

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 who adopt a child who meets the eligibility requirements under title IV-E of the Social Security Act, United States Code, title 42, sections 670 to 679a, or who otherwise meets the requirements in subdivision 4.

(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.

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 payments, and the payment terms. 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 amount of adoption assistance is subject to the availability of state and federal funds and 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 that which would be allowable for the child under foster family care and is subject to the availability of state and federal funds.

Subd. 3. **Modification or termination 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. The adoption assistance agreement may be extended to age 22 as allowed by rules adopted 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 the commissioner determines that a child is eligible for adoption assistance under Title IV-E of the Social Security Act, United States Code, title 42, sections 670 to 679a, the commissioner shall modify the adoption assistance agreement 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. 4. **Eligibility conditions.** (a) The placing agency shall use the AFDC requirements as specified in federal law as of July 16, 1996, when determining the child's eligibility for adoption assistance under title IV-E of the Social Security Act. If the child does not qualify, the placing agency shall certify a child as eligible for state funded adoption assistance only 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; or

(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.

(3)(i) The child is a ward of the commissioner or a tribal social service agency of Minnesota recognized by the Secretary of the Interior; or (ii) the child will be adopted according to tribal law without a termination of parental rights or relinquishment, provided that the tribe has documented the valid reason why the child cannot or should not be returned to the home of the child's parent. 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. A child who is adopted by the child's legal custodian or guardian shall not be eligible for state-funded adoption assistance.

(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 placed as one unit in which at least one sibling is older than 15 months of age or is described in clause (2) or (3).

(2) The child has documented physical, mental, emotional, or behavioral disabilities.

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

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

(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 manifests itself as documented by an appropriate health care professional.

Subd. 5. **Determination of residency.** 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 adoption services. Adoption services under this subdivision may include adoptive family recruitment, counseling, and special training when needed.

(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 (b), clause (1), (2), or (3); 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) or (2).

(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. The commissioner of human services shall agree 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. 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.

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