

Adoption Supports and Assistance Package PCSAO Rule Review Committee Recommendations

During the past few months, the PCSAO Rule Review Committee has brought together adoption experts statewide, to consider how best to support families that adopt Ohio's Special Needs children. We researched and considered federal Title IV-E policies and guidance; national resources such as the National Council on Adoptable Children (NACAC); Ohio law and rules; effective local practice and policies; and real life experiences of practitioners, families; and administrative and court decisions.

We also worked to take into consideration inequitable resources in communities across the state, and the public's trust in utilizing resources, and scarce resources.

Attached you will find the following products:

1. Adoption Supports and Subsidy Framework
2. Avoidance and Resolution of Subsidy Negotiation Disputes
3. Pending Issues
4. PCSAO recommendations to target the definition of Special Needs children

PCSAO Adoption Subsidy Framework Recommendations for Special Needs Children

PCSAO believes financial support should not be a barrier to matching special needs children in need of adoptive families, with permanent adoptive families.

In negotiating ongoing financial subsidy packages, it is the belief of PCSAO that support should be based upon immediate and future needs of the child, and the circumstances of the family. We do recognize the financial reality that the addition of a child to an existing family, especially a special needs child, will require certain financial, supportive service and community support.

PCSAO also recognizes that, with the adoption of a child, a family makes a commitment to love, care for and plan for that child, as any parent would a birth child. Birth and adoptive families alike, will access public and community resources, such as the public school system to meet the child's educational needs, early intervention services for infant and preschool needs, specialized services such as MR/DD for those children falling into the eligible framework, and various faith-based, and other supportive opportunities in a community.

Pre-Subsidy Negotiation Activities

Prior to discussion of a financial adoption assistance subsidy for a special needs child, the agency and prospective adoptive family, along with any other appropriate professionals, should:

- I. **Clearly identify and document the needs of the child** - share with parents, consider not only written acknowledgment of information provision, but audio or video taping.
- II. **Identify resources (other than ongoing financial assistance) specifically available to the Special Needs Adopted Child - Document the provision of information.**
 - A. **Medicaid / Health Insurance -**
 1. Most children will already have a Medicaid card, established with their Title IV-E Foster Care Maintenance eligibility, that will stay with them, until their 18th birthday.
 2. Children that were not eligible for Medicaid coverage in #1 above, can be made eligible for Medicaid (only for use in Ohio) if the adoptive family is made eligible for a State Adoption Maintenance Subsidy.
 3. All children in families up to 200% of poverty, are eligible for Healthy Start Medicaid coverage through age 19.
 4. Families can add their newly adopted child, to their own family's health insurance policy in addition to the Medicaid coverage. PCSAs should

advise the family that this is optional, and *should be in addition to Medicaid coverage, not instead of (as Medicaid often provides a wider breadth and depth of benefits than private insurance)*. The private insurance will be the primary payer, with Medicaid as the secondary payer.

5. There will be a small number of adopted children that will not be eligible for Medicaid - families should be advised they *must* include the child on their own private health insurance policy.

B. *Nonrecurring Adoption Expenses Subsidy* - *must have completed application prior to finalization*. These are one-time expenses, up to \$2,000, directly related to the legal adoption of a special needs child (court costs, attorney fees, etc.) Families must submit original itemized billings or documentation.

C. *Federal and State Adoption Tax Credits*

1. **Federal Adoption Tax Credit** - *families that adopt any child are eligible for a federal tax credit, which is increased as of tax year 2002: \$10,000 non-refundable tax credit (full tax credit for families with incomes up to \$150,000, phased out at \$190,000). This tax credit may be gradually claimed for up to 5 years, to allow for families that cannot claim the full \$10,000 credit amount in any given year. Itemized documentation is required in 2002, but beginning in tax year 2003, itemization is not required for Special Needs adoptions, (thus it will be a flat tax credit!)*.
2. **State Adoption Tax Credit** - Ohio families that adopt a special needs child are eligible for a non-refundable \$500 state tax credit.

D. *State Adoption Special Services Subsidy* - *must have completed application and agreement prior to finalization*. Any services can be suspended initially (or authorized), with option to revisit at a later date, depending upon resource availability (as this subsidy is a limited, set amount, provided to each PCSA).

E. *Post Finalization Support Services* - provide information and referral to any in-house or other community based program or services.

F. *Post Adoption Special Services Subsidy (PASSS)* - provide information regarding this program, to support purchase of certain eligible services, upon a critical need after finalization.

III. Identify Resources Available to all Community Children and Families - Document the provision of information

A. *Referral and Establishment of eligibility with other categorically eligible service systems* such as MR/DD services, SSI, etc.

- B. *Public Education*** - assessment of, and establishment of *Special Education services* as appropriate, Individual Education Plan, public preschool, etc.
- C. *Various public community services*** such as Early Intervention Services, Headstart, etc. for preschoolers, as appropriate; means tested public support as appropriate (child care subsidies, cash assistance, PRC programs, etc.); Mental Health / Drug and Alcohol services, etc; HB 57 Unruly Services - provide information on services and accessibility.
- D. *Family and Children First Council and local Cluster*** - intent of service coordination, especially for high treatment need situations.

Title IV-E Adoption Assistance Subsidy Negotiation Worksheet

Current federal law prohibits any means testing of the adoptive family - eligibility is based on child's Title IV-E status (ADC eligibility / low income of birth family and judicial determination that it was contrary to the child's welfare to remain in the home, or if pursuant to voluntary placement agreement, that child was in paid foster placement).

Consider the family's capacity to incorporate the child into their household, supporting the immediate and future needs of the child. The payment that is agreed upon should combine with the parents' resources to cover the ordinary and special needs of the child projected over an extended period of time, and should cover anticipated needs. Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment. The uniqueness of each child/family situation may result in different amounts of payment (PA 01-01).

Title IV-E AA reimburses Ohio 58% of the agreed upon subsidy. The state of Ohio pays the match up to \$250/month, the local PCSA pays the match for anything above \$250/month. An agency may negotiate an AA subsidy in the amount of \$0.00/month (in the case of no presenting needs, but potential future needs), which may be revisited at a later time. The ceiling AA rate is the per diem that would be paid for that child in foster care.

In determining a negotiated subsidy amount, PCSAO suggests the following items for consideration:

I. Healthcare

- A. Assuming Medicaid coverage, any additional physical or behavioral healthcare needs of the child that are outside the scope of Medicaid coverage, should be clearly documented if addressed within the context of a monthly subsidy amount.
- B. Families should be encouraged/required to seek a Medicaid Provider for any and all eligible healthcare costs.
- C. Other Specialized Medical Items (e.g. - orthodontics) - may be funded through PASSS, if specifically related to special needs of the child. Any need to address potential costs within a monthly subsidy should be documented as *potential costs*, and added costs can be negotiated for future, when known.

II Primary and Secondary Education - Ohio guarantees a public education for all children; there are additional guarantees for special education students; establishment of special education status should be established prior to finalization, when possible.

- A. Private school plans and expenses are the private decision and responsibility of an adoptive or any parent.
- B. Any immediate or future tutoring or other "catch-up" educational expenses, as considered necessary and appropriate, perhaps due to past instability leading to poor school performance, are certainly appropriate as part of the State Adoption Special Services subsidy.

II Higher Education

- A. The cost of higher education for youth, is difficult for all birth and adoptive families. Planful saving is essential.
- B. Ohio continues to advocate for federal educational tuition assistance for youth who were adopted at an older age, and independent living youth.
- C. Many families are eligible for Pell Grants; there are also a number of other financial assistance opportunities available for children that were involved with the child welfare system. PCSAs should partner with educational institutions, to provide information, access, and application for various financial assistance opportunities.
- D. Given the limited funds available to child welfare, and the primary mission of child safety and family stability, PCSAO does not recommend inclusion of higher education costs, within an adoption subsidy context.
- E. Upon reaching age 18, some agencies may transfer a special needs child in good academic standing, from a Title IV-E AA subsidy, to the State Adoption Maintenance Subsidy (for children in eligible families, with income under 120% of the Median Family Income). This strategy can assist low and moderate income families with educational support for their adopted child, between the ages of 18-21 years

IV Child Care Assistance

- A. PCSAs should assure information regarding employment related child care subsidies for families at or below 185% of poverty (or current statewide eligibility threshold), has been provided.
- B. To assist families with the significant cost of child care, this issue is sometimes considered within the context of an adoption assistance subsidy OR as a part of a State Adoption Special Services package (see #5 below).
- C. If the PCSA allows a higher FCM rate to assist with child care for *working* foster parents, the agency may develop a similar policy to address such support within the AA subsidy. AA cannot address child care as an “allowance”, however (PA 01-01). If part of the Title IV-E Adoption Assistance Subsidy, the original agreement should specify any future adjustments in the assistance amount, based on age (and child care needs) of child.
- D. When addressing child care through the State Adoption Special Services package, PCSAO suggests development of a written local policy, considering child care “assistance”, either as a standard amount, or a standard proportion of the cost (with a cap). This amount will be localized, as the cost of child care varies around the state. Items to consider:
 - 1. Recommend child care assistance be employment related.

2. Eligible ages (or a special needs of the child) should be clarified.
 3. Clarify if there is any expectation of use of licensed child care.
- E. PCSA Child Care Policy Examples - *suggest development of written local agency policy.*
1. Franklin CCS - Dollar amount / month for full time child care, birth - school age; dollar amount / month for part time child care, birth - school age; dollar amount / month for latchkey child care, age 5 - 12. Part of State Special Services Subsidy agreement.
 2. Hamilton CDJFS - Dollar amount / day, referenced as part of the subsidy. Part of Title IV-E Adoption Assistance Subsidy.
 3. Cuyahoga CDCFS - Portion of Employment Related Child Care Cost (capped at some dollar amount); eligible from birth to age 12; must use licensed child care. Part of State Special Services Subsidy agreement.
- V. **Respite** - Based upon the needs of the child, some PCSAs have respite policies that establish either a monthly amount or a certain number of nights / units respite. This can be a part of the State Special Services Subsidy, or referenced within the monthly Adoption Assistance Subsidy amount. Respite can also be accessed through
- VI. **Transportation** - if there is a transportation need for some special purpose, it is suggested this be addressed within the State Special Services Subsidy; any unusual transportation issues to be referenced within the monthly adoption subsidy amount should be clearly documented.

State Adoption Maintenance Subsidy

- I. Non-Title IV-E eligible children
- II. For eligible adoptive families with income under 120% of the state Median Family Income
- III. Ohio will provide a state funded monthly subsidy of up to \$250 / month
- IV. Use negotiation criteria as for IV-E eligible children above

TIPS FOR AVOIDING AND/OR SUCCESSFULLY RESOLVING SUBSIDY NEGOTIATION FAIR HEARING SITUATIONS

Truth in Information - To be provided to the family: Child Study Inventory, Individual Child Care Agreement, Prediction Paths

- A. Make sure all relevant information about the child has been shared, in writing and verbally, prior to the adoption finalization.
- B. Consider inclusion of other professionals (medical, mental health, education specialists, etc.) at a pre-finalization conference, to discuss the child's special needs, in layman's terms
- C. Consider audio or video taping the conference, for both the family and the PCSA.
- D. If the PCSA was not the original custodial agency, check for completeness of the information provided the family.

Attitudinal Tips

- A. Listen to needs, desires of adoptive parents - sometimes, they want something specific vs. just money.
- B. Acknowledge child's needs, and challenges for family
- C. Talk in layman's terms; when appropriate also provide legal language
- D. Propose alternate solutions; their requests may be limited by a more narrow scope of knowledge of opportunity than yours.
- E. Don't be afraid to allow for potential needs; agencies can approve eligibility with little or no subsidy. Assurance of future amount review can address fears of the future, when presenting issues are minimal.
- F. Firmly discourage costly personal preferences vs. publicly available services (such as non-Medicaid accepting physician preference vs. Medicaid services)
- G. Utilize other community based services to assist families - such as budgeting or financial assistance services for families requesting subsidy increase, based on out of control expenses.

Practical Guidelines

- A. Allow adoptive parents to spell out their needs in terms of incorporating the child into their household, and supporting immediate and future needs of the child - some agencies ask parents to complete a financial statement/budget format, and to itemize their monetary request. (This is used as information, not means testing!)
- B. Have a written PCSA policy on how various items are considered (child care, respite, educational tutoring, etc.)
- C. Require written denials of coverage when presented with requests that could be covered under primary insurer or by Medicaid.

- D. When denying requests (initial or increased amount), send “Denial Notice for AA Request for Assistance (ODJFS form 7069?), and Explanation of State Hearing Procedures (ODJFS form 4059). *Also send a cover letter explaining in layman’s terms why the request is being denied.*

At State Hearing

- A. Focus on child’s immediate, special and future needs
- B. Be prepared with organized documentation

Language excerpts from past Hearing Decisions - successful practitioners often use this language in both written and verbal communications with families, and at hearings:

- A. Differences between foster and adoptive family commitments** - “unlike foster care, adoption involves the creation of a new parent-child relationship...which creates and imposes the same financial and legal responsibilities upon an adoptive parent, as would exist if he/she were the biological parent.” (ODJFS Administrative Appeal Decision, Case No. 0001040434)

- A. Intended use of AA funds** - “The AA programs was not created to help individuals pay their mortgage and utility expenses, especially when these expenses would have been the same irrespective of the adoption. Nor was the AA program created for the purpose of (a) paying for luxury items for the child, (b) paying for ordinary and routine child-rearing expenses, such as clothing and food, or (c) paying for home renovations which other family members can use and enjoy equally , and which increase the property value of the home.” (ODJFS Administrative Appeal Decision, Case No. 1069086)

- B. Lowest amount of subsidy** - “While the OAC Rules pertaining to AA do require the agency to negotiate with adoptive parents to determine what payment should be made to the adoptive family, the OAC Rules do not establish any minimum payment amount, which infers that the agency can set the payment amount at zero if it deems fit.” (ODJFS Administrative Appeal No. 1055856)

- C. Adoptive Parents’ aversion to Medicaid or future interaction with the PCSA** - “The State Hearing officer found that the Agency has provided for the needs of the child through Adoption Assistance, Special Subsidy, and the PASSS program. The Hearing officer found it is the Appellants’ choice to close the Medicaid program and place the child on their medical insurance, which will increase their out-of-pocket expenses for their adopted daughter. However, there is no need for an increase in the Adoption Assistance payment where the agency considered the needs of the child and provided for these needs....the fact that Appellant do not want to interact with the agency when certain needs arise does not contradict the fact that the child’s needs can be met without raising the monthly IV-E payment.” (Court of Common Pleas, Clermont County, Ohio, Case no. 2001 CVF 00258)

ADOPTION ISSUES PENDING - PCSAO Rule Review Committee will continue work

1. Recommendation Ohio increase it's financial support to Ohio's families that adopt special needs children. The base subsidy of up to \$250/month (state and/or federal support) was established in 1986, and has not been increased since.

Regardless of source of IV-E match, the PCSAO Rule Review Committee philosophically has concerns with recommendation to automatically set AA subsidy at FCM per diem, based on belief there is fundamental difference between foster care and adoptive families; responsibility for wise use of public funds; and limited resources.

2. Recommendation that HHS eliminate Title IV-E Policy Announcement 01-01 language referencing the family's "lifestyle" and "standard of living" in negotiating an adoption subsidy amount. This language seems to support a discrimination against low income families by encouraging higher subsidy amounts for higher income families.
3. Recommendation that HHS reconsider the PA 01-01 implication that Title IV-E eligible special needs children that are adopted by relatives, that have not been paid as foster caregivers, be eliminated from IV-E AA subsidy eligibility. This discourages permanency and stability for special needs children living with relative caregivers.
4. Recommendation that HHS clarify that lack of birth family income information for Deserted/Abandoned Infants would not preclude them from Title IV-E eligibility status.
5. Identify options for subsidy reduction and/or re-assignment when adopted child is in out-of-home care.
6. Recommend review of the wording in OAC rules 5101:2-47-33 and 5101:2-44-05 related to age requirements. The issue is how to establish a mental or physical handicap for coverage between the age of 18-21. HHS PIQ-98-02 indicates the subsidy can be continued if there is a "physical or mental disability *which warrants the continuation of assistance.*"
7. Recommend review of all federal and state related Adoption Assistance OAC rules.