

259.67 ADOPTION ASSISTANCE PROGRAM.

Subdivision 1. **Adoption assistance.** (a) The commissioner of human services shall enter into an adoption assistance agreement with an adoptive parent or parents of an eligible child. To be eligible for adoption assistance a child must:

(1) be determined to be a child with special needs, according to subdivision 4; and

(2)(i) meet the criteria outlined in section 473 of the Social Security Act; or

(ii) have had foster care payments paid on the child's behalf while in out-of-home placement through the county or tribe, and be either under the guardianship of the commissioner or under the jurisdiction of a Minnesota tribe, with adoption in accordance with tribal law as the child's documented permanency plan.

(b) Notwithstanding any provision to the contrary, no child on whose behalf federal title IV-E adoption assistance payments are to be made may be placed in an adoptive home unless a criminal background check under section 259.41, subdivision 3, paragraph (b), has been completed on the prospective adoptive parents and no disqualifying condition exists. A disqualifying condition exists if:

(1) a criminal background check reveals a felony conviction for child abuse; for spousal abuse; for a crime against children (including child pornography); or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; or

(2) a criminal background check reveals a felony conviction within the past five years for physical assault, battery, or a drug-related offense.

(c) A child must be a citizen of the United States or otherwise eligible for federal public benefits according to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, in order to be eligible for title IV-E adoption assistance. A child must be a citizen of the United States or meet the qualified alien requirements as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, in order to be eligible for state-funded adoption assistance.

(d) Subject to commissioner approval, the legally responsible agency shall make a title IV-E adoption assistance eligibility determination for each child. Children who meet all eligibility criteria except those specific to title IV-E adoption assistance shall receive adoption assistance paid through state funds.

(e) Payments for adoption assistance shall not be made to a biological parent of the child who later adopts the same child. Direct placement adoptions under section 259.47 or the equivalent in

tribal code are not eligible for state-funded adoption assistance. A child who is adopted by the child's legal custodian or guardian is not eligible for state-funded adoption assistance. A child who is adopted by the child's legal custodian or guardian may be eligible for title IV-E adoption assistance if all required eligibility factors are met. International adoptions are not eligible for adoption assistance unless the adopted child has been placed into foster care through the public child welfare system subsequent to the failure of the adoption and all required eligibility factors are met.

Subd. 2. **Adoption assistance agreement.** The placing agency shall certify a child as eligible for adoption assistance according to rules promulgated by the commissioner. The placing agency shall not certify a child who remains under the jurisdiction of the sending agency pursuant to section 260.851, article 5, for state-funded adoption assistance when Minnesota is the receiving state. Not later than 30 days after a parent or parents are found and approved for adoptive placement of a child certified as eligible for adoption assistance, and before the final decree of adoption is issued, a written agreement must be entered into by the commissioner, the adoptive parent or parents, and the placing agency. The written agreement must be fully completed by the placing agency and in the form prescribed by the commissioner and must set forth the responsibilities of all parties, the anticipated duration of the adoption assistance agreement, the nature and amount of any payment, services, and assistance to be provided under such agreement, the child's eligibility for Medicaid services, eligibility for reimbursement of nonrecurring expenses associated with adopting the child, to the extent that total cost does not exceed \$2,000 per child, provisions for modification of the terms of the agreement, the effective date of the agreement, that the agreement must remain in effect regardless of the state of which the adoptive parents are residents at any given time, and the payment terms. The agreement is effective the date of the adoption decree. The adoption assistance agreement shall be subject to the commissioner's approval, which must be granted or denied not later than 15 days after the agreement is entered. The agreement must be negotiated with the adoptive parent or parents. A monthly payment is provided as part of the adoption assistance agreement to support the care of a child who has manifested special needs.

The amount of adoption assistance shall be determined through agreement with the adoptive parents. The agreement shall take into consideration the circumstances of the adopting parent or parents, the needs of the child being adopted and may provide ongoing monthly assistance, supplemental maintenance expenses related to the child's special needs, nonmedical expenses periodically necessary for purchase of services, items, or equipment related to the special needs, and medical expenses. The placing agency or the adoptive parent or parents shall provide written documentation to support the need for adoption assistance payments. The commissioner may

require periodic reevaluation of adoption assistance payments. The amount of ongoing monthly adoption assistance granted may in no case exceed the payment schedule outlined in subdivision 2a and, for state-funded cases, is subject to the availability of state funds.

Subd. 2a. **Benefits and payments.** (a) Eligibility for medical assistance for children receiving adoption assistance is as specified in section 256B.055.

(b) Basic maintenance payments are available for all children eligible for adoption assistance except those eligible solely based on high risk of developing a disability. Basic maintenance payments must be made according to the following schedule:

Birth through age five	up to \$247 per month
Age six through age 11	up to \$277 per month
Age 12 through age 14	up to \$307 per month
Age 15 and older	up to \$337 per month

A child must receive the maximum payment amount for the child's age, unless a lesser amount is negotiated with and agreed to by the prospective adoptive parent.

(c) Supplemental adoption assistance needs payments, in addition to basic maintenance payments, are available for a child whose disability necessitates care, supervision, and structure beyond that ordinarily provided in a family setting to persons of the same age. These payments are related to the severity of a child's disability and the level of parenting required to care for the child, and must be made according to the following schedule:

Level I	up to \$150 per month
Level II	up to \$275 per month
Level III	up to \$400 per month
Level IV	up to \$500 per month

A child's level shall be assessed on a supplemental maintenance needs assessment form prescribed by the commissioner. A child must receive the maximum payment amount for the child's assessed level, unless a lesser amount is negotiated with and agreed to by the prospective adoptive parent.

Subd. 3. **Modification, termination, or extension of adoption assistance agreement.**

The adoption assistance agreement shall continue in accordance with its terms as long as the need for adoption assistance continues and the adopted child is the legal or financial dependent of the adoptive parent or parents or guardian or conservator and is under 18 years of age. If the commissioner determines that the adoptive parents are no longer legally responsible for

support of the child or are no longer providing financial support to the child, the agreement shall terminate. Under certain limited circumstances, the adoption assistance agreement may be extended to age 22 as allowed by rules adopted by the commissioner. An application for extension must be completed and submitted by the adoptive parent prior to the date the child attains age 18. The application for extension must be made according to policies and procedures prescribed by the commissioner, including documentation of eligibility, and on forms prescribed by the commissioner. Termination or modification of the adoption assistance agreement may be requested by the adoptive parents or subsequent guardian or conservator at any time. When an adoptive parent requests modification of the adoption assistance agreement, a reassessment of the child must be completed consistent with subdivision 2a. If the reassessment indicates that the child's level has changed or, for a high-risk child, that the potential disability upon which eligibility for the agreement was based has manifested itself, the agreement shall be renegotiated to include an appropriate payment, consistent with subdivision 2a. The agreement must not be modified unless the commissioner and the adoptive parent mutually agree to the changes. When the commissioner determines that a child is eligible for extension of title IV-E adoption assistance under section 473 of the Social Security Act, the commissioner shall require the adoptive parents to submit the necessary documentation in order to obtain the funds under that act.

Subd. 3a. **Recovery of overpayments.** An amount of adoption assistance paid to an adoptive parent in excess of the payment due is recoverable by the commissioner, even when the overpayment was caused by agency error or circumstances outside the responsibility and control of the family or provider. Adoption assistance amounts covered by this subdivision include basic maintenance needs payments, monthly supplemental maintenance needs payments, reimbursement of nonrecurring adoption expenses, reimbursement of special nonmedical costs, and reimbursement of medical costs.

Subd. 3b. **Extension; adoption finalized after age 16.** A child who has attained the age of 16 prior to finalization of the child's adoption is eligible for extension of the adoption assistance agreement to the date the child attains age 21 if the child is:

- (1) completing a secondary education program or a program leading to an equivalent credential;
- (2) enrolled in an institution which provides postsecondary or vocational education;
- (3) participating in a program or activity designed to promote or remove barriers to employment;
- (4) employed for at least 80 hours per month; or

(5) incapable of doing any of the activities described in clauses (1) to (4) due to a medical condition which incapability is supported by regularly updated information in the case plan of the child.

Subd. 4. **Special needs determination.** (a) A child is considered a child with special needs under this section if the following criteria are met:

(1) Due to the child's characteristics or circumstances it would be difficult to provide the child an adoptive home without adoption assistance.

(2)(i) A placement agency has made reasonable efforts to place the child for adoption without adoption assistance, but has been unsuccessful;

(ii) the child's licensed foster parents desire to adopt the child and it is determined by the placing agency that the adoption is in the best interest of the child;

(iii) the child's relative, as defined in section 260C.007, subdivision 27, desires to adopt the child, and it is determined by the placing agency that the adoption is in the best interest of the child; or

(iv) for a non-Indian child, the family that previously adopted a child of the same mother or father desires to adopt the child, and it is determined by the placing agency that the adoption is in the best interest of the child.

(3) There has been a determination that the child cannot or should not be returned to the home of the child's parents as evidenced by:

(i) a court-ordered termination of parental rights;

(ii) a petition to terminate parental rights;

(iii) a consent to adopt accepted by the court under sections 259.24 and 260C.201, subdivision 11;

(iv) in circumstances where tribal law permits the child to be adopted without a termination of parental rights, a judicial determination by tribal court indicating the valid reason why the child cannot or should not return home;

(v) a voluntary relinquishment under section 259.25 or 259.47 or, if relinquishment occurred in another state, the applicable laws in that state; or

(vi) the death of the legal parent.

(b) The characteristics or circumstances that may be considered in determining whether a child meets the requirements of paragraph (a), clause (1), or section 473(c)(2)(A) of the Social Security Act, are the following:

(1) The child is a member of a sibling group to be adopted at the same time by the same parent.

(2) The child has been determined by the Social Security Administration to meet all medical or disability requirements of title XVI of the Social Security Act with respect to eligibility for Supplemental Security Income benefits.

(3) The child has documented physical, mental, emotional, or behavioral disabilities not covered under clause (2).

(4) The child has a high risk of developing physical, mental, emotional, or behavioral disabilities.

(5) The child is five years of age or older.

(6) The child is placed for adoption in the home of a parent who previously adopted another child born of the same mother or father for whom they receive adoption assistance.

(c) When a child's eligibility for adoption assistance is based upon the high risk of developing physical, mental, emotional, or behavioral disabilities, payments shall not be made under the adoption assistance agreement unless and until the potential disability upon which eligibility for the agreement was based manifests itself as documented by an appropriate professional.

(d) Documentation must be provided to verify that a child meets the special needs criteria in this subdivision. Documentation is limited to evidence deemed appropriate by the commissioner.

Subd. 5. Determination of residency. A child placed in the state from another state or a tribe outside of the state is not eligible for state-funded adoption assistance through the state. A child placed in the state from another state or a tribe outside of the state may be eligible for title IV-E adoption assistance through the state of Minnesota if all eligibility factors are met and there is no state agency that has responsibility for placement and care of the child. A child who is a resident of any county in this state when eligibility for adoption assistance is certified shall remain eligible and receive adoption assistance in accordance with the terms of the adoption assistance agreement, regardless of the domicile or residence of the adopting parents at the time of application for adoptive placement, legal decree of adoption, or thereafter.

Subd. 6. Right of appeal. (a) The adoptive parents have the right to appeal to the commissioner pursuant to section 256.045, when the commissioner denies, discontinues, or modifies the agreement.

(b) Adoptive parents who believe that their adopted child was incorrectly denied adoption assistance, or who did not seek adoption assistance on the child's behalf because of being provided with inaccurate or insufficient information about the child or the adoption assistance program, may request a hearing under section 256.045. Notwithstanding subdivision 2, the purpose of the hearing shall be to determine whether, under standards established by the federal Department of Health and Human Services, the circumstances surrounding the child's adoption warrant making an adoption assistance agreement on behalf of the child after the final decree of adoption has been issued. The commissioner shall enter into an adoption assistance agreement on the child's behalf if it is determined that:

(1) at the time of the adoption and at the time the request for a hearing was submitted the child was eligible for adoption assistance under United States Code, title 42, chapter 7, subchapter IV, part E, sections 670 to 679a, at the time of the adoption or for state funded adoption assistance under subdivision 4; and

(2) an adoption assistance agreement was not entered into on behalf of the child before the final decree of adoption because of extenuating circumstances as the term is used in the standards established by the federal Department of Health and Human Services. An adoption assistance agreement made under this paragraph shall be effective the date the request for a hearing was received by the commissioner or the local agency.

Subd. 7. Reimbursement of costs. (a) Subject to rules of the commissioner, and the provisions of this subdivision a child-placing agency licensed in Minnesota or any other state, or local or tribal social services agency shall receive a reimbursement from the commissioner equal to 100 percent of the reasonable and appropriate cost of providing child-specific adoption services. Adoption services under this subdivision may include child-specific recruitment, training, and home studies for prospective adoptive parents, and placement services.

(b) An eligible child must have a goal of adoption, which may include an adoption in accordance with tribal law, and meet one of the following criteria:

(1) is a ward of the commissioner of human services or a ward of tribal court pursuant to section 260.755, subdivision 20, who meets one of the criteria in subdivision 4, paragraph (a), clause (3), and one of the criteria in subdivision 4, paragraph (b); or

(2) is under the guardianship of a Minnesota-licensed child-placing agency who meets one of the criteria in subdivision 4, paragraph (b), clause (1), (2), (3), (5), or (6).

(c) A child-placing agency licensed in Minnesota or any other state shall receive reimbursement for adoption services it purchases for or directly provides to an eligible child. Tribal social services shall receive reimbursement for adoption services it purchases for or directly

provides to an eligible child. A local social services agency shall receive reimbursement only for adoption services it purchases for an eligible child.

Before providing adoption services for which reimbursement will be sought under this subdivision, a reimbursement agreement, on the designated format, must be entered into with the commissioner. No reimbursement under this subdivision shall be made to an agency for services provided prior to entering a reimbursement agreement. Separate reimbursement agreements shall be made for each child and separate records shall be kept on each child for whom a reimbursement agreement is made. Reimbursement shall not be made unless the commissioner agrees that the reimbursement costs are reasonable and appropriate. The commissioner may spend up to \$16,000 for each purchase of service agreement. Only one agreement per child is allowed, unless an exception is granted by the commissioner and agreed to in writing by the commissioner prior to commencement of services. Funds encumbered and obligated under such an agreement for the child remain available until the terms of the agreement are fulfilled or the agreement is terminated.

The commissioner shall make reimbursement payments directly to the agency providing the service if direct reimbursement is specified by the purchase of service agreement, and if the request for reimbursement is submitted by the local or tribal social services agency along with a verification that the service was provided.

Subd. 8. **Indian children.** The commissioner is encouraged to work with American Indian organizations to assist in the establishment of American Indian child adoption organizations able to be licensed as child-placing agencies. Children certified as eligible for adoption assistance under this section who are protected under the Federal Indian Child Welfare Act of 1978 should, whenever possible, be served by the tribal governing body, tribal courts, or a licensed Indian child-placing agency.

Subd. 9. **Effect on other aid.** Adoption assistance payments received under this section shall not affect eligibility for any other financial payments to which a person may otherwise be entitled.

Subd. 10. **Rules.** The commissioner shall promulgate rules necessary to implement this section and to comply with the adoption assistance requirements of the Social Security Act to qualify for funds available under the act.

Subd. 11. **Promotion of programs.** The commissioner or the commissioner's designee shall actively seek ways to promote the adoption assistance program, including information to prospective adoptive parents of eligible children under the commissioner's guardianship of the availability of adoption assistance. All families who adopt children under the commissioner's guardianship must also be informed as to the adoption tax credit.

History: 1979 c 256 s 1; 1982 c 553 s 3-5; 1984 c 654 art 5 s 58; 1986 c 414 s 1,2; 1987 c 370 art 1 s 7-9; 1990 c 542 s 8,9; 1Sp1993 c 1 art 3 s 32-39; 1994 c 631 s 31; 1996 c 416 s 11,12; 1997 c 85 art 3 s 52; 1997 c 177 s 20; 1997 c 239 art 6 s 12; 1998 c 406 art 1 s 22,37; 1998 c 407 art 9 s 21; 1999 c 159 s 114; 1999 c 245 art 8 s 34,35; 1Sp2003 c 14 art 4 s 13; art 6 s 54; 2005 c 159 art 2 s 6,7; 2007 c 147 art 1 s 5; art 2 s 50; 2008 c 361 art 6 s 13-16; 2009 c 79 art 2 s 33; 2009 c 163 art 2 s 5-12

NOTE: The reference in subdivision 2 to "260.851, article 5" must be changed to "260.93, article 4" upon legislative enactment by no fewer than 35 states of the compact in Laws 2008, chapter 361, article 6, section 23, as amended by Laws 2009, chapter 163, article 1, section 1. Laws 2009, chapter 163, article 1, section 8, the effective date.

NOTE: Subdivision 3b, as added by Laws 2009, chapter 79, article 2, section 33, is effective October 1, 2010. Laws 2009, chapter 79, article 2, section 33, the effective date.