



**Office of Children
and Family Services**

ANDREW M. CUOMO
Governor

SHEILA J. POOLE
Acting Commissioner

May 27, 2015

Kathleen McHugh
United States Department of Health &
Human Services
Administration of Children and Families
Policy Division, 8th Floor
1250 Maryland Avenue, SW
Washington, DC 20024

Re: Suspension or Termination of Adoption Assistance

Dear Ms. McHugh:

This letter responds to the notice issued in the Federal Register on March 31, 2015 by the Administration for Children and Families (ACF) inviting comments on the suspension and termination of adoption assistance payments and broader concerns about the program. The New York State Office of Children and Family Services (OCFS) appreciates the opportunity to comment on this important and sensitive issue.

OCFS is the Title IV-E single state agency in New York. We are responsible for the regulation and supervision of the adoption assistance program in New York. While New York is a state supervised/locally administered state, OCFS is fully aware of the issues faced by local agencies, adoptive parents and adoptees in regard to the appropriate administration of the adoption assistance program. OCFS sent a letter dated November 13, 2014 (attached), to ACF reflecting issues and concerns OCFS and county agencies have with the administration of the adoption assistance program in relation to cases, some of which have come to national attention, where questions have arisen as to whether adoption assistance is being used for the benefit of the adopted child. OCFS has not received a response to the November 13, 2014 letter as of this date; therefore, we will take this opportunity to highlight those concerns and add additional comment.

OCFS recommends modifications to the adoption assistance program that will support the program's fundamental purpose, which is to provide financial support for adopted children with special needs. We believe such modifications will enhance the integrity of the adoption assistance program while also addressing the rights and legitimate interests of adoptive parents.

Over the years, OCFS has sought clarification from ACF on what steps may be taken where issues arise regarding whether an adoptive parent is continuing to provide support for the adoptee. In the attached letter dated November 21, 2007, ACF informed OCFS that states are severely limited in what can be done. While the state can require that the adoptive parents submit an affidavit or a certification attesting to their continued support of the adoptive child, the state cannot suspend or terminate payment where the adoptive parent fails to respond. In addition, the state cannot require

the adoptive parents to provide an accounting of the expenditures they incurred in regard to the adoptee.

In regard to the federal requirement that adoption assistance must continue where the adoptive parents provide "any support", OCFS was informed by ACF that neither federal law nor policy authorized the states to establish what amount of money constitutes "any support". This creates the inequitable situation where, as long as the adoptive parents provides some level of support to the adoptee no matter how small, the adoptive parent can retain the remainder of the adoption assistance payment for whatever personal use the adoptive parent chooses. It is the experience in New York that in some cases, particularly those involving older adoptees, the adoptee's current caregiver who is someone other than the adoptive parent or even the adoptee is forced to seek judicial relief in the form of a child support order against the adoptive parent to receive the benefits of the adoption assistance program, for which the adoptee is intended to be the primary beneficiary.

New York is aware of a number of cases where the adopted child's current caretaker (other than the adoptive parents) and/or the adopted child him/herself have informed child welfare and public assistance agencies that the adoptive parents are no longer providing any support for the adopted child. In addition, such information has come from other sources, such as the courts after inquiring about the matter, giving rise to reasonable cause to suspect that the adoptive parents are no longer providing any support for the adopted child. OCFS recommends a change in federal policy to allow states to act in relation to these assertions while affording the adoptive parents the ability to respond consistent with their obligation to inform the government of changes in circumstances that would impact their ongoing eligibility for payments. We propose that, where the adopted child's caregiver or the adopted child asserts that the adoptive parents are no longer providing any support to the adopted child or where the government otherwise has reasonable cause to suspect that the adopted child is no longer receiving any support from the adoptive parents, a state should be able to require the adoptive parents, as a condition for continuing to receive adoption subsidy payments, to produce evidence of the support that is being provided on behalf of the adopted child over and above merely a statement that they are providing such support. Failure to produce such evidence should be a basis for terminating adoption assistance.

There also is a need for an operational definition of what it means that "the child is no longer receiving any support from the parents" in accordance with section 473(a)(4)(A)(iii) of the Social Security Act. The definition should focus on the needs of the adopted child. OCFS recommends that ACF adopt a policy whereby the definition of any support from the adoptive parents is limited to "support that is directly for the benefit of the adopted child that meets the food, clothing, education, medical and shelter needs of the adopted child and which has an identifiable value".

We also recommend a change in federal policy in cases where an adopted child receiving adoption assistance re-enters foster care. OCFS recommends ACF adopt a formal federal policy that New York understands may currently exist in some states. The policy would allow adoptive parents to voluntarily agree to the suspension or reduction of adoption subsidy payments for the period the child is in foster care in exchange for the government agreeing not to refer the adoptive parents to its child support collection unit to recover the cost of the foster care placement. If and when the child is discharged from foster care to the adoptive parents, adoption assistance payments would resume.

Finally, there is a need to address the problem of adoptive parents failing to respond to multiple requests for annual certifications that the adoptive parents remain financially responsible for the support of the child, continue to provide any support for the child and that a youth over the age of 18 meets the federal education and employment reporting requirements. Some adoptive parents

continue to be grossly delinquent in responding to repeated verification requests. Such cases raise questions regarding whether the parents legitimately meet the criteria for receiving ongoing adoption assistance payments.

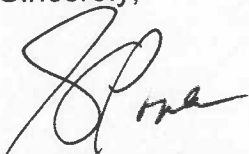
Accordingly, OCFS proposes that ACF adopt a policy that the annual certification request notify adoptive parents that they must provide the required certification by a date certain and that failure to provide the necessary certification within the required time period will result in the authorization for payment being withheld unless and until the necessary certification is received from the adoptive parents. A second notice would inform adoptive parents that should they submit the required certification by a specified date, adoption assistance payments will be paid retroactively to when the authorization for payments was withheld. However, if they fail to do so and submit the required certification after the specified date, adoption assistance payments will resume effective the date the required certification is submitted, but will not be made retroactively. The adoptive parents will have their standard fair hearing rights.

In regard to broader adoption subsidy issues, there are concerns about cases where a family receiving New York adoption assistance resides in or moves to a state that ends adoption assistance before age 21. In these cases, the state of residence ends the child's Medicaid coverage prior to the time when the New York State adoption subsidy agreement ends for the child. Continued Medicaid eligibility for children in receipt of adoption assistance should be consistent across state lines.

We all agree that the adoptive assistance program is a vital tool in achieving permanency for foster children and has been so in New York for decades. However, the time has come to buttress the integrity of the adoption assistance program, while recognizing and protecting all of the parties involved.

Again, thank you for this opportunity to provide comments. Please contact John Stupp at (518) 474-8490 if you have any questions regarding these comments.

Sincerely,



Sheila J. Poole
Acting Commissioner

Attachment

SP/ed



November 13, 2014

New York State
Office of
Children &
Family
Services

<http://ocfs.ny.gov>

Ms. Joo Yeun Chang
Associate Commissioner
Administration for Children and Families
Children's Bureau
U.S. Department of Health
and Human Services
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

Andrew M. Cuomo
Governor

Re: Adoption Assistance

Sheila J. Poole
Acting Commissioner

Dear Ms. Chang:

Capital View Office Park

52 Washington Street
Rensselaer, NY
12144-2834

This letter is being sent to inform the Administration for Children and Families of revisions to policy and practice the State of New York through its Title IV-E State Agency, the New York State Office of Children and Family Services (OCFS) intends to implement regarding the administration of the adoption assistance program in New York. These revisions are intended to support the basic purpose of the adoption assistance program, which is to provide financial support for adopted children with special needs. In addition, they will enhance the integrity of the adoption assistance program, while addressing the rights and legitimate interests of adoptive parents.

1. Complaints of Failure of Adoptive Parent to Provide Any Support

Recently, New York became aware of a number of cases where the adopted child's current caretaker (other than the adoptive parents) and/or the adopted child him/herself informed child welfare or public assistance agencies that the adoptive parents are no longer providing any support for the adopted child. In addition, similar information has come from other sources, such as the courts, giving rise to reasonable cause to suspect that the adoptive parents are no longer providing any support for the adopted child. OCFS is proposing a change in policy and practice to respond to these assertions and to afford the adoptive parents the ability to respond, consistent with their obligation to inform the government of changes in circumstances that would impact ongoing eligibility. Where the adopted child's caregiver or the adopted child asserts that the adoptive parents are no longer providing any support to the adopted child or where the



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government otherwise has reasonable cause to suspect that the adopted child is no longer receiving any support from the adoptive parents, the adoptive parents will be required, as a condition for the continuation of the adoption subsidy payments, to produce evidence of the support that is being provided on behalf of the adopted child over and above merely a statement that they are providing such support. Failure to produce such evidence would be a basis for termination of adoption assistance.

2. Operational Definition of "Any Support"

With regard to the determination whether "the child is no longer receiving any support from the parents" in accordance with section 473(a)(4)(A)(iii) of the Social Security Act, OCFS plans on applying an operational definition for the administration of the adoption assistance program in New York State. The definition focuses on the adopted child. Any support from the adoptive parents would be limited to "support that is directly for the benefit of the adopted child that meets the food, clothing, education, medical or shelter needs of the adopted child and which has an identifiable value".

3. Failure of Adoptive Parents to Submit Timely Certifications of Support/Education/Employment

New York proposes to address the problem with adoptive parents failing to respond to multiple requests for annual certifications attesting that the adoptive parents remain financially responsible for the support of the child, continue to provide any support for the child and to address federal reporting requirements for youth over the age of 18 relating to education and employment. Some adoptive parents continue to be grossly delinquent in responding to repeated requests for verification of their legal responsibility. Such cases raise questions relating to the legitimacy of ongoing payments of adoption assistance.

Accordingly, OCFS proposes to implement a policy and practice to reflect in its certification notifications to adoptive parents of the requirement to provide certification of the matters noted above by a date certain and that if the adoptive parents fail to provide the necessary certification within the time period set forth in at least two notices to the adoptive parents, authorization of payment will be withheld, unless and until the necessary certification is received from the adoptive parents. The adoptive parents will be informed in writing that should they submit the required certification by a specified date, adoption assistance payments would be paid retroactively to when authorization for payments was withheld. However, if they fail to do so and submit the required certification after the date certain, adoption assistance payments will resume effective as of the date of the submission of the required certification, but will not be made retroactively.

4. Voluntary Suspension of Adoption Assistance Payments

Another change in policy and practice relates to where an adopted child receiving adoption assistance re-enters foster care. New York proposes to implement a policy and practice, which we understand exists in other states. The policy and practice would afford the ability of the adoptive parents to voluntarily agree to the suspension or the reduction of adoption subsidy payments for the period the child

is in foster care. In exchange for this voluntary suspension or reduction, the government would agree not to refer the adoptive parents to its child support collection unit to seek support toward the cost of the foster care placement. If and when the child is discharged from foster care to the adoptive parents, adoption assistance would resume.

Where adoption assistance payments are terminated, the adoptive parents will have their standard fair hearing rights.

It is anticipated that the above referenced policies and practices will be implemented effective April 1, 2015. Should the Administration for Children and Families have any issues or concerns with them, New York would like to know as soon as possible so that we remain in conformance with applicable Title IV-E requirements. Please contact John Stupp at 518-474-8490 if you have any questions. Thank you for your attention to the matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Poole', written in a cursive style.

Sheila J. Poole
Acting Commissioner

cc: Louisa Chafee
NYS Deputy Secretary for Human Services