



New York State Foster Parent's Guide to Adoption

January 2007



Introduction

In New York State, many of the children in foster care who have a goal of adoption are adopted by their foster parent(s). As such, foster parents play a major role in providing safe, permanent homes for children in foster care. This guide was written to assist the adoption process for these children so that they are able to live in permanent, stable homes. The more adoptions of available foster children by foster parents, the fewer children who are uncertain about their future. For those foster parents who are considering adopting the children in their care, this guide is offered as a source of information and assistance.

This edition of the guide reflects changes in regulations, policies, and practices that resulted from passage of the federal Adoption and Safe Families Act of 1997 (ASFA) and Chapter 3 of the Laws of 2005 (Governor's Permanency Bill) in New York State. Many of these changes are expected to decrease the length of time that children spend in foster care and to speed up the process for adopting children in foster care.

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The *New York State Foster Parent's Guide to Adoption* was edited and designed by Welfare Research, Inc. (WRI) under contract to the New York State Office of Children and Family Services. WRI is a nonprofit agency located at 112 State Street, Albany, NY 12207; (518) 432-2563; www.welfareresearch.org.

How to Use This Guide

We are pleased to present the *New York State Foster Parent's Guide to Adoption*, which is designed to help foster parents understand the adoption process and take an active role in the adoption of their foster children.

There are two easy ways to use this guide without reading it from cover to cover.

1. Find the topic you want to read about in the *Table of Contents* on page vii.
2. Find the word or phrase you want explained in the *Index of Key Words and Phrases* on page 31.

If you are a foster parent and you are thinking about adopting your foster child, you can consult this guide for information on the steps you will need to take. Beginning on page iii is a summary of the adoption process as described in this guide. The summary should give you a good idea of what to expect if you make the decision to adopt your foster child. Chapters One through Six provide information on the adoption process. This is followed by a list of useful telephone numbers and websites, an index of key words and phrases (printed in bold type throughout the text), and a form to help you keep track of your adoption.

We hope you will find this guide helpful in making the adoption of your foster child a positive experience. The more you know about the process and the requirements, the more likely the adoption will take place in a timely fashion. This will benefit everyone involved, particularly the child.

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Notes:

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Summary

Adoption is a method provided by law that creates the legal relationship of parent and child. After an adoption is finalized, the adoptive parent and the adopted child have all the rights and responsibilities in connection with each other that any birth family has.

Foster children are in the legal custody of a commissioner of a social services district. The social services district may give responsibility for the care of the child to a voluntary authorized agency.

When a child is in foster care, decisions must be made regarding the long-range permanency plan for the child. If the social services district decides that it would not be in the child's best interests to return home and that the child should be adopted, steps must be taken to legally free the child for adoption.

There are three ways a child can become **legally free for adoption**: 1) the birth parents can sign a voluntary surrender agreement; 2) the social services district responsible for the child can bring a case in court asking the judge to terminate the parental rights of the birth parents; or 3) if both birth parents are deceased, or one parent is deceased and there is no other parent whose consent to the adoption is required, the child is automatically free for adoption.

The current foster parents can ask the court to permit the filing of a petition to terminate the parental rights of the birth parents.

During the process of legally freeing your child for adoption, you can begin the adoption process. The adoption process involves two major procedures. First, you and your home will need to be approved by the social services district or agency as an adoptive home. Second, you must start a court proceeding asking a judge to **finalize** (complete) the adoption to make it legal.

The Agency Approval Process

To be approved by the social services district or a voluntary authorized agency, you will need to cooperate with the adoption home study and sign an Adoptive Placement Agreement. Also, unless you and any other person over the age of 18 residing in your home were previously fingerprinted as part of the foster home approval or certification process, you and any such person will have to be fingerprinted and go through the **criminal history record review process**. For foster parents who are adopting, the **adoption home study** focuses on areas that need updating and any additional information the court will need. The adoption home study, which is usually conducted by someone from the social services district or the agency, provides information about the foster parent, the foster parent's home, and any other information that will probably affect how the child is cared for after the

adoption. The information is used by the social services district, the agency, and the court to learn about the adoptive family and to determine whether adoption by the foster parents will be in the child's best interests.

The **Adoptive Placement Agreement (APA)** is a form signed by the foster parent and the social services district or the agency. By signing the APA, the foster parent agrees to take care of the child and to meet the child's needs with the intention of adopting, and the agency agrees to carry out its duties concerning the welfare of the child.

Information You Should Receive

The social services district or the agency must give you any available medical history of your foster child and your foster child's birth parents before you adopt. The history must include psychological information and information about conditions or diseases believed to be hereditary; drugs or medication taken during pregnancy by the child's birth mother; immunizations; medications; allergies; diagnostic tests and their results; and any follow-up treatment given or still needed by the child.

Adoption Subsidy

An **adoption subsidy** is a monthly payment made to adoptive parents who have adopted a child who is considered handicapped or hard to place. In general, a **handicapped child** is a child who has a physical, mental, or emotional condition or disability that is so severe it would make it difficult for the child to be adopted. A **hard-to-place child** is a child who is not handicapped who has either been waiting to be adopted for a specific amount of time or is considered difficult to adopt because of certain factors. A subsidy is paid at one of three rates: **basic**, **special**, or **exceptional**. These rates are related to the foster care board payment rates.

If you are adopting a child who is handicapped or hard to place, you might also be reimbursed for nonrecurring adoption expenses up to \$2,000

for each child being adopted. A **nonrecurring adoption expense** is a onetime payment of money that is directly related to and necessary for the adoption of a foster child. These payments include lawyer fees, medical examinations, marriage certificates, and travel. These expenses are reimbursed only *after* the child is adopted. If the adoption is not finalized, the expenses will not be reimbursed.

This guide explains the steps for applying for an adoption subsidy and reimbursement of nonrecurring adoption expenses. Your caseworker should also give you detailed information.

Finalizing the Adoption

To have your adoption finalized, your lawyer and the social services district and/or the agency will have to submit documents and information to court, and you will have to petition the court to finalize your adoption.

The first step in the court finalization process is to hire a **lawyer (attorney)**. A lack of money should not prevent you from hiring a lawyer to handle your adoption. It is true that you are responsible for ensuring that the lawyer is paid for his or her services. Some lawyers, however, are willing to work out a payment arrangement with foster parents. This is especially true if the foster parent will be entitled to reimbursement of nonrecurring adoption expenses. Your caseworker may be able to help you make arrangements to have your reimbursement for nonrecurring adoption expenses paid directly to your lawyer if your lawyer agrees to this. If this is done, you will not have to pay your lawyer any money.

Your lawyer will have to submit documents to court that contain information the judge will need to finalize the adoption. These documents are often called the "**adoption packet**." The adoption packet contains information about the prospective adoptive family and child. The judge will require information about your home, how you live, who lives with you, and who spends time with the child.

You should be prepared to answer questions and to cooperate with your caseworker or whoever else might be conducting the home study. Other people living in your home should also be prepared to meet with the person conducting the home study and be screened by the **Statewide Central Register of Child Abuse and Maltreatment (SCR)**. Some judges also require information about anyone who spends a great deal of time in the home, such as someone who is in a significant relationship with the foster parent. In addition, information, as nearly as can be ascertained, concerning the birth parents must be provided to the court. This information includes the heritage of the parents, including nationality, ethnic background, and race; education; general physical appearance; occupation; health and medical history; and any other information that may be a factor influencing the child's future.

The following requirements apply to adoptions filed in New York State:

- ◆ If you live in New York State, you must file the adoption packet in either: the Family Court or Surrogate's Court in the county (or the borough) where you live; or the Family Court or Surrogate's Court in the county where the parental rights of your foster child's birth parents were terminated or where the surrender signed by the birth parents in court was approved.
- ◆ If you live in a state other than New York, you must file the adoption packet in either: the Family Court or Surrogate's Court where the agency has its main office; or the Family Court or Surrogate's Court in the county where the parental rights of your foster child's birth parents were terminated or where the surrender signed by the birth parents in court was approved.

Regardless of where you live, you may start the adoption finalization process early by filing the adoption petition in the court where the case terminating the parental rights of your foster child's birth parents has begun or by submitting the

adoption petition to the judge who has just finished terminating the parental rights of your foster child's birth parents or accepting the birth parents' surrender. (If you start the adoption process early and you plan to apply for an adoption subsidy, you should apply for the subsidy as soon as possible.)

As the petitioner in the case, you should keep track of the progress of the adoption by contacting your lawyer and your caseworker. You can also call the court if you need additional information. If you call the court, ask to speak with the **adoption clerk** or any other person who can tell you the status of your case. To call the court yourself, you will need to know the name of the court where the adoption has been filed. It would also be helpful to know the **docket number** of the case if it was filed in Family Court or the file number if it was filed in Surrogate's Court. A docket number is a number that certain courts give to cases to show that the case has been officially filed with that court. Docket numbers for adoption cases filed in a New York State Family Court begin with the letter "A." In Surrogate's Court, each case is assigned a **file number**. When a foster parent is adopting more than one child, each child is assigned a docket or a file number. You can use the form at the end of this guide to help you keep track of your adoption case.

After the judge has reviewed your case and has decided that you can adopt your foster child, a day will be scheduled for you and your foster child to go to court. To help your finalization go smoothly, you should arrive at court early. The judge will probably ask you questions and sign documents to make the adoption legal.

Continuing Contact with the Birth Family

Continuing contact with the birth family should be allowed if it is in the child's best interests. If the social services district or the agency believes that your child would benefit from continued contact with his or her birth family, you should

gained at the time the child enters foster care and not just when the child has been freed for adoption.

If you want or need help developing these skills and attitudes, you should talk with your caseworker and seek out any other available resources.

The more knowledgeable you are about the adoption process, the greater the likelihood that your adoption will be finalized in a timely fashion. It should be noted that such knowledge should be

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What is Adoption?

Adoption is a method provided by law that creates the legal relationship of parent and child. After an adoption is finalized, the adoptive parent assumes all the rights and responsibilities for the child that the birth parent would have. Also, the adopted child has the same rights and responsibilities as would any child born to the adoptive parents.

The adoption process involves two major procedures. First, the foster parent who wants to adopt his or her foster child must go through the agency approval process. Next, the person must start a court proceeding asking a judge to **finalize**—that is, complete—the adoption to make it legal.

Steps in the Adoption Process

To adopt your foster child you must take these steps:

1. Be approved by the social services district or the voluntary agency as the child's adoptive parent.
2. Petition the court to have the adoption finalized.

How Foster Children Become Free for Adoption

A foster child who is available for adoption is said to be **legally free for adoption**. Before a child becomes legally free for adoption, several stages usually occur.

How a Child Enters Foster Care

A child can enter foster care in two ways:

1. The child's parent or person who cares for the child can voluntarily place the child in foster care.
2. A Family Court judge can order that the child be removed from his or her home and placed in foster care. Such an order by a Family Court judge is usually made to keep an abused and/or neglected child safe (child protective proceedings); or because the child is having problems with the law (juvenile delinquency proceedings); or because the child needs more supervision (proceedings concerning whether a person is in need of supervision—PINS).

Care and Custody of Children in Foster Care

Foster children are in the legal **custody** of a commissioner of a social services district. This means that the social services commissioner for the district has legal responsibility for the child. With the exception of the five counties (or boroughs)

of New York City, each county in New York State is a social services district. New York City is a social services district that is made up of the five boroughs. (The New York City **Administration for Children's Services (ACS)** is responsible for providing foster care services in New York City.) After a child enters foster care, the social services district can give responsibility for the day-to-day care of the child to its own foster care unit or to a voluntary authorized agency.

The **New York State Office of Children and Family Services (OCFS)** supervises social services districts and voluntary authorized agencies to require that these districts and agencies provide the proper services. OCFS does this by establishing rules and standards for practices concerning the care of children in New York State. These rules and standards are written in the form of regulations and other official documents.

Where a Foster Child Lives

After a child enters foster care, the child might be placed in a foster family boarding home or a group setting.

A child placed in a foster family boarding home lives in the home of a person who has been certified or approved by a social services district or a voluntary authorized agency to be a foster parent. If the foster parent is a relative of the child, the child is said to be in **kinship foster care**.

Some foster children, most of whom are in older age groups, live in group homes or facilities with a large number of other children. These homes are staffed by social services or voluntary authorized agency employees.

Deciding that the Child Can Be Adopted

When a child is in foster care, decisions must be made regarding the long-range permanency plan for the child. If the social services district decides that it would not be in the child's best interests to return home, another plan must be made for

the child. This other permanency plan might be adoption.

At a **permanency hearing** (see next page), one possible outcome is that a child's permanency goal is changed to adoption. Once the permanency goal is adoption, the social services district has to take the necessary steps to free the child for adoption.

The child's current foster parents will receive **notice** of every permanency hearing as well as the **permanency hearing report**. Foster parents should make every attempt to attend permanency hearings as part of their involvement in the child's life. Moreover, the foster parent has the right to an opportunity to be heard at the permanency hearing and if the child has been in the home of the foster parent for more than 12 months is a party to the proceedings. A notice of permanency hearing must also be mailed to former foster parents with whom the child lived continuously for 12 months.

Freeing the Child for Adoption

If the social services district decides that the foster child should be adopted, steps must be taken to legally free the child for adoption.

There are three ways a child can become **legally free for adoption**:

1. The birth parents can sign a voluntary surrender, giving up all rights and responsibilities to the child.
2. The social services district can bring a case in court asking the judge to terminate the parental rights of the birth parents.

A current foster parent may ask the court to grant permission to file a termination of parental rights (TPR) petition. Upon determining that grounds for termination of parental rights exist, the court may direct the local social services district to begin a proceeding to legally free the child for adoption.

If the agency fails to begin the proceeding within 90 days of the order, the *court must permit the foster parents in whose home the child lives to*

begin such a proceeding unless the social services district obtains a modification or extension of the order, or unless the court has “reasonable cause” to believe the foster parents would not be approved to adopt the child in a subsequent adoption proceeding.

3. The child is automatically legally free for adoption if both parents are deceased, or if one parent is deceased and there is no other parent whose consent to the adoption is required.

After a child is legally free for adoption, and sometimes before, the foster parent can begin the adoption process. (See page 4, *Starting the Adoption Process Early*, for information concerning how to start the adoption process before a child is legally free for adoption.)

Finding an Adoptive Home

Photolisting

Photolisting is a service performed by the New York State Office of Children and Family Services (OCFS) that was established to find adoptive families for children who are legally freed

for adoption, have been in foster care for three months or more, and who have not been placed for adoption. As part of the photolisting process, social services districts and agencies are required to send a photograph and brief description to OCFS of children who should be photolisted. Photolisting of a child may be waived or delayed under certain limited circumstances that are described in New York State regulations. OCFS regularly publishes the photographs and descriptions of children who must be photolisted in a set of books called The Adoption Album. Some of the children listed in The Adoption Album books are also listed on the OCFS website. The Adoption Album books are distributed to OCFS regional offices, foster care and adoption agencies, local social services districts, public libraries, and other institutions accessible to the public. Individuals can look through The Adoption Album and contact the agency identified in the Album or OCFS if they see a child they might want to adopt. (See page 29 for OCFS telephone numbers and the website address.)

Permanency Hearing

A hearing held for the purpose of reviewing the foster care status of the child and the appropriateness of the permanency plan developed by the social services district. The standards for permanency hearings for abused or neglected children, children voluntarily placed in foster care, and completely freed foster children are set forth in Article 10-A of the Family Court Act. The initial permanency hearing for a non-completely freed abused, neglected, or voluntarily placed child must begin no later than eight months after removal, and the subsequent permanency hearing must begin no later than six months following the previous permanency hearing. Both must be completed within 30 days after they began. For a foster child who is placed as a PINS (person in need of supervision) or JD (juvenile delinquent), the initial permanency hearing will be held within 12 months of the date the child is considered to have entered foster care and every 12 months from the previous permanency hearing. When a child is completely freed for adoption at a court hearing, the initial freed child permanency hearing must begin within 30 days of the court hearing unless the court determines that it should be held immediately upon completion of the hearing at which the child was freed, provided adequate notice has been given. (FCA § 1089)

Declaration of Interest in Adopting

If a legally free child is living with a foster parent who is interested in adopting the child, the social services district or the agency can ask the parent to sign a **Declaration of Interest in Adopting**. This declaration is written confirmation that the foster parent is interested in adopting the child. After the Declaration of Interest in Adopting is signed, the agency must not refer the child for photolisting.

Foster Parent Preference in Adopting

If a legally free child has lived with a foster parent for twelve continuous months or more, the social services district or the agency must give that foster parent's request to adopt the child preference and first consideration. This means that after a child is legally free for adoption, the foster parent who has cared for the child for at least twelve months without interruption can ask the social services district or agency for permission to adopt the child. The district or the agency must take the foster parent's request to adopt into account before it considers allowing any other family to adopt the child. This foster parent preference, however, is not a guarantee that the foster parent will be able to adopt the child. The agency is still required to make sure that adoption by the foster parent is in the child's best interests.

Starting the Adoption Process Early

Many people refer to starting the adoption process early as "**Chapter 588**" because the steps, or procedures, became law in New York State as part of Chapter 588 of the Laws of 1991.

There are several steps you can take to start the adoption process early:

1. Apply for an adoption subsidy before your foster child is legally free for adoption. Speak to your social services district or agency caseworker about this when the two of you discuss adoption. Applying for an adoption subsidy early helps to avoid delays in the adoption process. (See Chapter Three for information about adoption subsidy.)
2. File an adoption petition in court while the termination of parental rights hearing is occurring, *or* submit an adoption petition in court immediately after the termination of parental rights hearing or surrender of parental rights by the birth parent. (See Chapter Four for information about the court.)

If you decide to submit an adoption petition to court early, be aware that there is always the possibility that the judge will not terminate parental rights or that the birth parent might not surrender the child. If you hire a lawyer and pay his or her fee, you will not be reimbursed for this fee as a nonrecurring adoption expense if you do not adopt the child.

It is also advisable to discuss the early filing of the adoption with your caseworker to make sure that the early filing is a good idea in your case. You will have to work closely with the social services district or the agency to make the early filing a success.

The Agency Approval Process

When you decide that you want to adopt your foster child, you will have many contacts with the social services district or the agency until the adoption is finalized. These contacts include going through the adoption home study process, completing the Adoptive Placement Agreement, and exchanging important information.

Steps in the Agency Approval Process

To be approved by the social services district or the voluntary authorized agency as an adoptive parent, you will need to complete the following steps:

1. Cooperate with the adoption home study process.
2. Complete the Adoptive Placement Agreement.

Cooperating with the Adoption Home Study Process

For foster parents who are adopting, the **adoption home study** focuses on areas of the family's home study that need updating and any additional information the court will need. The adoption home study, which is usually conducted by someone from the social services district or the agency, provides information about the foster parent, the foster parent's home, and any other information that will probably affect how the child is cared for after the adoption.

The adoption home study serves two purposes:

- ◆ The social services district or the agency uses the home study process to gather and record information that it can use to determine whether the foster parents will be appropriate adoptive parents for the child.
- ◆ The court uses the home study report to learn about the adoptive family and to determine whether adoption by the foster parents will be in the child's best interests.

The social services district or the agency usually submits its home study report to the court. The home study report that is submitted to court is sometimes called an **Investigation and Report (I & R)** or an **Adoption Report of Investigation (ARI)**. In some cases, however, the court might order another agency or department, such as the

Department of Probation, to conduct a home study or to do a follow-up to the home study done by the agency.

Fingerprinting

Before a person can be finally certified or approved as a foster parent or approved as an adoptive parent in New York State, that person and the other persons living in the home who are over the age of 18 must undergo **fingerprinting** through the New York State Office of Children and Family Services (OCFS) **criminal history record review process**. If you have been finally certified or approved as a foster parent in New York State, you have already been fingerprinted through the OCFS process. However, if you are not a certified or approved foster parent, or if anyone else living in your home who is over the age of 18 has not been fingerprinted through the OCFS criminal history record review process, you and they will have to complete the process before you can be approved as an adoptive parent.

If you are an applicant to be either a certified or approved foster parent or an approved adoptive parent and you have a criminal conviction for a specified felony, you are presumptively disqualified from being certified or approved. The social services district or the agency must deny your application unless you demonstrate that the denial will create an unreasonable risk of harm to the physical or emotional health of the child; and approval or certification will not place the child's safety in jeopardy and will be in the best interests of the child.

If you were convicted of any other crime, or if any other person over the age of 18 residing in your home was convicted of any crime, the social services district or the agency may deny your application. The decision whether to deny will be based on various factors, including how the crime relates to the care of children, when the conviction took place, the age of the person when the crime occurred, the seriousness of the crime, and rehabilitation and good conduct. If you have any questions or concerns about the criminal history record review process, especially if someone in your home has not been fingerprinted, you should speak with your caseworker and/or attorney.

Completing an Adoptive Placement Agreement

An **Adoptive Placement Agreement (APA)** is a form that the foster parent and a representative from the social services district or the agency must sign after the foster parent is approved to adopt a child. The APA has information about the rights and responsibilities of the person who wants to adopt the child and the rights and responsibilities of the social services district or the agency that has custody of the child. The foster parent who signs an APA agrees to take care of the child and to meet the child's needs with the intention of adopting. In turn, the agency agrees to carry out its duties concerning the welfare of the child. The APA does not, however, transfer custodial rights to the person who is planning to adopt the child. The social services district commissioner still has custody of the child.

Filling Out Forms

During the adoption process, prospective adoptive parents are usually asked to sign several forms. Before signing any form, you should review it carefully and discuss the consequences of signing the form with your caseworker. It is not advisable to sign blank forms.

Before you sign the APA, your caseworker or other agency representative from the social services district or the agency should discuss the significance of the APA with you.

Information You Should Receive from the Agency

Medical History Information

The social services district or the voluntary authorized agency must give you any available medical history, including psychological and psychiatric information, of your foster child and your foster child's birth parents before you adopt. Information kept by the court, the social services district, and the agency concerning the adoptive child is confidential. However, New York State law requires that the social services district or the voluntary authorized agency automatically give the medical history of the child and the child's birth parents to the following people:

- ◆ a person who is going to adopt a child
- ◆ a person who is going to become a child's foster parent
- ◆ a foster child when the child is discharged to his or her own care

New York State Law also requires that the social services district or the voluntary authorized agency give the medical history of the child and the child's birth parents to the following people if they ask for information:

- ◆ a person who has already adopted a child
- ◆ a person who is already the foster parent of a child
- ◆ an adopted former foster child

The medical history can be a copy of the official documents or a summary of those documents. Information identifying the birth parents must be deleted from the medical history before the history is given to a person who is going to become the child's adoptive or foster parent, a person who has already become the child's foster or adoptive parent, or a person who is an adopted

former foster child. Information identifying the birth parents is any information that can reveal the identity of the child's birth parents. Examples of identifying information are the birth parents' names, addresses, and social security numbers.

A medical history that is given according to the provisions discussed above must include, but is not limited to, the following information, where known:

- ◆ conditions or diseases believed to be hereditary
- ◆ drugs or medication taken during pregnancy by the child's birth mother
- ◆ immunizations received by the child while in foster care and before placement in care
- ◆ medication dispensed to the child while in care and before placement in care
- ◆ allergies the child has had while in foster care and before placement in care
- ◆ diagnostic tests, including developmental or psychological tests and evaluations given to the child while in care and before placement in care, and their results
- ◆ laboratory tests for HIV and their results
- ◆ any follow-up treatment given to the child while in care or before placement in care, or still needed by the child

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. At the very bottom of the page, there is a light blue gradient bar. There is no handwriting or other markings on the paper.

Adoption Subsidy

After adoption, foster parents stop receiving **foster care board payments**. However, the child being adopted might be eligible for an adoption subsidy. The following is an explanation of the adoption subsidy program.

The Adoption Subsidy

What Is an Adoption Subsidy?

An **adoption subsidy** is a monthly payment made to adoptive parents who have adopted a child who meets New York State Office of Children and Family Services (OCFS) eligibility standards. The purpose of an adoption subsidy is to provide the adoptive parent with money to assist with the care

and support of the child. To be able to receive an adoption subsidy, a foster parent must enter into an adoption subsidy agreement with the social services district or the voluntary authorized agency, *before* the child is adopted. This subsidy agreement must then be approved by OCFS or the social services district if the district has been authorized by OCFS to do so. An adoption subsidy may be available after adoption finalization only in the special situation discussed on page 14, *Applying for Adoption Subsidy After the Adoption Is Finalized*.

Adoption Subsidy Is Paid Until the Child Is 21

The adoptive parent will continue to receive the adoption subsidy until the child reaches the age of 21, unless 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. Also, if the adoptive parent(s) dies before the child reaches the age of 21, the child's legal guardian will receive the subsidy payments until the child turns 21.

Eligibility for Adoption Subsidy

Not all foster parents who adopt their foster children are entitled to receive an adoption subsidy. Only those foster parents who are adopting a child who meets the State legal definitions of handicapped or hard to place can receive an adoption subsidy.

For the purposes of determining a child's eligibility for adoption subsidy, a **handicapped**

Steps in Applying for Adoption Subsidy

1. Talk to your caseworker about the adoption subsidy program.
2. Collect the necessary documents.
3. Complete and review the adoption subsidy agreement with your caseworker and/or attorney.
4. Sign and date the agreement *before* the adoption is completed.
5. Obtain a copy of the agreement for your records.

child is a child who has a physical, mental, or emotional condition or disability that is so severe it would make it difficult for the child to be adopted. A **hard-to-place child** is a child who is not handicapped and who either has been waiting to be adopted for a specific amount of time or is considered difficult to adopt because of certain factors. These factors include the age of the child, whether or not the child is a member of a sibling group, and the length of time the child has been in foster care. Whether or not a child is a member of a minority group that is substantially overrepresented in New York State foster care in relation to the percentage of that State's total population might also be a factor.

The following is the section of **New York State regulations** that explains which children are eligible for handicapped or hard-to-place adoption subsidies.

New York State regulations define a handicapped child as a child who possesses a specific physical, mental, or emotional condition or disability of such severity or kind which, in the opinion of the Office of Children and Family Services, would constitute a significant obstacle to the child's adoption. Such conditions include, but are not limited to:

- (i) any medical or dental condition which will require repeated or frequent hospitalization, treatment or follow-up care;
- (ii) any physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for remunerative occupation as described in sections 1002 and 4001 of the Education Law; or makes or may be expected to make a child handicapped, as described in section 2581 of the Public Health Law;
- (iii) any substantial disfigurement such as the loss or deformation of facial features, torso or extremities; or
- (iv) a diagnosed personality or behavioral problem,

psychiatric disorder, serious intellectual incapacity or brain damage, which seriously affects the child's ability to relate to his or her peers and/or authority figures, including mental retardation or developmental disability.

New York State regulations define a hard-to-place child as a child, other than a handicapped child:

- (i) who has not been placed for adoption within six months from the date his or her guardianship and custody were committed to the social services official or the voluntary authorized agency; or
- (ii) who has not been placed for adoption within six months from the date a previous adoption placement terminated, and the child was returned to the care of the social services official or the voluntary authorized agency; or
- (iii) who meets any of the conditions listed (below) in clauses (a) through (f) of this subparagraph, which the Office has identified as constituting a significant obstacle to a child's adoption, notwithstanding that the child has been in the guardianship and custody of the social services official or the voluntary authorized agency for less than six months:
 - (a) the child is one of a group of two siblings (including half-siblings) who are free for adoption, and it is considered necessary that the group be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; and
 - (1) at least one of the siblings is five years old or older; or
 - (2) at least one of the siblings is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or
 - (3) at least one of the children is otherwise eligible for a subsidy in accordance with the provision of this subdivision;
 - (b) the child is the sibling or half-sibling of a

child already adopted, and it is considered necessary that such children be placed together pursuant to 421.2(e) and 421.18(d) of this Part; and

- (1) the child to be adopted is five years old or older; or
 - (2) the child is a member of a minority group which is substantially over-represented in New York State foster care in relation to the percentage of that group to the State's total population; or
 - (3) the sibling or half-sibling already adopted is eligible for subsidy or would have been eligible for subsidy if application had been made at the time of or prior to the adoption;
- (c) the child is one of a group of three or more siblings (including half-siblings) who are free for adoption, and it is considered necessary that the group be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; or
- (d) the child is eight years old or older and is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or
- (e) the child is 10 years old or older; or
- (f) the child is hard to place with parents other than his/her present foster parents because he/she has been in care with the same foster parents for 12 months or more prior to the signing of the adoption placement agreement by such foster parents and has developed a strong attachment to his/her foster parents while in such care and separation from the foster parents would adversely affect the child's development.

[These regulations were copied from 18 New York Code of Rules and Regulations 421.24(a)(2) and (3).]

A foster parent's income is not considered in determining whether or not the foster parent will

be able to receive an adoption subsidy. That is, the amount of money you earn does not affect whether or not you can receive an adoption subsidy.

The Amount of the Adoption Subsidy

1. Adoption Subsidy and the Foster Care

Board Rate—Adoption subsidy rates are based on the child's situation at the time the application for adoption subsidy is made. Your foster child may have needs that have changed since he or she entered foster care. Your foster child's actual needs will be assessed to determine the rate that corresponds with the current needs of the child. This rate may be the same as the foster care board rate, it may be less, or it may be more.

After a child has been adopted, the adoption subsidy will increase if the social services district increases its foster care board rate. Also, the adoption subsidy may change when certain milestones are met for the child's age group.

Social services districts have the option of taking adoptive parents' income into consideration when calculating adoption subsidy amounts. This might cause the adoption subsidy to be less than the foster care board payment.

2. Basic, Special, and Exceptional Rates

—Generally, if a child is hard to place, the adoption subsidy is paid at the **basic** rate.

If a child is handicapped, the adoption subsidy is paid at either the basic, special, or exceptional rate. In general, the **special** rate is paid when the child requires a high degree of care. The **exceptional** rate is paid only when the child requires the highest degree of care as defined by standards established by the social services district.

3. Medical Coverage—Adoptive parents who adopt a child who is eligible for subsidy might also receive **medical coverage** for the child, usually under the Medicaid program. Medicaid coverage will continue until the age of 21 for a handicapped child and until 18 for a hard-to-place child.

4. Effect of Adoption Subsidy on Other

Benefits—In some cases, the adoption subsidy might affect other benefits the adoptive parent is

receiving, such as public housing. If you have questions about whether or not the amount of other benefits you are receiving will be affected by the adoption subsidy, you should call the provider responsible for administering the other benefits.

Reimbursement of Nonrecurring Adoption Expenses

What Are Nonrecurring Adoption Expenses?

A **nonrecurring adoption expense** is a onetime payment of money made by a foster parent that is directly related to and necessary for the adoption of a child with special needs. Examples of common nonrecurring adoption expenses are:

- ◆ attorney fees
- ◆ health and physical examinations
- ◆ money paid to obtain certificates, such as a death certificate of a spouse who died during the marriage, certified copies of divorce decrees, etc.
- ◆ travel expenses

Steps in Applying for Reimbursement of Nonrecurring Adoption Expenses.

1. Sign and date the nonrecurring adoption expenses agreement *before* the adoption is completed.
2. Save all receipts for adoption-related expenses.
3. Submit the receipts to the social services district or the agency within two years of the date of the final adoption decree.

Eligibility for Reimbursement of Nonrecurring Adoption Expenses

You might be able to be reimbursed for your nonrecurring adoption expenses if you are adopting a child who has special needs. Generally, all handicapped children and most hard-to-place children satisfy the definition of a child with special needs. Most adoptive parents who adopt a child who qualifies for an adoption subsidy will also be able to receive reimbursement for their nonrecurring adoption expenses.

For a nonrecurring adoption expense to be reimbursable, the following conditions must be met:

- ◆ The expenses must be for services directly related to and necessary for the legal adoption of the child.
- ◆ The amount of the expenses must be “reasonable.” For example, if you hire a lawyer who charges twice as much as other lawyers for the same amount and type of work, that fee might not be considered reasonable.
- ◆ The expenses must not have been reimbursed from any other source.
- ◆ The expenses must not have been paid as compensation for adoption services that violate federal law, New York State law, or the law of any other state.
- ◆ The receipts for nonrecurring adoption expenses must be received by the social services district or the agency within two years of the date of the final decree of adoption.
- ◆ The agreement for reimbursement of nonrecurring adoption expenses must be signed *before* the child is adopted.

Expenses Reimbursable Only After the Child Is Adopted

Nonrecurring adoption expenses are reimbursed only *after* the child is adopted. If the adoption is not finalized, the expenses will not be reimbursed.

Limit on Reimbursement

The maximum amount that will be reimbursed for total adoption expenses is \$2,000 per child. This amount includes the combined total of lawyer's fees, court costs, and fees paid to obtain official documents. If your nonrecurring adoption expenses for a child are more than \$2,000, you will not be reimbursed for any amount over \$2,000 paid to adopt that child.

Reimbursement of Lawyer's Fees

Some attorneys will handle an adoption without requiring direct payment from the prospective adoptive parent if the adoptive parent is eligible for reimbursement of nonrecurring adoption expenses. The lawyer can directly receive reimbursement for allowable attorney fees and court costs. In this way, the adoptive parent does not have to pay the lawyer any money. If you are interested in setting up this type of arrangement, you should speak with your lawyer and your caseworker. (See page 18, *Paying Your Lawyer*.)

Applying for Adoption Subsidy and Reimbursement of Nonrecurring Adoption Expenses

Your caseworker should discuss the adoption subsidy and reimbursement for nonrecurring adoption expenses programs with you. If you are in the process of adopting your foster child and no one from the social services district or the agency has spoken to you about an adoption subsidy, you should ask about it immediately.

As part of the adoption subsidy application process, it must be established whether or not the child is considered handicapped or hard to place as defined in New York State regulations. A child's eligibility as a handicapped child is established through the submission of documents that describe the child's physical, mental, or emotional condition

or disability. These documents are also used to determine the rate at which a handicapped adoption subsidy should be paid. The documents that are submitted as part of the adoption subsidy application process must be current and must include the results of a recent examination done by a physician, a psychiatrist, or a psychologist. The examination results must include a description of the actual needs of the child and what the foster parent must do to meet those needs. The examination results must also include a diagnosis of the child's condition and the treatment plan that should be followed to meet the child's needs.

Adoption Subsidy

To apply for an adoption subsidy you will need to do the following:

- ◆ Discuss the availability of an adoption subsidy with your caseworker. Your caseworker must give you information about the subsidy program, including a subsidy agreement form and a summary of the subsidy program.
- ◆ Gather all of the documents that your caseworker tells you that you will need to apply for an adoption subsidy. If you apply for a handicapped subsidy and you have current documents supporting the extent of your foster child's physical, mental, or emotional condition or disability, ask your caseworker if the agency will need copies of these documents.
- ◆ Cooperate with your caseworker in the preparation of the adoption subsidy agreement.
- ◆ Review the adoption subsidy agreement with your caseworker and/or attorney.
- ◆ *Before* the adoption is completed, sign and date a completed adoption subsidy agreement for each child being adopted. The agreement for nonrecurring adoption expenses must be approved *before* the adoption is completed.
- ◆ Obtain a copy of the subsidy agreement signed by either the social services district or the State Office of Children and Family Services, as applicable, for your records.

Reimbursement of Nonrecurring Adoption Expenses

To apply for reimbursement of your nonrecurring adoption expenses, you will need to do the following:

- ◆ *Before* the adoption is completed, sign and date a nonrecurring adoption expenses agreement for each child being adopted. The agreement for nonrecurring adoption expenses must be approved *before* the adoption is completed.
- ◆ Save all of your receipts for money spent on nonrecurring adoption expenses. You must give these receipts to the social services district or the agency within two years of the date of the final adoption decree.

Adoption Subsidy and Nonrecurring Adoption Expenses Agreements

You must sign and date the adoption subsidy and nonrecurring adoption expenses agreements *before* the adoption is finalized. If you do not sign the subsidy agreement *before* the adoption is finalized, you cannot apply for an adoption subsidy after you adopt your child except as explained below, *Applying for Adoption Subsidy After the Adoption is Finalized*. If you do not enter into an agreement for reimbursement for payment of nonrecurring adoption expenses *before* the adoption is finalized, you will not be able to do so after you adopt your child.

You should receive a copy of the approved adoption subsidy agreement before you adopt your foster child. This is an important legal document that you should retain for your records. The approved adoption subsidy agreement assures you that the subsidy has been approved for the amount indicated.

Applying for Adoption Subsidy After the Adoption Is Finalized

An adoptive parent can request an adoption subsidy after the adoption is finalized *only* if the adoptive parent *first learns* that the child has a

physical or emotional condition or disability after the adoption is finalized and a doctor certifies that the condition or disability existed before the adoption was finalized.

To request an adoption subsidy after you have adopted your child, contact the social services district or the agency and ask for an adoption subsidy application. If you need more information, contact the New York State Office of Children and Family Services (OCFS) at one of the telephone numbers or the website address listed on page 29. If you decide to apply for an adoption subsidy, you should do so as soon as possible after learning that your child might be eligible.

Children Whose Condition Worsens:

Sometimes the condition of a child who has been adopted with subsidy worsens after the child has been adopted. If this occurs, the adoptive parent may be able to obtain an increase in the amount of the subsidy. In order for an adoptive parent to receive an increase in adoption subsidy after a child has been adopted, there must be documentation that shows that the condition that made the child eligible for adoption subsidy has worsened. Also, the documentation must show that the child's current needs meet the criteria for the higher rate that is being requested. For example, if an adoptive parent is receiving an adoption subsidy at the basic rate for a handicapped child, and the child's condition worsens after the adoption, the adoptive parent might be able to receive an adoption subsidy at the special or exceptional rate if the proper documentation is submitted with a new adoption subsidy application.

If the condition that made your child eligible for adoption subsidy worsens after you adopt your child, you should immediately contact the social services district or the voluntary authorized agency and ask for an adoption subsidy application. If you need more information, contact the New York State Office of Children and Family Services (OCFS) at one of the telephone numbers or the website address listed on page 29.

Sometimes a child's needs might increase after a child is adopted, but these increased needs are not related to the condition that made the child eligible for adoption subsidy. There is no increase in subsidy in this case. If your child's needs increase after adoption, but you are not sure whether the increased needs are the result of the condition that made your child eligible for adoption subsidy, you should contact the social services district or the agency for help in determining whether you should request an increase in the rate of the subsidy payments.

Requesting a Fair Hearing After an Application Has Been Denied

If your application for adoption subsidy is denied, you should receive a letter informing you of the denial and explaining the reason for the denial. If you are informed that your adoption subsidy application has been denied, you can request a **fair hearing** to have the opportunity to prove that the child is eligible for adoption subsidy. If you decide to request a fair hearing, you must do so no later than 60 days after you receive the letter informing you that your adoption subsidy application has been denied. To request a fair hearing, follow the instructions in the denial letter. If you have not received a denial letter, you can write to the New York State Office of Children and Family Services (OCFS), Bureau of Special Hearings (see page 29).

Persons who apply for adoption subsidy also have the right to a fair hearing if the adoption subsidy is granted in an amount which the person applying for the subsidy determines to be inadequate or inappropriate, or if the application for the subsidy is not acted upon within 30 days of filing. The request for the fair hearing must be made no later than 60 days after the person receives a letter informing him or her that the adoption subsidy will be granted in an amount the person

determines to be inadequate or inappropriate.

After you request a fair hearing, you should speak with your caseworker to determine whether the reasons for the denial of your adoption subsidy application can be resolved before you go to a fair hearing. For example, you might be able to submit more information showing that the child's disability makes the child eligible for adoption subsidy at a higher rate.

You should not finalize the adoption until adoption subsidy issues are resolved.

If Adoption Subsidy Payments Stop

If you adopt a child with subsidy, you are supposed to continue to receive an adoption subsidy until the child reaches the age of 21, unless you are no longer legally responsible for the support of your child or your child is no longer receiving any support from you. Note that even though your child might not be living in your home, this does not automatically mean that you are no longer legally responsible for your child's support. If you stop receiving adoption subsidy payments after you adopt your child, you might be eligible for a fair hearing to show that the subsidy payments should not have stopped. To request a fair hearing, write to the New York State Office of Children and Family Services (OCFS), Bureau of Special Hearings (see page 29). If you need more information, contact OCFS at one of the telephone numbers or the website address listed on page 29.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. At the very bottom of the page, there is a light blue gradient bar. There is no handwriting or other markings on the paper.

Finalizing the Adoption

In addition to the requirements listed in the previous chapters, you will also have to petition the court to finalize your adoption. By petitioning the court, you are asking the judge to issue an order of adoption. To have your adoption finalized, your lawyer and the social services district and/or the agency must submit documents to court and give the judge any other information he or she may need.

The following is an explanation of the steps in the court finalization process. At first, it might appear that the court finalization process is long and complicated, but remember that your lawyer, the social services district, the agency (if one is involved), and the court all have responsibilities in the process. You are not expected to do everything on your own.

Steps in the Adoption Finalization Process

1. Hire a lawyer.
2. Help put together the adoption packet to send to court.
3. Keep track of the adoption case.
4. Go to court on finalization day.

Hiring a Lawyer

Foster parents who adopt their foster children may hire a **lawyer (attorney)** to handle the adoption for them. It is up to you to obtain a lawyer if you want one. The social services district or the agency does not assign you a lawyer. Someone from the social services district or the agency might recommend a lawyer for you to use, but it is your choice whether or not you will use that person. Also, it is important to remember that if the lawyer you use was recommended by the social services district or the agency, he or she becomes your lawyer for the purpose of the adoption.

Your attorney is obligated to work at all times in your best interests even if your interests conflict with those of the agency involved in the adoption. Your attorney is obligated to keep you informed of the status of your case. You have the right to follow up with your attorney and the social services district at any time to make sure everyone is doing his or her part as quickly as possible to finalize the adoption.

If you cannot resolve your differences with your attorney, you have the right to discharge him or her. Court approval may be required in some matters, and your attorney may have a claim against you for the value of the services provided in your case up to the point of discharge. You should be aware, however, that changing attorneys while the case is pending may result in delaying your case.

When to Contact a Lawyer

If your foster child is legally free for adoption, you should contact a lawyer as soon as possible and begin the adoption finalization process.

If your foster child is not yet legally free for adoption or is in the process of being freed, you may contact a lawyer and get advice about the adoption process. However, if your lawyer works on your case and your child does not become free for adoption, the lawyer might still charge a fee for the work that he or she has done. This fee will not be reimbursable as a nonrecurring adoption expense. If you plan to begin the court finalization process early, you should contact a lawyer before your child is freed for adoption. (See page 4, *Starting the Adoption Process Early*.)

Although you can contact a lawyer to represent you in the adoption as soon as you realize you want to adopt your foster child, it is best *not* to start the court finalization process before discussing this with your caseworker. The social services district and agency play a vital role in the adoption process, and the consent of the social services district and the agency must be obtained before a child can be adopted. Also, if you decide to start the adoption finalization process early, your caseworker must tell you when and in which court the child will be freed for adoption if you decide to start the adoption finalization process early.

Choosing a Lawyer

We recommend several ways of finding and choosing a lawyer to represent you in the adoption finalization process:

- ◆ You can ask *your caseworker* to give you a list of the names of lawyers who have represented other foster parents in adoptions.
- ◆ You can ask *other foster parents* who have adopted their foster children if they would recommend their lawyer.
- ◆ You can contact *local bar associations* and ask to be referred to a lawyer who is willing to represent foster parents in an adoption (see page 29).

You can also select your own lawyer based on the recommendations of people you know, advertisements in the newspapers, or any other source that provides information about lawyers.

When you are selecting a lawyer, you should look for someone who is cooperative, responsive to questions, and knowledgeable. Feel free to ask the lawyer about his or her qualifications, including how experienced the lawyer is in handling adoptions by foster parents. Remember, you make the final decision whether to hire a lawyer and, if so, which lawyer will represent you in the adoption.

Paying Your Lawyer

Fee Charged for Each Child: If you hire a lawyer, and you are adopting more than one child, you may be charged a fee for each child.

Fee Arrangements: You should not let the lack of money to pay a lawyer stop you from looking for a lawyer to handle your adoption. It is true that you are responsible for ensuring that the lawyer is paid for his or her services. Some lawyers, however, are willing to work out a payment arrangement with foster parents. This is especially true if the foster parent will be entitled to reimbursement of nonrecurring adoption expenses. Examples of fee arrangements are:

- ◆ **Paying in Installments**

Some lawyers will allow the foster parent to pay part of the fee before the case begins and the rest at the end of the adoption.

- ◆ **No Out-of-Pocket Expenses**

Some lawyers are willing to handle the adoption without requesting direct payment from the foster parent if the foster parent is entitled to be reimbursed for nonrecurring adoption expenses. If your lawyer allows this, you should talk to your caseworker.

If the Lawyer Does Extra Work

Lawyers will sometimes increase their standard fee if a case involves more work than is usually required in an adoption. For example, if

one of the child's relatives files an adoption petition at the same time the foster parent does, the judge might hold a hearing to determine who should adopt the child. If this happens, your lawyer would have to spend more time preparing for the trial and going to court. The lawyer would probably charge an additional amount of money for the extra work. The additional amount of money might go over the allowable limit of \$2,000 for reimbursement of nonrecurring adoption expenses. If this happens, you will not be reimbursed for any money that goes over the \$2,000 limit. Also, the extra work done by the lawyer might not be a service for which payment can be reimbursed through the reimbursement of nonrecurring adoption expenses program.

Putting Together the Adoption Packet

Your lawyer will have to submit an adoption petition and other documents to court that contain information the judge will need to finalize the adoption. The social services district and/or the agency will also have to provide information to the court. The adoption petition and other documents that are submitted to court are often called the **“adoption packet.”** The adoption packet contains information about the prospective adoptive family and child. The judge will require information about your home, how you live, who lives with you, and who spends time with the child. You should be prepared to answer questions and to cooperate with your caseworker or whoever else might be conducting the home study. Other people living in your home should also be prepared to meet with the person conducting the home study. In addition, individuals over 18 years of age will be required to have a database check by the Statewide Central Register of Child Abuse and Maltreatment and a criminal history review. Some judges also require information about anyone who spends a great deal of time in the home such as someone in a significant relationship with the foster parent.

Information Required by the Court

◆ General Information

- your name and address
- age
- religion
- occupation
- income

◆ Marital Status

- ◆ The law requires the judge to ask whether you are married, single, widowed, divorced, legally separated, or still legally married but living separate and apart from your husband or wife for three years or more before you begin the court finalization process.
- ◆ You will have to give the court proof of your marital status and marital history. This means you will have to submit all of the following documents that apply to your situation:
 - certified marriage certificate(s) from your current or previous marriage(s)
 - certified divorce decree(s)
 - certified decree(s) of separation or separation agreement(s)
 - certified death certificate for a spouse who died during the marriage
 - proof, such as an affidavit (a sworn statement), stating that you are married, but have been living separate and apart from your husband or wife for at least three years

◆ Statewide Central Register Database Check

The **Statewide Central Register of Child Abuse and Maltreatment (SCR)** is the division of the New York State Office of Children and Family Services that keeps records on individuals who were found to have abused or maltreated a child for whom they were legally responsible. Everyone living in your home who is over the age of 18 must have an SCR database check as part of the adoption process. If you are listed on the SCR as a person who has abused or maltreated a child, the court will probably ask the social services district and/or the agency to present evidence

supporting their opinion that the child will be safe in your home.

◆ **Court Cases Involving**

Abuse or Neglect of a Child

The judge will want to know if a judge has ever found that you or anyone else in your household has abused or neglected a child.

◆ **Involvement with**

the Criminal Justice System

◆ Upon demand, the social services district and/or the agency is required to share with the court the results of the criminal history records check that is required as part of the adoption approval process. (See Chapter Two, *The Agency Approval Process*.)

◆ The judge might require additional information concerning whether anyone in your home has a criminal history.

◆ **Juvenile Delinquency (JD) and Person in Need of Supervision (PINS) History**

The judge might ask if any child in your home is having problems with the law. (Certain records concerning juvenile delinquency activity are sealed and confidential.)

◆ **Medical Reports**

Some judges require that the adoptive parents present to the court a doctor's report concerning their health. This report usually must have been completed within certain time frames, such as 12 months. Some judges require that all members of the adoptive household present a medical report to the court. If the medical report "goes stale"—is too old by the time the judge reviews the case—the judge will tell the lawyer to ask the adoptive parents to get another medical examination.

◆ **Identification of a "Back-up Person"**

Some judges require that foster parents identify a "back-up person." A **back-up person** is a person who expresses a willingness to be responsible for the child if the adoptive parent becomes unable to do so due to death, illness, or some other circumstance. The agency might have to provide the court with information

regarding the back-up person. The back-up person should be prepared to cooperate with the social services district or the voluntary authorized agency during this process.

◆ **Information About the Birth Parents**

As a part of the adoption petitioning process, a person who is adopting a child must present to the judge the following information, as nearly as can be ascertained, about the birth parents. If you have questions about obtaining this information, you should talk with your attorney.

- heritage of the parents, including nationality, ethnic background, and race
- education, which shall be the number of years of school completed by the parents at the time of the birth of the adoptive child
- general physical appearance of the parents at the time of the birth of the adoptive child, including height, weight, color of hair, eyes, skin
- occupation of the parents at the time of the birth of the adoptive child
- health and medical history of the parents at the time of the birth of the adoptive child, including all available information on conditions or diseases believed to be hereditary, and any drugs or medication taken during the pregnancy by the child's mother
- any other information that may be a factor influencing the child's present or future health
- talents, hobbies, and special interests of the parents

Collecting Documents for the Court

When you and the social services district and/or agency decide that you will adopt your foster child, you should begin collecting the documents you will need to present to the court. Ask your lawyer or caseworker what type of documents you will need and how you should get them. If you are having problems getting the documents, tell your lawyer and your caseworker immediately. They

should be willing to help you get the documents you need so that your adoption will not be delayed.

Documents in Another Language: Sometimes the documents a person must provide to the court in an adoption proceeding are in another language. For example, if a person was married or divorced in another country, the marriage certificate or divorce decree might be in the language that is spoken in that country. Documents that are in a language other than English must be translated into English. If any of the documents you are required to provide to the court are in another language, you should discuss this with your lawyer or caseworker immediately.

Sending the Adoption Packet to Court

As the petitioner, you will need to file the adoption packet in a particular court. Depending on the circumstances described below, you and your lawyer will decide in which court the adoption packet will be filed. The following requirements apply to adoptions filed in New York State.

- ◆ *If you live in New York State, you must file the adoption packet in either the Family Court or Surrogate's Court in the county (or the borough) where you live **or** in either the Family Court or Surrogate's Court in the county where the parental rights of your foster child's birth parents were terminated or where the surrender signed by the birth parents in court was approved.*
- ◆ *If you live in a state other than New York, you must file the adoption packet in either the Family Court or Surrogate's Court where the social services district is located or the voluntary authorized agency has its main office **or** in either the Family Court or Surrogate's Court in the county where the parental rights of your foster child's birth parents were terminated or where the surrender signed by the birth parents in court was approved.*
- But:**
- ◆ *Regardless of whether you live in New York or another state, you may start the adoption*

finalization process early either by filing the adoption petition in the court where the case terminating the parental rights of your foster child's birth parents *has started* **or** by submitting the adoption petition to the judge who *has just finished* terminating the parental rights of your foster child's birth parents or accepting the birth parents' surrender. (If you start the adoption process early, you should apply for an adoption subsidy as soon as possible if you believe your foster child is eligible.)

Cooperating with the Agency

The social services district and the agency also have to give the court certain documents. At any time during the court finalization process, your caseworker or someone else from the social services district and/or agency might ask you for additional information that the judge needs to finalize the adoption.

Keeping Track of the Adoption Case

Remember, *you* are the petitioner in the case. You begin the court finalization process by having your attorney file the adoption packet in court. You have the power to follow up with your attorney, the social services district, the agency, and the court to make sure everyone is doing his or her part.

You can check on the progress of the adoption in three simple ways:

- ◆ Contact your lawyer.
- ◆ Contact your caseworker.
- ◆ Contact the court.

You can use the form at the end of this guide to help you keep track of your adoption case.

Contacting Your Lawyer

Your lawyer should keep track of your case after the packet is submitted to court. You should be able to get the information you need from your lawyer. You are the client; your lawyer works for you.

Contacting the Social Services District or the Voluntary Authorized Agency

Even though you are your child's foster parent, the social services district commissioner is still the child's legal custodian and the social services district is responsible for the welfare of your foster child. Because the social services district has this responsibility, your caseworker or some other person at the social services district or the agency, if one is involved, should follow the case through court to help the process go smoothly. Your caseworker should always be willing to talk to you about your case.

Contacting the Court

You should be able to obtain whatever information you need about the adoption from your lawyer and your caseworker. If you have trouble getting information about the adoption, however, you can call the court. When you call the court, you should ask to speak with the **adoption clerk** or the person who can tell you the status of your case. For example, you might want to know whether the adoption has been filed or if a finalization date has been set. You might also want to find out what information the judge will need to finalize the adoption.

To call the court yourself, you will need to know the following:

- ◆ the name of the court where the adoption has been filed
- ◆ the docket number

You can get this information from your caseworker or your lawyer.

Docket Number

A **docket number** is a number that certain courts give to cases to show that the case has been officially filed with that court. Docket numbers for adoption cases filed in a New York State Family Court begin with the letter "A." When a foster parent is adopting more than one child, each child is assigned a docket number.

Going to Court on Finalization Day

After the judge has decided that you can adopt your foster child, a day will be scheduled for you and your foster child to go to court. To help your finalization go smoothly, you should arrive at court early. It would also be helpful to know ahead of time what room you should go to and the name of the judge you will be seeing. Your lawyer should be able to give you this information.

When you get to court, you might go to the judge's chambers, which is basically the judge's office. The judge will probably ask you questions and sign documents to make the adoption legal.

Most families find the adoption finalization to be a pleasant experience compared to the other types of Family Court proceedings with which they may have been involved.

Denial of an Order of Adoption

Judges have the authority to deny an order of adoption. If this should happen in your case, ask your lawyer and your caseworker why this might have occurred to see if you can change or appeal the situation. You might also want to explore other permanency options such as custody or guardianship.

Working Toward a Successful Adoption

The more knowledgeable you are about the adoption process, the greater the likelihood that your adoption will be finalized in a timely fashion. The best time to gain that knowledge is when the child enters foster care, not after the child has been freed for adoption.

This chapter gives you some suggestions and tips that will help empower you in making a decision about adoption and in going through the process once you decide to adopt.

Suggestions for a Positive Experience

Be clear about your decision to adopt.

Adoption is a *lifelong* commitment and requires a great deal of time and energy. The decision to adopt should not be taken lightly. It is important that you be clear about how adopting a child will affect you, the child, and the rest of your family. Make sure your expectations about the adoption are realistic and that you really understand what adopting a child is all about. We recommend that you talk to your caseworker about your decision to adopt and discuss openly any concerns or issues you may have before the process begins. Many social services districts and voluntary authorized agencies also have foster and/or adoptive parent groups, which serve as support and resource groups. See page 28 for information.

Be assertive.

There is some truth to the saying “the noisy hinge gets the oil.” You play a major part in the adoption of your child, and you should be actively involved. If you have any questions about the status of your adoption, seek out the answers for yourself. Contact your caseworker to get information about the adoption. You should also be in touch with your lawyer. If you have not heard from your lawyer for some time, give him or her a call. Remember, your lawyer is being paid to work on your case and you have the right to know what is happening.

Ask what you can do to help the process along, and be willing to do some of the footwork or information-gathering yourself. If people see that you’re willing to go that extra mile to speed up the process, then they will usually do likewise.

Be open.

In the process of getting your adoption finalized, you will be expected to reveal a substantial amount of information about yourself and your family. Some of this information may be extremely personal, and you may not feel comfortable about revealing it to anyone. Even though you might not feel comfortable discussing certain aspects of your life with the person conducting the home study, it is important to be honest in answering questions and sharing information. Inaccurate information in your home study might delay your adoption or cause you to be unable to adopt your foster child.

Be organized.

It is very important to keep accurate and current records about the events taking place in your foster child's adoption case. After each event, it is helpful to update your records with a note about what took place and the date. Also, if you keep all of your documents in one place, you will save time when you need to give them to your caseworker, your lawyer, or the court.

The form at the end of this manual is designed to help you keep track of the adoption.

Twelve Tips to Success

Listed below are twelve tips from the Group Preparation and Selection Leader Guide, developed by the Child Welfare Institute in Atlanta, Georgia. Following these tips will help empower you.

1. **Know your family.** Assess your individual and family strengths and needs.
2. **Communicate effectively.** Use and develop communication skills needed to foster or adopt.
3. **Know the children.** Identify the strengths and needs of children and youth who have been abused, neglected, abandoned, and/or emotionally maltreated.
4. **Build strengths; meet needs.** Build on strengths and meet the needs of children who are placed with you.
5. **Work in partnership.** Develop partnerships with children and youth, birth families, the agency, and the community to develop and carry out plans for permanency.
6. **Be loss and attachment experts.** Help children and youth develop skills to manage loss and attachment.
7. **Manage behaviors.** Help children and youth develop skills to manage behaviors.
8. **Build connections.** Help children and youth maintain and develop relationships that keep them connected to their past.
9. **Build self-esteem.** Help children and youth build positive self-concept and positive family, cultural, and racial identity.
10. **Assure health and safety.** Provide a healthy and safe environment for children and youth, and keep them free from harm.
11. **Assess impact.** Assess the ways fostering and/or adopting will affect your family.
12. **Make an informed decision.** Make an informed decision to foster or adopt.

Getting More Information and Help

If you want or need help developing the skills and attitudes described above, you should talk with your caseworker and seek out any other available resources. Many social services districts and agencies offer training and workshops on a wide range of topics and concerns related to the adoption process. Statewide conferences and seminars are also available. Participating in these activities will enhance your understanding of the adoption process. The organizations listed in the next chapter can help you locate agencies and other organizations that offer adoption and post-adoption services.



After the Adoption

After the adoption, you may have to consider several issues including continuing contact with the child's birth family and other relatives, depending on the specifics of the court order. Following is an explanation about continuing contact as well as information about obtaining a birth certificate and a social security number for your adopted child. A list of agencies offering post-adoption services also follows.

Continuing Contact Between Child and Birth Family

Contact with the birth family should be allowed if it is in the child's best interests. Depending on the situation, continuing contact can take various forms. For example, continuing contact can be regular visitation, telephone calls, e-mail, letter writing, or the exchange of photographs. If you have questions about whether you should allow continued contact between your child and your child's birth family after the adoption is finalized, you should discuss this with the social services district or the agency. The decision as to who will have contact with your child after you adopt, however, is yours to make.

Conditional Surrender

After a child is freed for adoption, the child's birth parents generally no longer have the right to have contact with the child. There are exceptions to this policy. One of these exceptions involves a contact agreement that was executed as part of a conditional surrender.

A **conditional surrender** is when the birth parent signs a surrender, which designates a person(s) who will adopt the child and/or provides for contact or communication between the birth parent and the child after the surrender and possibly also the adoption of the child. However, a birth parent can also sign a surrender that does not designate a particular person to adopt the child. The agency cannot accept the surrender conditioned upon the adoption by a particular person unless the agency has fully investigated and certified or approved the individual as a qualified adoptive parent or as a certified or approved foster parent, where the permanency plan for the child is adoption by such foster parent.

If the surrender document *designates* a particular person who will adopt the child, that person, the child's birth parent, the agency having guardianship and custody of the child, and the child's law guardian may also enter a written agreement providing for communication or contact between the child and the child's birth parent and siblings or half siblings, if any.

If the surrender document *does not designate* a particular person who will adopt the child, then the child's birth parent, the agency having guardianship and custody of the child, and the child's law guardian may enter a written agreement providing for communication or contact between the child and the child's birth parent and siblings or half siblings, if any.

Post-Adoption Contact Agreements

Agreements about communication with or contact between an adoptive child and adoptive parent(s) and the child's birth parent(s) and/or siblings or half siblings must be incorporated into the written court order. The terms and conditions of the agreement must be set forth and consented to in writing by the parties of the agreement, including the law guardian representing the adoptive child. This agreement must be found to be in the child's best interests.

If either of your foster child's birth parents signed a conditional surrender and contact agreement allowing continued contact or communication with the child after the adoption, and you no longer allow contact or communication to occur, the birth parents or siblings might go to court and ask that the contact or communication be enforced. Unless the court finds that the enforcement is not in the child's best interests, the judge will allow the contact or communication to be continued.

Failure to comply with the terms and conditions of the court order incorporating the agreement about communication or contact are not grounds for setting aside the adoption.

Informal Arrangements

Some foster parents work out arrangements with the birth parents to allow the child to have contact with the birth family after the adoption. Informal arrangements usually occur in situations

where the adoptive parent and the birth parent know one another, such as in kinship adoptions. Informal arrangements do not enjoy the same protections as those that are set forth in the surrender and approved by the court.

Open Adoption

The term "**open adoption**" is often used to refer to the situation where an adopted child continues to have contact with his or her birth family. In New York State, some people use the term to refer to the situation where a child's birth parents sign a conditional surrender requesting continuing contact with the child. Some people also use the term to refer to the situation where the judge who finalizes the adoption orders that contact between the child and the child's birth family be allowed after the child has been adopted.

If the issue of open adoption comes up in your case, you should immediately talk to your caseworker and your lawyer about how this might affect your adoption. If you do try to enter into a type of open adoption agreement that is not allowed in New York State, your adoption might be delayed. See the previous sections on conditional surrender and post-adoption contact agreements: the New York State Office of Children and Family Services encourages continued contact with the birth family to take place with formal agreements where the rights of the parties may be enforced.

Continuing Contact with Sisters, Brothers, and Grandparents

It is important to realize that a termination of parental rights or a surrender by the birth parents does not necessarily terminate the rights of the child's brothers and sisters or other relatives. Nor does it mean that the child cannot ask to have contact with his or her relatives. Also, the social

services district or the voluntary authorized agency is still required to facilitate visitation between brothers and sisters who are in foster care after a child has been legally freed for adoption unless there is a court order directing otherwise.

New York State law has provisions that allow grandparents to go to court and ask for visitation with their grandchildren. The law also has provisions that allow individuals to go to court and request visitation with their brothers and sisters who are under the age of 18. This visitation or contact might be allowed after parental rights have been terminated or surrendered or after the child has been adopted.

If your child wants to contact a brother or sister after the adoption, you might want to explore the option of going to court and asking for an order of visitation. You can do this by consulting with a lawyer. If you are not able to retain a lawyer, you can go to the Family Court in the county or borough where you live and tell the clerk that you would like to fill out a visitation petition on behalf of your child.

Obtaining a Birth Certificate and Social Security Number*

Birth Certificate

After the adoption is finalized, the Court notifies the New York State Department of Health of the adoption and provides identifying information on the adoptive parents and the child's new name. Ask your caseworker for information on who does the paperwork.

The Department of Health prepares a new **birth certificate** for the child and sends one copy to the adoptive parents and one copy to the local registrar in the city, town, or village where the child was born. Except for noting that a change has been made, the new certificate does not indicate the change was due to adoption. The new certificate

has the same registration number as the original, which is sealed in a vault. If the child was born in New York City and the agency has purchased a second copy of the original, the City Department of Health will accept it in exchange for issuing the new one without charging a fee. If not, it will charge adoptive parents a small fee.

For children born outside the City of New York, whether elsewhere in the State of New York, another state, Puerto Rico, or abroad, the Court sends notification of the adoption to the New York State Department of Health. If the child was born abroad, is under 18 at the time of adoption, and the adoptive parents reside in New York, the New York State Department of Health will issue a Certificate of Birth Data, which is the legal equivalent of a birth certificate from the child's country of origin. There is a fee. If a foreign born child is not eligible for a Certificate of Birth Data, the New York State Department of Health will notify departments of health in the state, including Puerto Rico, or the country in which the child was born, which will mail to the adoption attorney instructions for complying with their requirements. All charge a fee.

Social Security Number

You do not need to wait until you receive the child's birth certificate to apply for his or her **social security number**. To apply for the number, contact a service representative at the local office of the Social Security Administration (SSA). You will need a certificate of adoption or birth certificate as proof of the child's legal (new) name, age (date of birth), and citizenship (place of birth). You will also need proof of the child's identity from a third party (e.g., school ID, baptismal or religious record, or medical record) as well as proof your own identity and relationship to the child.

If the child already has a social security number, you will need to apply for a new number. However, SSA will not issue a new number if the

* Adapted from *What's Next*, Michael A. Neff, P.C., January 20, 2006.

child currently receives social security benefits, knows that he is or she is adopted, or knows that he or she already has a social security number, has a work history (children age 12 and older must appear for a personal interview), or the adoptive parent is a stepparent or grandparent. In these cases, the SSA service representative may request legal proof linking the child's old and new names in order to issue a card under the existing number with the child's new name. Ask your attorney to give a certified copy of the Order of Adoption to you or directly to SSA.

Post-Adoption Services

Post-adoption services are programs intended to help adoptive parents make the transition to adoption. The need for support is normal and is not necessarily limited to a specific time period.

Social services districts are required to provide post-adoption services for adoptive families where the child has been legally freed and placed in an adoptive home. These services may extend for three years from the date of the adoption decree. Some of these services include support groups where adoptive parents can come together and share their feelings and thoughts about adoption. They also include counseling for the adoptive parent, the adoptive child, and other family members. Most services are free. You should speak with your caseworker about the post-adoption services available in your social services district or agency.

Also, foster/adoptive parent organizations are usually able to provide information about post-adoption services. These groups also provide foster/adoptive parents with the opportunity to talk with other people who have foster care and adoption experiences they can share. Foster/adoptive parent organizations have been formed in many social services districts and agencies. If there is a foster/adoptive parent organization in your social services district or agency, you might consider becoming involved.

The following statewide organizations offer information on foster parenting and adoption.

New York State Citizens' Coalition for Children, Inc.

410 East Upland Road
Ithaca, New York 14850
Telephone: (607) 272-0034
Fax: (607) 272-0035
E-mail: office@nysccc.org
Website: www.nysccc.org

New York State Foster and Adoptive Parents Association, Inc.

92-31 Union Hall
P.O. Box 120151
Jamaica, New York 11412
Telephone: (718) 262-3214
Fax: (718) 557-1005

Where to Go for Answers

For Answers to General Questions About Adoption

◆ New York State Office of Children and Family Services

Regional Offices

Albany Regional Office
Telephone: (518) 486-7078

Buffalo Regional Office
Telephone: (716) 847-3145

New York City Regional Office
Telephone: (212) 383-1788

Rochester Regional Office
Telephone: (716) 238-8201

Syracuse Regional Office
Telephone: (315) 423-1200

Yonkers Regional Office
Telephone: (914) 377-2080

Adoption Information

Website: www.ocfs.state.ny.us

New York Parents Connection Line
Telephone: 1-800-345-KIDS

Hearings

Bureau of Special Hearings
52 Washington Street
Rensselaer, NY 12144

For Answers to Questions About the Court Finalization Process

- ◆ **The Family Court or Surrogate's Court in Your County or Borough** — Your lawyer or caseworker should be able to provide you with this telephone number. If they cannot, the number is available from directory assistance (411) or in your local telephone book. Some telephone books have a special section for government listings. Ask to speak with the adoption clerk or the person who can give you information about your adoption case.

- ◆ **Bar Associations** — There are many bar associations around the state that refer persons to lawyers and perhaps provide information about adoption. The following is information for the New York State Bar Association.

New York State Bar Association
Telephone: (518) 463-3200
Website: www.nysba.org



Notes:

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Keeping Track of Your Adoption

Child's Name

Court Information

Court Where Adoption Is Filed

County or Borough.....

Family or Surrogate's.....

Telephone Number

Docket or File Number

Date Case Was Filed

Additional Information Requested by the Court

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Finalization Day

Date

Time

Court's Address

.....

Room.....

Agency Information

Social Services District (County) or
Voluntary Authorized Agency's Name

.....

Caseworker's Name.....

Telephone Number

Lawyer's Information

Your Lawyer's Name

.....

Telephone Number

Notes

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

Capital View Office Park
52 Washington Street
Rensselaer, NY 12144

Visit our website at:
www.ocfs.state.ny.us

For child care and
adoption information, call:
1-800-345-KIDS

To report child abuse and
neglect, call:
1-800-342-3720

For information on the
Abandoned Infant
Protection Act, call:
1-866-505-SAFE

For information about services for
the blind, call:
1-866-871-3000
1-866-871-6000 TDD

State of New York



Office of Children & Family Services

Gladys Carrión, Esq.
Commissioner

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will make this material available in large print or on audiotape upon request.

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