) The child is no longer supported financially by the adoptive parents.

However, the AAP agreement may specify a future condition when the amount will decrease.

AAP payments are increased automatically to the same degree and extent the state approved age-related basic foster family home rate increases if the initial AAP agreement was signed before January 1, 2010.<sup>27</sup> Adoption assistance agreements signed after January 1, 2010, may not be automatically increased. However, parents may request a reassessment of the child's needs, and the AAP payment may be increased to meet the child's needs provided that the amount of the payment does not exceed the amount paid when the child was placed in a licensed or approved family home in foster care.<sup>28</sup> State regulations require the adoption assistance benefit to be reassessed by the agency at least once every two years, but payment continues until the child is no longer eligible.<sup>29</sup>

## How long do AAP payments last?

AAP payments can be made on behalf of an eligible child until the child turns 18 years old with the following exceptions:

- (1) Children with mental or physical disabilities that warrant the continuation of assistance are eligible for AAP until they reach the age of 21.<sup>30</sup>
- (2) Children are eligible for AAP after age 18 if:
  - a. the initial AAP agreement was signed on or after the child's 16<sup>th</sup> birthday, and
  - b. the youth is engaging in one or more of the following activities
    - i. completing secondary education or a program leading to an equivalent credential,

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<sup>26</sup> MPP Adoption Users Manual § 35343(a).

<sup>27</sup> Cal. Welf. & Inst. Code § 16121(a).

<sup>28</sup> *Id.*

<sup>29</sup> MPP Adoption Users Manual § 35333(g).

<sup>30</sup> Cal. Welf. & Inst. Code §§ 16120(d), 16123.

- ii. enrolled in an institution that provides postsecondary or vocational education,
- iii. participating in a program or activity designed to promote, or remove barriers to, employment,
- iv. employed for at least 80 hours per month, or
- v. is incapable of doing any of the above activities due to a documented medical condition.<sup>31</sup>

### **What happens if the adoptive parents and child move?**

Adoptive parents will continue to receive AAP assistance at the agreed upon rate even if they move to a different county, state or country.<sup>32</sup> Children with federal (IV-E) adoption assistance are eligible for Medicaid in the state where they reside.<sup>33</sup> Children with state-only adoption assistance are eligible for Medicaid in most other states, but adoptive families should clarify eligibility before they move.<sup>34</sup>

### **Resources:**

California Department of Social Services, Manual of Policies & Procedures- Adoption Users Manual

<http://www.cdss.ca.gov/ord/entres/getinfo/pdf/ad1101.pdf>

U.S. Department of Health & Human Services, Administration for Children & Families, Child Welfare Policy Manual

[http://www.acf.hhs.gov/programs/cb/laws\\_policies/index.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/index.htm)

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<sup>31</sup> Cal. Welf. & Inst. Code § 16120(d)(3).

<sup>32</sup> Cal. Welf. & Inst. Code §§ 16121.1, 16121.2.

<sup>33</sup> 42 U.S.C. §673(b).

<sup>34</sup> See materials of the Association of Administrators of the Interstate Compact on Adoption and Medical Assistance for more information. [www.aaicama.org](http://www.aaicama.org)